

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/STOP PRESS: ENERGY ACT 2008

FUEL AND ENERGY (

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The Energy Act 2008 makes provision relating to gas importation and storage, the generation of electricity from renewable and low-carbon sources, the decommissioning of energy installations and wells, the management and disposal of waste produced during the operation of nuclear installations, petroleum licences and third party access to oil and gas infrastructure, modifications of pipelines, payments in respect of the renewable generation of heat, gas and electricity meters and electricity safety, and the security of equipment, software and information relating to nuclear matters. The Act received the royal assent on 26 November 2008 and the following provisions came into force on that day: ss 37 (in part), 38 (in part), 88-91, 102, 104 (in part), 105 (in part), 106, 107 (in part), 110-113, Sch 5 (in part). Sections 38 (in part), 39, 40-43, 72-77, 83, 87, 94, 97, 98, 100, 101, 103, 104 (in part), 105 (in part), 107 (in part), 108 (in part), 109, Schs 3, 4, 5 (in part), 6 (in part) came into force on 26 January 2009: SI 2009/45. Sections 37 (in part), 92, 93, 95, 96, 107(1) (in part), 108 (in part), Schs 5 (in part), 6 (in part) came into force on 1 April 2009: SI 2009/45. Sections 1, 17-35, 36 (in part), 45-71, 78-82, 107 (in part), 108 (in part), Schs 1 (in part), 5 (in part), 6 (in part) come into force on 6 April 2009: SI 2009/45. Sections 2-15 and Sch 1 (so far as not already in force) come into force for certain purposes on 13 November 2009: SI 2009/2809. The remaining provisions come into force on a day or days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-36) Gas importation and storage

Chapter 1 (s 1) Gas importation and storage zones

Section 1 provides for ownership of the rights under the United Nations Convention on the Law of the Sea 1982 in the exclusive economic zone outside the United Kingdom's territorial sea, in relation to the unloading and storage of gas, to be vested in the Crown and allows Her Majesty to designate an area within which those rights are exercisable.

Chapter 2 (ss 2-16) Gas importation and storage zones

Section 2 prohibits specified activities relating to the recovery, unloading and storage of gas from being carried on except in accordance with a licence. However, such a licence is not required for certain activities which relate to developments which are liable to be subject to planning control: s 3. Under s 4, the Secretary of State may grant licences in respect of the specified activities referred to in s 2. The Secretary of State may, under s 5, make regulations relating to the making of applications for licences. Section 6 enables the Secretary of State to determine the terms and conditions of a licence and s 7 provides for the Secretary of State to make regulations prescribing model clauses for licences. By virtue of s 8, it is an offence to carry on any of the activities listed in s 2 and not excepted by s 3 without an appropriate licence. Section 9 provides that it is an offence for a licence holder to breach certain of provisions of the licence. Where there has been a breach of a licence, the Secretary of State may direct that the licence holder takes appropriate steps to remedy the breach: s 10. Failure

to comply with such a direction is an offence: s 11. Section 12 allows the Secretary of State to apply to the High Court for an injunction to restrain the carrying on of activities other than in accordance with a licence. The Secretary of State may appoint inspectors to assist in carrying out the Secretary of State's functions and provide for their remuneration: s 13. By virtue of s 14, offences may be prosecuted in any part of the United Kingdom, irrespective of where they were committed. In respect of a licence for the recovery of gas in a controlled place, s 15 makes provision to allow the Secretary of State give a direction, where satisfied that the amount of petroleum present is insignificant, to the effect that the holder of a gas storage licence does not also need a petroleum licence. Section 16 provides for interpretation.

Chapter 3 (ss 17-35) Storage of carbon dioxide

Section 17 prohibits specified activities relating to the storage of carbon dioxide with a view to its permanent disposal from being carried on except in accordance with a licence. Under s 18, the Secretary of State may grant licences in respect of the specified activities referred to in s 17. The Secretary of State is empowered by s 19 to make regulations prescribing the conditions that the applicant may be required to meet in order to obtain a licence and other requirements which must be met before a licence is granted. Subject to regulations on the terms and conditions of licence, the Secretary of State may grant licences on such terms and conditions as are considered appropriate: ss 20, 21. By s 22, it is an offence for a person to carry on any of the activities listed in s 17 without an appropriate licence, and by 23, it is an offence for a licence holder to breach certain of provisions of the licence. Where there has been a breach of a licence, the Secretary of State may direct that the licence holder takes appropriate steps to remedy the breach (s 24), and failure to comply with such a direction is an offence (s 25). Section 26 allows the Secretary of State to apply to the High Court for an injunction to restrain the carrying on of activities other than in accordance with a licence. The Secretary of State may appoint inspectors to assist in carrying out the Secretary of State's functions and provide for their remuneration: s 27. By virtue of s 28, offences may be prosecuted in any part of the United Kingdom, irrespective of where they were committed. Section 29 requires the Secretary of State to maintain a register containing prescribed information relating to licences, and allows the Secretary of State to prescribe the information that must be included in the register. The operators of offshore installations installed for the purposes of carbon dioxide storage activities are required by s 30 to decommission them in a timely manner after operations have permanently ceased. Regulations may be made which set out the circumstances under which a licence may be terminated: s 31. Section 32 extends provisions relating to safety zones around oil and gas installations to carbon storage installations. Section 33 ensures that the use of carbon dioxide in the recovery of petroleum is not subject to the provisions on the licensing of carbon dioxide storage requirements, unless the Secretary of State makes an order so extending those provisions. The Secretary of State may transfer any of his functions relating to the storage of carbon dioxide to a public body: s 34. Section 35 provides for interpretation.

Chapter 4 (s 36) General provisions about gas importation and storage

Section 36 introduces Sch 1, which makes amendments to legislation in connection with licensing of gas importation and storage.

Part 2 (ss 37-44) Electricity from renewable sources

Section 37 makes provision relating to the operation of the renewables obligation and empowers the Secretary of State to make a renewables obligation order, and (1) enables such an order to specify how the level of the obligation is to be set; (2) provides for the issue of renewables obligation certificates by the Gas and Electricity Markets Authority ('GEMA'); (4) allows the exclusion of specified renewable sources or descriptions of generating stations from eligibility for renewables obligation certificates or to the confinement of such eligibility to a proportion of electricity from specified sources; (5) allows the Secretary of State to provide different levels of support to different technologies; (6) allows electricity suppliers to make a

payment to GEMA as an alternative to complying with its renewables obligation; (7) enables GEMA to be empowered to require electricity suppliers to provide certain information in relation to their participation in the renewables obligation; (8) makes provision in relation to consultation. Section 38 makes supplementary provision in relation to the consultation requirement. By virtue of s 39, the Secretary of State may modify, preserve, replace or otherwise deal with arrangements made pursuant to non fossil fuel obligation orders. Section 40 makes provision in relation to the Northern Ireland renewables obligation. The Secretary of State may modify electricity supply and distribution licences to introduce a scheme to encourage small-scale low-carbon generation of electricity: s 41. In the exercise of that power, the Secretary of State must comply with the procedural requirements set out in s 42. Section 43 makes supplemental provisions in relation to the modification power conferred by s 41. Section 44 and Sch 2 makes provision relating to electricity transmission licences, in particular by conferring on GEMA power to recover costs related to competitive tenders for determining to whom offshore electricity transmission licences are to be granted, and power to make property schemes to transfer property, rights and liabilities from the existing owner to the successful bidder.

Part 3 (ss 45-75) Decommissioning of energy installations

Chapter 1 (ss 45-68) Nuclear sites: decommissioning and clean-up

Section 45 requires a person applying for a nuclear site licence for a site where they intend to construct or operate a nuclear power station to notify the Secretary of State and submit a funded decommissioning programme for approval. Section 46 gives the Secretary of State the power to approve or reject a funded decommissioning programme, which must be exercised with the aim of securing that prudent provision is made for defined technical matters. It is an offence for a person required to submit a programme under s 45 by reason of an application for a nuclear site licence to use the site by virtue of the licence without an approved funded decommissioning programme in place: s 47. Section 48 provides that a funded decommissioning programme, and any condition attached to it, may be modified once it has been approved, in accordance with the procedure specified by s 49 and from the time determined in accordance with s 51. The Secretary of State may make regulations to disapply s 49 in relation to modifications proposed by a person other than the Secretary of State: s 50. Section 52 gives the Secretary of State powers to obtain information from the site operator and other persons with obligations under a funded decommissioning programme, and in certain circumstances, from bodies corporate associated with the site operator. The Secretary of State may review an approved funded programme and request information about the programme from the site operator or any other person who has obligations under the programme: s 53. Section 54 empowers the Secretary of State to make regulations about the preparation, content and implementation of a funded decommissioning programme and about the modification of such programmes. Such regulations may allow the Secretary of State to rely on verification of financial matters by an independent third party: s 55. Provision is made by s 56 to protect monies set aside for the performance of designated technical matters under an approved funded decommissioning programme, in particular by disapplying insolvency legislation. Section 57 makes it an offence for a site operator or persons associated with the operator to fail to comply with their obligations under an approved decommissioning programme. Under s 58, the Secretary of State may direct a person with obligations under an approved funded decommissioning programme to take specified action where the person has failed to comply with any obligations imposed by the programme or has been engaged in unlawful conduct that may affect the programme. Section 59 makes it an offence to disclose certain information relating to an approved funded decommissioning programme and s 60 makes it an offence to knowingly or recklessly supply information which is false or misleading in a material respect. No proceeding for an offence under Ch 1 (ss 45-68), including an offence created by regulations under s 54, may be instituted except by the Secretary of State or the

Director of Public Prosecutions: s 61. Under s 62, the Secretary of State may modify s 45 so that it applies to persons who apply for a nuclear site licence of a specified description. The Secretary of State may require the Health and Safety Executive or the Environment Agency to assist him in discharging his duties under Ch 1: s 63. Section 64 provides that the obligations on an operator or former operator under a decommissioning programme remain until the Secretary of State explicitly releases it from its obligations, even if it no longer holds a site licence. Section 65 makes it an offence to install or operate a nuclear installation without a site licence issued by Health and Safety Executive. Where the Secretary of State enters into an agreement for the disposal of relevant hazardous material which is the subject of a funded decommissioning programme, the agreement may provide for a fee to be paid to the Secretary of State: s 66. Provision is made by s 67 for determining whether one body corporate is associated with another. Section 68 provides for interpretation.

Chapter 2 (ss 69-71) Offshore renewables installations

Section 69 allows the Secretary of State to serve a decommissioning notice on an associate of a developer requiring the associate to submit a decommissioning programme, where the Secretary of State is not satisfied that adequate arrangements have been made by the developer. Provision is made by s 70 to protect funds set aside for carrying out of approved decommissioning programmes or for compliance with the conditions of their approval, in particular by disapplying insolvency legislation, and to enable the Secretary of State to direct the publication of specified information regarding that protection. Section 71 empowers the Secretary of State to require persons who are, or may in future be, subject to decommissioning obligations to provide certain information or documents to assist the Secretary of State in exercising functions relating to offshore renewables installations.

Chapter 3 (ss 72-74) Oil and gas installations

Section 72 extends the range of persons who may be given a notice to submit a programme relating to the abandonment of an offshore installation or submarine pipeline, and ensuring that persons who have not been entitled to derive benefits from a certain particular installation are not subject to a decommissioning obligation. Section 73 clarifies the information which may be required to satisfy the Secretary of State of a person's ability to fund its abandonment obligations, or potential obligations. Provision is made by s 74 to protect funds set aside for the purposes of abandonment programme, in particular by disapplying insolvency legislation, and to enable the Secretary of State to direct the publication of specified information regarding that protection.

Chapter 4 (s 75) Wells

Section 75 empowers the Secretary of State to require a person who has drilled or started drilling a well pursuant to a petroleum licence or a gas storage and unloading licence to provide information about that person's financial affairs within a specified period of time, allows the Secretary of State to require the person to take specified action, and provides for offences for non-compliance.

Part 4 (ss 76-82) Petroleum licensing

Section 76 provides that the Secretary of State may direct that the right or benefit in a petroleum licence which has been transferred without the Secretary of State's consent must revert back to the transferor and allows the Commissioners for Her Majesty's Revenue and Customs to disclose to the Secretary of State information relating to the transfer of rights granted under petroleum licences. Model clauses of petroleum licences are amended by s 77 and Sch 3. Section 78 makes provision to extend the scope of the regulatory regime by which third parties may obtain access to existing oil and gas transporting and processing infrastructure. Section 79 provides for compulsory modifications to the oil and gas transporting and processing infrastructure by way of notice and enforcement of such a notice. Provision is

made by s 80 for a process of dispute resolution for third party access to oil processing facilities. The terms of the directions for third party access that may be made by the Secretary of State are dealt with by s 81 and, in relation to such third party access, provision for determining whether one body corporate is associated with another is made by s 82.

Part 5 (ss 83-102) Miscellaneous

Section 83 extends the primary objective of the Secretary of State and GEMA in their functions relating to the supply of gas through pipes from the interests of existing consumers to the interests of both existing and future consumers, and require the Secretary of State and GEMA to have regard to the need to contribute to the achievement of sustainable development. Section 84 empowers the Secretary of State, for the purpose of facilitating access to and/or efficient use of a transmission system in Great Britain or offshore waters, to modify a particular electricity generation, transmission, distribution or supply licence, standard licence conditions of those types of electricity licence, and documents maintained under the licence conditions of relevant electricity licences. Procedural provisions relating to the exercise those modification powers are set out in s 85 and supplementary provisions are set out in s 86. Section 87 makes provision relating to the Secretary of State's annual reports on progress towards sustainable energy aims. Section 88 empowers the Secretary of State to make specified modifications to gas and electricity licences so as to require licence holders to provide or install, or facilitate the provision, installation or operation of, a particular kind of meter. Procedural provisions relating to the exercise those modification powers are set out in s 89 and supplementary provisions are set out in s 90. Section 91 introduces Sch 4, which makes provision relating to the licensing of activities connected with the provision, installation or operation of prescribed types of gas or electricity meters. Section 92 transfers the functions of GEMA under specified gas meter legislation to the Secretary of State and s 93 makes consequential amendments. Section 94 empowers the Secretary of State, after consultation with licence holders, GEMA and any other appropriate persons, to modify the conditions of gas transporter licences. Section 95 transfers the functions of GEMA under specified gas meter legislation to the Secretary of State and s 96 makes consequential amendments. Section 97 empowers the Secretary of State, after consultation with licence holders, GEMA and any other appropriate persons, to modify the conditions of electricity transmission and distribution licences. Section 98 allows regulations to entitle an electricity distributor required to connect a person to the electricity distribution network to charge that person reasonable connection offer expenses. Provision is made by s 99 transferring responsibility for electricity safety standards, including inspection and enforcement, from the Secretary of State to the Health and Safety Executive. The Secretary of State may establish a scheme to facilitate and encourage renewable generation of heat: s 100. Section 101 deems places where equipment, software or information relating to the enrichment of uranium is held as 'prohibited places', so as to extend to those places offences and penalties under official secrets legislation. The Secretary of State's principal objectives and general duties set out in the Gas Act 1986 ss 4AA-4B and the Electricity Act 1989 ss 3A-3D apply when the Secretary of State is exercising his modification powers under the 2008 Act ss 41-43, 84-86, 88-90, 94 and 97: s 102.

Part 6 (ss 103-113) General

Section 103 provides that where an offence has been committed under the Act by a body corporate with the consent or connivance of an officer of that body corporate, that officer is also guilty of the offence. Section 104 provides for the making of Orders in Council, orders or regulations and s 105 provides for the Parliamentary annulment and approval of such instruments. Section 106 deals with interpretation, and ss 107, 108, Schs 5, 6 provide for amendments and repeals. Section 109 makes provision for transitional or savings provisions.

Section 110 deals with commencement, s 111 with financial provision, s 112 with extent and s 113 with short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Pipe-lines Act 1962 s 10G, 10H; Nuclear Installations Act 1964 s 1(4); Food and Environment Protection Act 1985 ss 7A, 24; Gas Act 1986 ss 4AA, 41HA-41HC, 92; Petroleum Act 1987 s 21; Electricity Act 1989 ss 3A, 6D, 6E, 16A, 32-32M, 56FA-56FC, 106, Sch 7; Petroleum Act 1998 ss 5A-5C, 11, 13, 26(2), 28, 30, 38, 38A, 38B, 44, 45A, 47A; Anti-terrorism, Crime and Security Act 2001 s 80A; Sustainable Energy Act 2003 ss 1, 5; Energy Act 2004 ss 81(3), 105, 105A, 107(5)-(7), 108(3A), 110A, 110B, 112A, 116, 180(2) 188; Climate Change and Sustainable Energy Act 2006 ss 18, 23, 24.

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1. INTRODUCTION

(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE

(i) In general

601. Powers, duties and functions within the scope of the title.

The powers, duties and functions of the Secretary of State¹ with which this title is concerned are his powers, duties and functions under the domestic legislation relating to:

- 1 (1) energy conservation and control²;
- 2 (2) climate change and sustainable energy³;
- 3 (3) the regulation of the gas and electricity industries, both generally⁴ and in relation to each of those industries in particular⁵;
- 4 (4) the offshore production of renewable energy⁶;
- 5 (5) the imposition of renewable transport fuel obligations⁷;
- 6 (6) nuclear energy and radioactive substances⁸; and
- 7 (7) petroleum production⁹.

With some exceptions¹⁰, functions relating to fuel and energy are not transferred so as to be exercisable in relation to Wales by the Welsh Ministers.

The Secretary of State is also the competent authority¹¹ for the purpose of making regulations implementing European Directives relating to fuel and energy¹².

Certain functions previously carried out by the Secretary of State with regard to energy and technology innovation have been transferred to the Technology Strategy Board, which was established as a research council on 1 April 2007¹³.

1 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. In this title, unless the context otherwise requires, the Secretary of State referred to is generally to be taken to be the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry). At the date at which this title states the law, however, certain functions relating to climate change, radioactive materials and waste and the control of pollution were the responsibility of the Secretary of State for Environment, Food and Rural Affairs; health and safety matters in the workplace were the responsibility of the Secretary of State for Work and Pensions; certain planning matters were the responsibility of the Secretary of State for Communities and Local Government; and the Treasury had certain responsibilities in connection with public procurement under the Utilities Contracts Regulations 2006/6, and in connection with information regarding licences under the Petroleum Act 1998. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355; and for current ministerial responsibilities see the websites of the government departments concerned and the Civil Service Yearbook.

Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS), certain statutory functions relating to fuel and energy, including functions under subordinate legislation, so far as exercisable in relation to Wales, are now the responsibility of Welsh Ministers (ie the First Minister and the Welsh Ministers established under ss 46, 48: see s 45(2); and CONSTITUTIONAL LAW AND HUMAN RIGHTS). These functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (now repealed) (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1 (as amended); the

National Assembly for Wales (Transfer of Functions) Order 2005, SI 2005/1958); or, in the case of functions conferred under enactments subsequent to the Government of Wales Act 1998, by virtue of particular provision made under those enactments: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Further transfers of Ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22 (now repealed)) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. By virtue of these transfers functions under the following enactments (to the extent that they are recorded in this title) are conferred on the Welsh Ministers in so far as they are exercisable in relation to Wales, subject (where applicable) to the limitations noted: (1) the Official Secrets Act 1989 in respect of the power to prescribe persons or classes of member or employee for the purposes of s 12(1)(f) (see PARA 1574 post) so far as exercisable in respect of bodies in relation to which the Assembly exercises or the Welsh Ministers exercise functions; (2) the Radioactive Substances Act 1993 (see PARA 1439 et seq post) except s 1(5) (see PARA 1439 post), s 8(6) (see PARA 1440 post), s 11(1) (see PARA 1446 post), s 15 (as amended) (see PARA 1450 post) and s 25 (as amended) (see PARA 1572 post); (3) the Gas Act 1995 Sch 5 para 12 (power to modify certain provisions with regard to rating); (4) the Pollution Prevention and Control Act 1999 s 2, except in relation to offshore oil and gas exploration and exploitation (see PARA 1694 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 186 note 2). Additionally: (a) the functions of the Secretary of State under the Radioactive Substances Act 1993 ss 25, 39 (as amended) (see PARAS 1567, 1572 post) are exercisable by the Welsh Ministers concurrently with the Secretary of State; (b) where the power to prescribe persons or classes of member or employee for the purposes of the Official Secrets Act 1989 s 12(1)(f) is exercisable in respect of bodies or offices in relation to which both the Assembly or the Welsh Ministers and a Minister of the Crown exercise functions, that prescribing function is exercisable concurrently with the Secretary of State; (c) certain functions with regard to certificates in respect of planning permission and licences to abstract water which are required under the Gas Act 1965 are exercisable either by the Welsh Ministers or by those ministers and the appropriate Secretary of State jointly (see PARAS 1011-1012 post).

Fuel and energy law does not generally fall within the legislative competence of the Assembly; but an Act of the Assembly may make provision with regard to the encouragement of energy efficiency otherwise than by prohibition or regulation, only so far as relating to Wales: see the Government of Wales Act 2006 s 108, Sch 7 Pt 1 para 4 (amended by the National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007, SI 2007/2143, art 4).

2 See PARA 603 et seq post.

3 See PARA 614 et seq post.

4 See PARA 706 et seq post.

5 See PARA 789 et seq post (regulation of the gas industry); para 1041 et seq post (regulation of the electricity industry).

6 See PARA 1310 et seq post.

7 See PARA 1329 et seq post.

8 See PARA 1358 et seq post.

9 See PARAS 1629, 1633 et seq post.

10 See note 1 supra.

11 Ie for the purposes of the European Communities Act 1972 s 2(2).

12 As to the relevant European Directives and their implementation see eg paras 624 et seq, 631 et seq, 950 et seq, 1191 et seq, 1477 et seq, 1630-1631 post.

13 See the Technology Strategy Board Order 2007, SI 2007/280; the Technology Strategy Board (Transfer of Property etc) Order 2007, SI 2007/1676. That transfer took effect on 1 July 2007: see art 3.

UPDATE

601 Powers, duties and functions within the scope of the title

NOTE 1--The functions of the Secretary of State for Business, Enterprise and Regulatory Reform have been transferred to the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

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602. Power to impose charges to fund energy functions.

The Secretary of State¹ may by regulations² make provision requiring the payment to him of charges in respect of any of the following:

- 8 (1) services or facilities provided or made available by him in the carrying out of his relevant energy functions³;
- 9 (2) the consideration or supervision⁴ by him, for purposes connected with the carrying out of any of those functions, of any matter;
- 10 (3) the issue by him, in the carrying out of those functions, of a licence⁵;
- 11 (4) the doing of anything else which is done by him in the carrying out of any of those functions or for purposes which are incidental to, or otherwise connected with, the carrying out of any of those functions⁶.

The matters in respect of which charges may be imposed under these provisions include:

- 12 (a) the performance of a duty imposed on the Secretary of State; and
- 13 (b) things done in relation to, or to activities carried on in, the territorial sea adjacent to the United Kingdom⁷ or a designated⁸ area⁹;

and the persons who may be made liable for charges imposed by such regulations are:

- 14 (i) any of the persons to whom, or on whose application¹⁰, the service or facility in question is provided or made available;
- 15 (ii) any of the persons on whose application the matter in question is considered, or to whom that matter relates;
- 16 (iii) any of the persons whose activities are supervised;
- 17 (iv) any of the persons to whom, or on whose application, the licence in question is issued;
- 18 (v) any of the persons on whose application the other thing is done¹¹.

In exercising his powers under these provisions to fix the amount of the charge to be paid by a person of a particular description, the Secretary of State may fix any amount that appears to him to be appropriate having regard to the costs that the Secretary of State is likely to incur in the carrying out in relation to persons of that description, or in a manner that benefits persons of that description, of the relevant energy functions in respect of which the charge is imposed¹².

The provision that may be made by such regulations includes provision:

- 19 (A) specifying the times at which charges imposed under such regulations become due;
- 20 (B) specifying the manner in which they are to be paid; and
- 21 (C) for charges that must be paid periodically in respect of any matter¹³.

The power to make regulations under the above provisions is in addition to every other power to impose charges in connection with the carrying out by the Secretary of State of his relevant energy functions and is to be disregarded in construing those other powers¹⁴.

The Secretary of State must pay sums received by him by virtue of such regulations into the Consolidated Fund¹⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Regulations so made are subject to the negative resolution procedure: Energy Act 2004 s 188(6). Every power conferred by the Energy Act 2004 on the Secretary of State or the Treasury to make an order or regulations is a power exercisable by statutory instrument: s 192(1). Where (1) that Act provides for an Order in Council, order or regulations to be subject to the negative resolution procedure; and (2) a draft of the Order in Council, order or regulations has not been required, in accordance with s 192(3) (see PARA 754 note 17 post) or any other enactment, to be laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons, the statutory instrument containing the Order in Council, order or regulations is subject to annulment in pursuance of a resolution of either House of Parliament: ss 192(2), 196(1). Subject to s 192(5), every power under that Act to make an Order in Council and every power conferred by that Act on the Secretary of State or the Treasury to make an order or regulations includes power (a) to make different provision for different cases (including different provision in respect of different areas); (b) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit; and (c) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit: s 192(4). Section 192(4) does not apply to (i) the Secretary of State's power to make an order under s 39(3) (see PARA 1414 post); (ii) the power to make an Order in Council under s 84(4) (see PARA 1310 post); or (iii) so much of the Secretary of State's power to make an order under s 198 (power to make commencement orders) as is exercisable otherwise than by virtue of s 179(4), (5) (commencement orders for certain amendments to the Electricity Act 1989): Energy Act 2004 s 192(5).

3 The references in *ibid* s 188 to the Secretary of State's relevant energy functions are references to the powers and duties of the Secretary of State by or under any of the following: (1) the Pipe-lines Act 1962; (2) so much of the Prevention of Oil Pollution Act 1971 as has effect in connection with anything specified in the Energy Act 2004 s 188(8); (3) the Energy Act 1976 (see PARAS 603 et seq, 1216-1218 post); (4) so much of the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended) (deposits in the sea: see SHIPPING AND MARITIME LAW) as has effect in connection with anything so specified; (5) the Gas Act 1986 (see PARA 789 et seq post); (6) the Electricity Act 1989 (see PARA 1041 et seq post); (7) the Gas Act 1995 (see PARAS 805, 834 post); (8) the Petroleum Act 1998 (see PARA 1626 et seq post); (9) so much of the Pollution Prevention and Control Act 1999 (see PARA 1694 post) as has effect in connection with anything specified in the Energy Act 2004 s 188(8); (9) Pt 2 Schs 2, 3 (ss 84-114) (see PARA 1310 et seq post); (10) Pt 3 Chs 2-4 (ss 145-187) (see PARAS 706, 733 et seq, 743 et seq, 806, 810, 1065 note 9, 1069 post); (11) so much of any Community instrument as has effect in connection with anything specified in s 188(8): s 188(7).

The matters mentioned in s 188(7) are: (a) the carrying out of exploration for petroleum; (b) the winning or production of petroleum; (c) the generation, transmission, distribution or supply of electricity; (d) the conveyance, supply, storage or processing of gas; (e) pipelines for the conveyance of petroleum that are situated in Great Britain; (f) offshore installations and submarine pipelines; (g) renewable energy zones and renewable energy installations; (h) the protection of the environment from activities carried on in connection with anything mentioned in heads (a)-(g) supra: s 188(8). For these purposes: (i) 'gas' has the same meaning as in the Gas Act 1986 (see PARA 802 post); (ii) 'offshore installation' has the same meaning as in the Petroleum Act 1998 Pt IV (ss 29-45) (see PARA 1729 note 4 post) and 'petroleum' has the same meaning as in Pt I (ss 1-9) (see s 1; and PARA 1626 post); (iii) 'pipeline' means a pipeline within the meaning of Pt III (ss 14-28) (as amended) (see PARA 1741 post) or a pipeline within the meaning of the Pipe-lines Act 1962 (see s 65 (as amended)); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559); and (iv) 'renewable energy zone' and 'renewable energy installation' have the same meanings as in the Energy Act 2004 Pt 2 Ch 2 (ss 84-105) (see PARAS 1310, 1311 note 2 post): s 188(9).

4 For these purposes, 'supervision', in relation to activities, includes the carrying out of an inspection of any premises or thing used or apparently used in connection with those activities: *ibid* s 188(9).

5 For these purposes, 'issue', in relation to a licence, includes grant and serve, and also refuse, modify, revoke and renew, and cognate expressions are to be construed accordingly; and 'licence' includes an authorisation, consent, approval, exemption, certificate or notice: *ibid* s 188(9).

6 *Ibid* s 188(1). As to the exercise of this power see the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 9; and PARA 1260 post.

7 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain'

means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom.

8 le an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post.

9 Energy Act 2004 s 188(2).

10 For these purposes, 'application' includes a requirement, and cognate expressions are to be construed accordingly: *ibid* s 188(9).

11 *Ibid* s 188(3).

12 *Ibid* s 188(4).

13 *Ibid* s 188(5).

14 *Ibid* s 188(10).

15 *Ibid* s 188(11). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

602 Power to impose charges to fund energy functions

NOTE 3--Energy Act 2004 s 188(7), (8) amended: Energy Act 2008 Sch 1 para 13.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/A. PERMANENT AND RESERVE POWERS FOR ENERGY CONSERVATION AND CONTROL/603. General control by order; general duty.

(ii) Energy Conservation and Control Powers under the Energy Act 1976

A. PERMANENT AND RESERVE POWERS FOR ENERGY CONSERVATION AND CONTROL

603. General control by order; general duty.

The Secretary of State¹ may by order² provide for regulating or prohibiting the production, supply, acquisition or use of:

- 22 (1) crude liquid petroleum, natural gas³ and petroleum products⁴;
- 23 (2) any substance, whether solid, liquid or gaseous, not falling within head (1) above but used as fuel, whether for the propulsion of vehicles or for any other purposes; and
- 24 (3) electricity⁵.

Such orders regulating or prohibiting the use of any of those substances, or of electricity, may be made at any time but only where it appears to the Secretary of State to be desirable for the purpose of conserving energy⁶. Before so making an order, the Secretary of State must consult with organisations in the United Kingdom⁷ appearing to him to represent those who will be affected by the order, including both consumers and suppliers of energy, and such other organisations as he thinks appropriate⁸.

Orders regulating or prohibiting the production, supply or acquisition of any of those substances, or of electricity, may only be made when an Order in Council⁹ is in force declaring those powers exercisable to their fullest extent¹⁰. Where such an Order in Council is in force, orders for regulating or prohibiting the use of those substances, or the use of electricity, may be made without consultation¹¹.

The Secretary of State may also by order provide for regulating the price at which crude liquid petroleum, natural gas or petroleum products may be supplied¹². This power is exercisable at any time in the case of petroleum products, but otherwise is exercisable only when such an Order in Council is in force¹³.

A power under the above provisions may be exercised in relation to anything which is wholly or partly situated in, or to activity wholly or partly in, the United Kingdom, the territorial sea¹⁴ of the United Kingdom, or a designated¹⁵ area¹⁶.

The Secretary of State is also charged with the general duty of securing the effective and co-ordinated development of coal, petroleum¹⁷ and other minerals and sources of fuel and power in Great Britain¹⁸, and of promoting economy and efficiency in the supply, distribution, use and consumption of fuel and power, whether produced in Great Britain or not¹⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Orders under the Energy Act 1976 must be made by statutory instrument and (except in the case of Orders in Council under s 3 (see PARA 605 post) and orders under s 9 (as substituted and amended: see PARA 981 post) or s 23(2) (commencement)) are subject to annulment in pursuance of a resolution of either House of Parliament: s 17(1) (amended by the Oil and Gas (Enterprise) Act 1982 s 37, Sch 3 para 37(2)). Powers to make an order, including such an Order in Council, include power to revoke or vary the order and to make any incidental, supplementary or transitional provision which appears to the Secretary of State or, as the case may be, to Her Majesty in Council, to be appropriate: Energy Act 1976 s 17(2), (3). Any such order may (1) apply to persons, premises or undertakings generally, or to classes of persons, premises or undertakings, or to particular persons, premises, or undertakings, and may so apply either in all areas or in specified areas; and (2) provide for exempting persons, premises or undertakings, or any class of any of them, from the requirements of the order, either unconditionally or subject to conditions and with or without a limit in time, and for any such exemption to be varied or revoked: s 17(4). For these purposes, 'undertaking' includes a business, and also any activity carried on by a body of persons, whether corporate or unincorporate: s 21. Prima facie evidence of any such exemption relating to a class of persons, premises or undertakings, or of the variation or revocation of such an exemption, may be given in any legal proceedings, including arbitrations, by the production of a copy of the London, Edinburgh or Belfast Gazette purporting to contain such an exemption, variation or revocation: s 18(1), Sch 2 para 8(3)(b), (c).

3 'Natural gas' means any gas derived from natural strata: *ibid* s 21.

4 'Petroleum products' means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (ie a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point): *ibid* s 21.

5 *Ibid* s 1(1). The Liquid and Gaseous Fuel (Designated Filling Stations and Fuel Depots) (No 5) (Revocation) Order 2000, SI 2000/2676, which revokes the Liquid and Gaseous Fuel (Designated Filling Stations and Fuel Depots) (No 5) Order 2000, SI 2000/2535, was made under the Energy Act 1976 s 1(1). In addition, by virtue of s 22, Sch 4 Pt III, the following orders have effect as if so made: (1) the Fuel and Electricity (Heating) (Control) Order 1974, SI 1974/2160 (amended by SI 1980/1013); and (2) the Fuel and Electricity (Heating) (Control) (Northern Ireland) Order 1975, SI 1975/62 (amended by SI 1980/1253). As to administration and enforcement see PARA 609 et seq post.

Unless any enactment requires the heating of any premises or any part of them to be maintained at a specific temperature or at a specific minimum temperature, no electricity or fuel may be used for the purpose of heating premises so as to cause their temperature to exceed 19°C: see the Fuel and Electricity (Heating) (Control) Order 1974, SI 1974/2160, art 3(1) (amended by SI 1980/1013). This does not, however, apply to the use of electricity or fuel for the purpose of heating any part of any premises (1) used as living accommodation, unless the heating of that part cannot be controlled separately from the heating of those parts which are not so used; (2) used as a sauna bath, turkish bath or swimming pool; (3) to the extent that such heating is necessary (a) for the maintenance of the health or well being of any person on the premises who is ill, disabled, infirm, pregnant, under the age of five or over the age of 60 years; (b) in the course of any industrial process, in the preparation of food, for purposes of research or for agricultural purposes; (c) to prevent damage or deterioration to food, goods, material or growing crops or to prevent damage to or impairment of the functioning of any apparatus or equipment on the premises which is sensitive to changes of temperature or humidity; or (d) for preserving the health of any animal or bird on the premises; or (4) in respect of which a licence has been granted by the Secretary of State: Fuel and Electricity (Heating) (Control) Order 1974, SI 1974/2160, art 3(2). A licence so granted may be subject to conditions and may be revoked without prior notice: art 4. It is a defence for a person who contravenes or fails to comply with any of these provisions to prove that he used all due diligence to secure compliance with that provision: art 5. 'Fuel' means any substance, whether solid, liquid or gaseous, used as a fuel: art 2(1).

6 Energy Act 1976 s 1(2).

7 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

8 See the Energy Act 1976 s 1(3). Any administrative expenses incurred by a government department in consequence of the Energy Act 1976 must be paid out of money provided by Parliament: s 20(1).

9 *Ie* under *ibid* s 3: see PARA 605 post.

10 *Ibid* s 1(2).

11 See *ibid* s 1(2).

12 *Ibid* s 1(4).

13 *Ibid* s 1(4). At the date at which this title states the law, no such order had been made and none had effect as if so made. As to enforcement of such orders see PARA 611 post.

14 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

15 Is an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post.

16 Energy Act 1976 s 5(1) (added by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 14). This is without prejudice to the Energy Act 1976 s 2(2)(b) (see PARA 604 the text and notes 14-15 post): s 5(2) (as so added). Section 5 (as originally enacted) was repealed by the Competition Act 1998 s 74(1), (3), Sch 12 para 2, Sch 14 Pt I.

17 For these purposes, 'coal' and 'petroleum' respectively include products of coal and products of petroleum: Ministry of Fuel and Power Act 1945 s 6(1).

18 The general duty of securing the effective and co-ordinated development of such resources in Great Britain extends to any such resources outside Great Britain with respect to which rights are exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources: see the Continental Shelf Act 1964 s 1(1), (6).

19 Ministry of Fuel and Power Act 1945 s 1(1) (amended by the Ministry of Fuel and Power Act 1945 (Repeal) Regulations 1974, SI 1974/2012, reg 2).

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/A. PERMANENT AND RESERVE POWERS FOR ENERGY CONSERVATION AND CONTROL/604. Reserve power to control by government directions.

604. Reserve power to control by government directions.

When an Order in Council is in force¹ declaring the following powers exercisable to their fullest extent, the Secretary of State² may give directions³ to any person⁴ carrying on an undertaking⁵:

- 25 (1) in the course of which he produces any crude liquid petroleum, natural gas⁶, petroleum products⁷ or other substance used as fuel⁸, as to the production and use of that substance⁹;
- 26 (2) in the course of which he supplies any such substance, as to the supply by him of that substance¹⁰; and
- 27 (3) which involves the use of any such substance, as to the use by him of that substance for the purposes of the undertaking¹¹.

In particular, and without prejudice to the generality of heads (1) to (3) above, a direction:

- 28 (a) under head (1) above may prohibit or restrict the use of any material for the production of any relevant substance¹² and may extend to the disposal of stocks of such a substance or of any such material¹³;
- 29 (b) under head (2) above may:
 - 1 (i) prohibit or restrict the supply anywhere in the world of any such substance to specified¹⁴ persons; and
 - 2 (ii) require the supply anywhere in the world of any such substance to specified persons in accordance with specified requirements, including, in the case of crude liquid petroleum, natural gas or petroleum products, requirements as to price¹⁵; and
- 30 (c) under head (3) above may prohibit or restrict the use of any such substance for specified purposes or during specified periods¹⁶.

These provisions, except head (b)(ii) above so far as it relates to requirements as to price, apply in relation to electricity as they apply in relation to the relevant substances¹⁷.

Without prejudice to head (b) in the text, a power under the above provisions may be exercised in relation to anything which is wholly or partly situated in, or to activity wholly or partly in, the United Kingdom, the territorial sea¹⁸ of the United Kingdom, or a designated¹⁹ area²⁰.

¹ ie under the Energy Act 1976 s 3: see PARA 605 post. As to the power to make orders generally see PARA 603 note 2 ante.

² As to the Secretary of State see PARA 601 note 1 ante.

³ Any power to give a direction under the Energy Act 1976 includes power to revoke or vary the direction: s 17(2). Where a power is conferred to give directions for any purpose, there is also power to make provision for that purpose by order applicable to all, or to any class of, persons to whom directions could be given: s 17(5).

- 4 Unless the contrary intention appears, 'person' includes a body of persons corporate or unincorporate: see the Interpretation Act 1978 s 5, Sch 1.
- 5 For the meaning of 'undertaking' see PARA 603 note 2 ante.
- 6 For the meaning of 'natural gas' see PARA 603 note 3 ante.
- 7 For the meaning of 'petroleum products' see PARA 603 note 4 ante.
- 8 Ie any substance mentioned in the Energy Act 1976 s 1(1): see PARA 603 ante.
- 9 Ibid s 2(1)(a).
- 10 Ibid s 2(1)(b).
- 11 Ibid s 2(1)(c).
- 12 See note 8 supra.
- 13 Energy Act 1976 s 2(2)(a).
- 14 For these purposes, 'specified' means specified by the Secretary of State's directions: ibid s 2(3).
- 15 Ibid s 2(2)(b).
- 16 Ibid s 2(2)(c).
- 17 Ibid s 2(4). As to the Secretary of State's power to give directions for preserving the security of electricity supplies see the Electricity Act 1989 s 96; and PARA 1179 post.
- 18 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.
- 19 Ie an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post.
- 20 Energy Act 1976 s 5(1), (2) (added by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 14); and see PARA 603 note 16 ante.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/A. PERMANENT AND RESERVE POWERS FOR ENERGY CONSERVATION AND CONTROL/605. Implementation of reserve powers.

605. Implementation of reserve powers.

Her Majesty may by Order in Council declare the powers of control by order¹ and government directions² exercisable to their full extent because either:

- 31 (1) they are required for the implementation of certain European Union or international obligations of the United Kingdom³; or
- 32 (2) there exists or is imminent in the United Kingdom an actual or threatened emergency affecting fuel or electricity supplies which makes it necessary in Her Majesty's opinion that the government should temporarily have at its disposal exceptional powers for controlling the sources and availability of energy⁴.

Any such Order in Council must be laid before Parliament after it is made⁵.

If it is made by virtue of head (2) above, any such Order in Council ceases to be in force on the expiration of the period of 28 days⁶ beginning on the date on which it was made, unless before the end of that period it is approved by resolution of each House of Parliament⁷; and it ceases to be in force at the end of the 12 months beginning with the date on which it was made, unless before then both Houses of Parliament have resolved that it be continued for a further period of 12 months⁸. It may be continued in force more than once⁹.

An Order in Council made under head (1) or head (2) above may in any case be revoked by a subsequent Order in Council declaring Her Majesty's opinion that the circumstances which led to the making of the earlier Order no longer obtain¹⁰.

A power under the above provisions may be exercised in relation to anything which is wholly or partly situated in, or to activity wholly or partly in, the United Kingdom, the territorial sea¹¹ of the United Kingdom, or a designated¹² area¹³.

1 Ie the powers of the Energy Act 1976 s 1: see PARA 603 ante.

2 Ie the powers of *ibid* s 2: see PARA 604 ante.

3 Ie obligations incumbent upon the United Kingdom as a member of the European Community or the International Energy Agency or as a party to the International Energy Agreement to take emergency measures in connection with the reduction, or threatened reduction, of fuel supplies: Energy Act 1976 s 3(1)(a). An Order in Council made in these circumstances must be laid before Parliament but is not subject to any form of parliamentary procedure: see the text to note 5 *infra*. See also PARA 603 note 2 ante. 'International Energy Agency' and 'International Energy Agreement' mean, respectively, the body established by the Decision of the Council of the Organisation for Economic Co-operation and Development on 15 November 1974 and the Agreement on an International Energy Program signed at Paris on 18 November 1974 (TS 111 (1976); Cmnds 5826, 6697) (see PARA 1632 post): Energy Act 1976 s 21. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 *Ibid* s 3(1)(a), (b). For an example of the exercise of the power under s 3(1)(b) see the Energy Act 1976 (Reserve Powers) Order 2000, SI 2000/2449.

5 Energy Act 1976 s 3(1).

6 In reckoning that period no account is to be taken of any time during which Parliament is dissolved or prorogued, or during which the House of Commons is adjourned for more than four days: *ibid* s 3(2).

7 *Ibid* s 3(2).

8 *Ibid* s 3(4). Where an Order in Council under s 3 ceases to be in force by virtue of any provision of s 3, the Interpretation Act 1978 s 16(1) (effect of repeals) applies as if the provisions of the Energy Act 1976 which then cease to have effect or become limited in their effect had been repealed, or repealed *pro tanto*, by another Act; and the cesser does not prejudice the making of a new Order in Council under s 3: s 17(6); Interpretation Act 1978 s 17(2)(a).

9 Energy Act 1976 s 3(5). On each occasion after the first, s 3(4) applies with the substitution for the period of 12 months there specified of a period of 12 months beginning with the date on which, but for the resolutions of Parliament, the Order in Council would have ceased to be in force: s 3(5).

10 *Ibid* s 3(3). See also note 8 *supra*.

11 As to the territorial sea of the United Kingdom see *WATER AND WATERWAYS* vol 100 (2009) PARA 31 note 3.

12 Is an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 *post*.

13 Energy Act 1976 s 5(1) (added by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 14); and see PARA 603 note 16 *ante*.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/A. PERMANENT AND RESERVE POWERS FOR ENERGY CONSERVATION AND CONTROL/606. Other powers of control.

606. Other powers of control.

A person¹ supplying or using any crude liquid petroleum, natural gas², petroleum products³ or other substance used as fuel⁴, if authorised to do so by the Secretary of State⁵ by any general or special authority granted for the purpose, and while acting in accordance with that authority, may disregard or fall short in discharging any obligation imposed by or under an enactment⁶, or any contractual obligation, relating to or involving the supply or use of that substance⁷. This provision has effect, however, only when an Order in Council is in force⁸ declaring the powers of control by order⁹ and government directions¹⁰ exercisable to their full extent¹¹.

At any time when such an Order in Council is in force, the Secretary of State may grant, or enable any person to grant on his behalf, a general or special authority relaxing road traffic and transport law¹².

Her Majesty may by Order in Council make provision for modifying or excluding any obligation or restriction imposed, or extending any power conferred, by or under an enactment which directly or indirectly affects the use of a substance mentioned above¹³. If the powers of control by order and government directions have been declared¹⁴ exercisable to their full extent, then this power also extends to the supply of those substances¹⁵.

These provisions also apply in relation to electricity¹⁶.

A power under the above provisions may be exercised in relation to anything which is wholly or partly situated in, or to activity wholly or partly in, the United Kingdom¹⁷, the territorial sea¹⁸ of the United Kingdom, or a designated¹⁹ area²⁰.

1 As to the meaning of 'person' see PARA 604 note 4 ante.

2 For the meaning of 'natural gas' see PARA 603 note 3 ante.

3 For the meaning of 'petroleum products' see PARA 603 note 4 ante.

4 I.e. a substance mentioned in the Energy Act 1976 s 1(1): see PARA 603 ante. See also the text to note 16 infra.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 'Enactment' includes an enactment of the Parliament of Northern Ireland (abolished by the Northern Ireland Constitution Act 1973 s 31), a Measure of the Northern Ireland Assembly established under the Northern Ireland Constitution Act 1973 s 1 (repealed) and an Act of the Northern Ireland Assembly within the meaning of the Northern Ireland Act 1998 s 4(5), and includes any Order in Council made during the period of direct rule by virtue of the Northern Ireland Act 1974 s 1, Sch 1 para 1(7): see the Energy Act 1976 s 21; the Northern Ireland Act 1998 Sch 12 paras 2, 3.

7 Energy Act 1976 s 4(1). Prima facie evidence of any general authority granted under s 4(1) or (2) (see the text and note 12 infra) or the variation or revocation of such an authority may be given in any legal proceedings, including arbitration, by the production of a copy of the London, Edinburgh or Belfast Gazette purporting to contain such an authority, variation or revocation: s 18(1), Sch 2 para 8(3).

8 I.e. under *ibid* s 3: see PARA 605 ante.

9 I.e. the powers of *ibid* s 1: see PARA 603 ante.

- 10 le the powers of *ibid* s 2: see PARA 604 ante.
- 11 *Ibid* s 4(1).
- 12 See *ibid* s 4(2), Sch 1 (as amended). As to road traffic and transport law see generally ROAD TRAFFIC.
- 13 *Ibid* s 4(3). As to the making of orders see PARA 603 note 2 ante.
- 14 le by an Order in Council in force under *ibid* s 3(1): see PARA 605 ante.
- 15 *Ibid* s 4(4)(a).
- 16 *Ibid* s 4(5).
- 17 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 18 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.
- 19 le an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post.
- 20 Energy Act 1976 s 5 (added by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 3 para 14); and see PARA 603 note 16 ante.

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B. MAINTENANCE OF FUEL RESERVES; PROMOTING FUEL ECONOMY

607. Bulk stocks of petroleum etc.

Directions¹ may be given to any person² who in the course of an undertaking³ carried on by him produces, supplies or uses crude liquid petroleum or petroleum products⁴. The Secretary of State⁵ may direct any such person to make such arrangements with respect to his United Kingdom⁶ stocks of crude liquid petroleum or of petroleum products as will enable those stocks to be brought within a specified⁷ time to, and thereafter maintained at, a specified level and ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by authority of the Secretary of State⁸. In the case of any such person who is a substantial supplier to the United Kingdom market, the Secretary of State may direct him to create such stocks and make such arrangements with respect to them⁹.

Before giving such a direction the Secretary of State must notify the substance of it to the person to whom he proposes to give it and must afford him a reasonable opportunity to make representations¹⁰. In giving such directions, the Secretary of State must have regard in particular to:

- 33 (1) the quantities of crude liquid petroleum, or of petroleum products, which have been supplied by the undertaking to the United Kingdom market in past periods; and
- 34 (2) the extent to which crude liquid petroleum and petroleum products produced or supplied by the undertaking are, or will be, indigenous¹¹.

Proceedings for an offence of contravening or failing to comply with any such direction may be instituted only by, or with the consent of, the Secretary of State or the Director of Public Prosecutions¹².

1 As to the giving of directions generally see PARA 604 note 3 ante.

2 As to the meaning of 'person' see PARA 604 note 4 ante.

3 For the meaning of 'undertaking' see PARA 603 note 2 ante.

4 Energy Act 1976 s 6(1). For the meaning of 'petroleum products' see PARA 603 note 4 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 'Specified' means specified by the Secretary of State's direction; and the Secretary of State may by order prescribe, as respects the effect of, and compliance with, such directions: (1) the cases and circumstances in which stocks (in the United Kingdom or elsewhere) are to be treated, in relation to any person, as his United Kingdom stocks, and those in which a person is to be treated as a substantial supplier to the United Kingdom market; (2) the extent to which stocks of a particular kind are to count towards compliance with a direction specifying stocks of another kind; and (3) the method by which quantities are to be measured for different purposes: Energy Act 1976 s 6(6). As to the making of orders generally see PARA 603 note 2 ante. In exercise of the power so conferred, the Secretary of State has made the Petroleum Stocks Order 1976, SI 1976/2162

(amended by SI 1982/968; SI 1983/909). Stocks of crude liquid petroleum and petroleum products (in the United Kingdom or elsewhere) are to be treated in relation to any person to whom a direction under the Energy Act 1976 s 6 is given as his United Kingdom stocks in the following circumstances, that is to say where they are held for his use or disposal and are (a) within the United Kingdom but are not (i) kept for sale to the general public by delivery into the fuel tanks of vehicles; (ii) in ships (except qualified cargoes) or in other vehicles, pipelines or refinery plant; or (b) outside the United Kingdom in the territory of another member state under an agreement made between the United Kingdom and that member state for the purpose of implementing EEC Council Directive 68/414 (OJ L308, 22.12.68, p 14) imposing an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products (repealed: see now EC Council Directive 2006/67 (OJ L217, 8.8.2006, p 8); and PARA 1631 post): Petroleum Stocks Order 1976, SI 1976/2162, art 2(1). For these purposes, 'qualified cargo' means any cargo of crude liquid petroleum or petroleum products in a ship (A) within the limits of a port appointed by the Commissioners for Revenue and Customs under the Customs and Excise Management Act 1979 s 19 which may immediately be lawfully landed; (B) engaged in the trade of carrying goods within the United Kingdom; or which is a coasting ship within the meaning of s 69 (as amended); and 'ship' includes any boat or other vessel whatsoever: Petroleum Stocks Order 1976, SI 1976/2162, art 2(2); Interpretation Act 1978 s 17(2).

8 Energy Act 1976 s 6(2)(a). A direction so given may require a specified portion of a person's stocks to be held in Northern Ireland: s 6(4).

9 Ibid s 6(2)(b). See also note 8 supra. A person who in the course of an undertaking carried on by him supplies petroleum products to persons for use by them as finished products is to be treated as a substantial supplier to the United Kingdom market for these purposes if he has, during any period of 12 months ending not earlier than three months before the giving of a direction to him under s 6(2)(b), supplied to persons (other than companies associated with the supplier in the same group) in the United Kingdom for such use there a total quantity of petroleum products which, together with the total quantity so used in that period by him, or if the supplier is a company by that company and any company associated with it in the same group, exceeds 50,000 tonnes: Petroleum Stocks Order 1976, SI 1976/2612, art 3(1) (amended by SI 1983/909). For these purposes, companies are associated together in the same group if one is a subsidiary of the other or both are subsidiaries of a third ('subsidiary' having the same meaning as in the Companies Act 1985 (see s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed); and COMPANIES vol 14 (2009) PARA 25): Petroleum Stocks Order 1976, SI 1976/2612, art 3(2); Interpretation Act 1978 s 17(2).

10 Energy Act 1976 s 6(5).

11 Ibid s 6(3). 'Indigenous' in relation to crude liquid petroleum, means won under the authority of licences granted under United Kingdom legislation, and in relation to petroleum products means produced in the United Kingdom from indigenous crude: s 6(3). 'United Kingdom legislation' includes any enactment for the time being in force in any part of the United Kingdom: s 21. As to petroleum production generally see PARA 1625 et seq post.

12 Ibid s 18(1), Sch 2 para 6(1) (amended by the Electricity Act 1989 s 112(4), Sch 18). For penalties see PARA 613 post. As to consents to prosecutions generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1071 et seq.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/B. MAINTENANCE OF FUEL RESERVES; PROMOTING FUEL ECONOMY/608. Passenger car fuel consumption; imposition of renewable transport fuel obligations.

608. Passenger car fuel consumption; imposition of renewable transport fuel obligations.

The Secretary of State¹ has power to make orders in relation to passenger cars requiring fuel consumption to be determined by means of officially approved tests and providing for test results to be recorded in official fuel economy certificates and published in the specified manner². This power is discussed elsewhere in this work³.

The Secretary of State also has power to impose on each transport fuel supplier of a specified description a renewable transport fuel obligation⁴. This power is discussed in a later part of this title⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 See the Energy Act 1976 s 15; the Passenger Car Fuel Consumption Order 1983, SI 1983/1486 (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 815.

3 See SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 815.

4 See the Energy Act 2004 Pt 2 Ch 5 (ss 124-132); and PARA 1329 et seq post.

5 See PARA 1329 et seq post.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/C. ADMINISTRATION AND ENFORCEMENT/609. Power to obtain information and call for documents.

C. ADMINISTRATION AND ENFORCEMENT

609. Power to obtain information and call for documents.

The Secretary of State¹ may direct² any person³ carrying on an undertaking⁴ to keep such books, accounts and records relating to crude liquid petroleum, natural gas⁵, petroleum products⁶ or other substance used as fuel⁷, or to electricity, as may be specified⁸. He may also direct any such person to furnish, as and when specified, (1) estimates, forecasts, returns and information relating to such a substance, or to electricity; and (2) information and forecasts relating to the undertaking itself or to its activities, including the way in which the undertaking is organised and administered and the character and extent of its operation⁹. All these powers are exercisable by the Secretary of State where it appears to him expedient for the purpose of implementing certain international obligations of the United Kingdom¹⁰. The powers to direct the keeping of books, accounts and records¹¹ and the furnishing of estimates, forecasts and returns¹² are also exercisable where it appears to him expedient for any purpose connected with the operation of the Energy Act 1976 or the effective performance by him of his functions thereunder¹³.

For the purpose of securing compliance with any statutory provision¹⁴ and of checking estimates and forecasts or verifying returns and information provided in response to such directions, a person authorised by or on behalf of the Secretary of State has power, on production, if so required, of his authorisation, to require¹⁵:

- 35 (a) any person to produce for inspection, or to deliver up, any document in his possession or control which has been issued by or on the authority of the Secretary of State in connection with the administration and enforcement of the relevant statutory provisions¹⁶;
- 36 (b) any person with executive functions in an undertaking, or the person carrying it on, to produce documents relating to the undertaking or its operations, and allow copies or extracts to be made from them¹⁷;
- 37 (c) any such person, or one who has in the preceding five years exercised such functions, to provide further particulars as to the whereabouts, contents or subject matter of such documents¹⁸.

These provisions also have effect, with modifications, in relation to the administration and enforcement of the provisions of the Electricity Act 1989¹⁹ relating to fuel stocks at generating stations²⁰. Separate provision is made with regard to statistical information relating to the generation, transmission or supply of electricity²¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the giving of directions generally see PARA 604 note 3 ante.

3 As to the meaning of 'person' see PARA 604 note 4 ante.

4 For the meaning of 'undertaking' see PARA 603 note 2 ante.

- 5 For the meaning of 'natural gas' see PARA 603 note 3 ante.
- 6 For the meaning of 'petroleum products' see PARA 603 note 4 ante.
- 7 The substances mentioned in the Energy Act 1976 s 1(1): see PARA 603 ante.
- 8 Ibid s 18(1), Sch 2 para 1(1)(a). 'Specified' means specified by the Secretary of State's directions: Sch 2 para 1(3).
- 9 Ibid Sch 2 para 1(1)(b), (c).
- 10 The obligations incumbent upon the United Kingdom as a member of the European Community or the International Energy Agency or as a party to the International Energy Agreement to take emergency measures in connection with the reduction, or threatened reduction, of fuel supplies: Energy Act 1976 Sch 2 para 1(2). For the meaning of 'International Energy Agency' and 'International Energy Agreement' see PARA 605 note 3 ante. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 11 The powers conferred by the Energy Act 1976 Sch 2 para 1(1)(a): see the text to notes 1-8 supra.
- 12 The powers conferred by ibid Sch 2 para 1(1)(b): see head (1) in the text.
- 13 Ibid Sch 2 para 1(2).
- 14 The any provision made by or under the Energy Act 1976: Sch 2 para 2(1)(b).
- 15 Ibid Sch 2 para 2(1), (2).
- 16 Ibid Sch 2 para 2(2)(a).
- 17 Ibid Sch 2 para 2(2)(b).
- 18 Ibid Sch 2 para 2(2)(c).
- 19 The Electricity Act 1989 s 34 (as amended): see PARA 1248 post.
- 20 See ibid s 35(7); and PARA 1248 note 33 post.
- 21 See ibid s 98 (as amended); and PARA 1276 post.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/C. ADMINISTRATION AND ENFORCEMENT/610. Access to premises etc; entry with warrant.

610. Access to premises etc; entry with warrant.

A person authorised by or on behalf of the Secretary of State¹ may, for the purpose of securing compliance with orders made and directions given by the Secretary of State² and of checking estimates and forecasts or verifying returns and information provided in response to directions³, go to any premises⁴ at all reasonable hours and on production, if so required, of his authorisation, and there make such inquiries and inspections, and purchase or take such samples of any substance, as are allowed by the terms of his authorisation or he thinks necessary for those purposes⁵. These powers are not, however, exercisable only for the purpose of securing compliance (1) with orders relating to passenger car fuel consumption⁶; or (2) with orders regulating or prohibiting the production, supply, acquisition or use of any crude liquid petroleum, natural gas⁷, petroleum products⁸ or other substance used as fuel⁹ or electricity¹⁰, unless in the latter case an Order in Council is in force¹¹ declaring those powers exercisable to their fullest extent¹².

If a justice of the peace is satisfied, on sworn information in writing submitted on behalf of the Secretary of State, that admission to premises is reasonably required for the above purposes, and that the specified circumstances¹³ are present, he may issue a warrant naming a person authorised by the Secretary of State and authorising that person to enter the premises, by force if necessary¹⁴. No such warrant may, however, be issued authorising entry for the purpose of complying with the orders mentioned in heads (1) and (2) above, unless in the latter case such an Order in Council is in force¹⁵.

A warrant continues in force until the end of one month beginning with the date on which it was issued¹⁶. A person entering premises under its authority may search them and take possession of any documents which he finds there and which appear to him to be relevant to the purposes for which the warrant was obtained¹⁷. If the premises are unoccupied or the occupier is temporarily absent, the person so entering them must leave them as effectively secured against trespassers as he found them¹⁸.

These provisions also have effect, with modifications, in relation to the administration and enforcement of the provisions of the Electricity Act 1989¹⁹ relating to fuel stocks at generating stations²⁰. Separate provision is made with regard to statistical information relating to the generation, transmission or supply of electricity²¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie under the Energy Act 1976: see PARA 603 et seq ante.

3 Ie under ibid s 18(1), Sch 2 para 1: see PARA 609 ante.

4 For these purposes, 'premises' includes vehicles and vessels, but does not include any premises used only as a dwelling: ibid Sch 2 paras 3(3), 4(9).

5 Ibid Sch 2 para 3(1).

6 Ie orders under ibid s 15: see PARA 608 ante.

7 For the meaning of 'natural gas' see PARA 603 note 3 ante.

- 8 For the meaning of 'petroleum products' see PARA 603 note 4 ante.
- 9 Ie any substance mentioned in the Energy Act 1976 s 1(1): see PARA 603 ante.
- 10 Ie orders under ibid s 1(1).
- 11 Ie under ibid s 3: see PARA 605 ante.
- 12 Ibid Sch 2 para 3(2).
- 13 Ie the circumstances specified in ibid Sch 2 para 4(2) or (3): Sch 2 para 4(1)(b). Those circumstances are that (1) if no Order in Council under s 3 is in force, either (a) admission to the premises has been refused after, if the case is not one of urgency, not less than seven days' notice of the intention to enter had been given to the occupier; or (b) application for admission would defeat the object of the entry or the premises are unoccupied; (2) if such an Order is in force, either (a) admission to the premises has been refused, or a refusal is apprehended, and notice of intention to apply for a warrant has been given to the occupier; or (b) application for admission would defeat the object of the entry, or the case is one of urgency, or the premises are unoccupied or the occupier is temporarily absent: Sch 2 para 4(2), (3).
- 14 Ibid Sch 2 para 4(1).
- 15 Ibid Sch 2 para 4(4).
- 16 Ibid Sch 2 para 4(8).
- 17 Ibid Sch 2 para 4(5). Any documents of which possession is so taken may be retained for a period of three months or, if within that period there are commenced proceedings for an offence to which they are relevant, until the conclusion of those proceedings: Sch 2 para 4(6). As to proof of documents see Sch 2 para 8(1), (2).
- 18 Ibid Sch 2 para 4(7).
- 19 Ie the Electricity Act 1989 s 34 (as amended): see PARA 1248 post.
- 20 See ibid s 35(7); and PARA 1248 note 33 post.
- 21 See ibid s 98 (as amended); and PARA 1276 post.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/C. ADMINISTRATION AND ENFORCEMENT/611. Price control enforcement.

611. Price control enforcement.

The Secretary of State¹ may designate a local weights and measures authority for the purposes of the enforcement within its area of price controls² in relation to supplies to the general public of crude liquid petroleum, natural gas, petroleum products and certain other substances used as fuel³. If a justice of the peace is satisfied, on sworn information in writing submitted on behalf of a designated local weights and measures authority, that admission to premises⁴ is reasonably required for that purpose, and that the specified circumstances⁵ are present, he may issue a warrant authorising a duly authorised officer of the authority (naming him) to enter the premises, by force if necessary⁶. A warrant continues in force until the end of one month beginning with the date on which it was issued⁷. A person entering premises under its authority may search them and take possession of any documents which he finds there and which appear to him to be relevant to the purposes for which the warrant was obtained⁸. If the premises are unoccupied or the occupier is temporarily absent, the person so entering them must leave them as effectively secured against trespassers as he found them⁹.

Proceedings for an offence of contravening or failing to comply with price controls may be instituted only by or on behalf of such a designated local weights and measures authority or by, or with the consent of, the Secretary of State or the Director of Public Prosecutions¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 'Price controls' means orders under the Energy Act 1976 s 1(4) (see PARA 603 ante) and directions under s 2 (see PARA 604 ante) imposing requirements as to price: s 21. As to weights and measures authorities see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20.

3 Ibid s 18(1), Sch 2 para 5(1). The powers of Sch 2 paras 2, 3 (see PARAS 609-610 ante) are also exercisable by a duly authorised officer of a designated local weights and measures authority for the purpose of securing compliance with price controls in relation to such supplies: Sch 2 para 5(2). For the meanings of 'natural gas' and 'petroleum products' see PARA 603 notes 3-4 ante.

4 For the meaning of 'premises' see PARA 610 note 4 ante (definition applied by ibid Sch 2 para 5(3)).

5 I.e. the circumstances specified in ibid Sch 2 para 4(2) or (3) (see PARA 610 note 13 ante): Sch 2 para 5(3) (b).

6 Ibid Sch 2 para 5(3).

7 Ibid Sch 2 para 4(8) (applied by Sch 2 para 5(3)).

8 Ibid Sch 2 para 4(5) (applied by Sch 2 para 5(3)). See also Sch 2 para 4(6) (as so applied); and PARA 610 note 17 ante.

9 Ibid Sch 2 para 4(7) (applied by Sch 2 para 5(3)).

10 Ibid Sch 2 para 6(2). Schedule 2 para 6 is modified in relation to Northern Ireland: see Sch 2 para 6(4). As to offences and penalties see PARA 613 post. As to consents to prosecutions generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1071 et seq.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/C. ADMINISTRATION AND ENFORCEMENT/612. Restrictions on disclosure of information.

612. Restrictions on disclosure of information.

No information obtained by virtue of the Energy Act 1976 may be disclosed except:

- 38 (1) with the consent of the person¹ by whom or on whose behalf the information was given or supplied and, where applicable, of the owner of any goods, or the occupier of any premises, to which the information relates²;
- 39 (2) to a government department for the purposes of the exercise of any of its functions³;
- 40 (3) to any institution of the European Community, or to the International Energy Agency⁴, in pursuance of obligations incumbent on the United Kingdom⁵ to transmit the information or see to its transmission⁶;
- 41 (4) in the form of statistics or otherwise, so that it cannot readily be recognised as relating to any particular person or undertaking⁷;
- 42 (5) with a view to the institution, or otherwise for the purposes, of any criminal proceedings⁸.

These provisions also have effect, with modifications, in relation to the administration and enforcement of the provisions of the Electricity Act 1989⁹ relating to fuel stocks at generating stations¹⁰.

1 As to the meaning of 'person' see PARA 604 note 4 ante.

2 Energy Act 1976 s 18(1), Sch 2 para 7(a).

3 Ibid Sch 2 para 7(b).

4 For the meaning of 'the International Energy Agency' see PARA 605 note 3 ante.

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 Energy Act 1976 Sch 2 para 7(c).

7 Ibid Sch 2 para 7(d). For the meaning of 'undertaking' see PARA 603 note 2 ante.

8 Ibid Sch 2 para 7(e). As to offences and penalties see PARA 613 post.

9 Ie the Electricity Act 1989 s 34 (as amended): see PARA 1248 post.

10 See ibid s 35(7); and PARA 1248 note 33 post.

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

612-613 Restrictions on disclosure of information ... Offences and penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(ii) Energy Conservation and Control Powers under the Energy Act 1976/C. ADMINISTRATION AND ENFORCEMENT/613. Offences and penalties.

613. Offences and penalties.

A person¹ commits an offence if:

- 43 (1) without reasonable excuse he contravenes or fails to comply with any provision made by the Energy Act 1976, or made under it by order, direction or otherwise²; or
- 44 (2) he wilfully obstructs any person exercising a power conferred, or performing a duty imposed, thereby or thereunder³; or
- 45 (3) he contravenes or fails to comply with any specified⁴ directly applicable Community obligation⁵; or
- 46 (4) in furnishing any information in purported compliance with such an obligation or for the statutory purposes⁶, or in a notice given for any of those purposes, he makes or causes to be made on his behalf a statement which he knows to be false or does not believe to be true⁷; or
- 47 (5) he has in his possession without lawful excuse a document purporting to be one issued for the statutory purposes, or for the purposes of an order made or direction given⁸, which is not such a document but so closely resembles it as to be calculated to deceive⁹.

Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of a body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly¹⁰.

A person guilty of any such offence is in general liable on summary conviction to a fine not exceeding level 5 on the standard scale¹¹. In certain cases¹², however, such a person may alternatively be liable on conviction on indictment to a fine¹³. Where a person contravenes, or fails to comply with (a) a direction given under the reserve power to control¹⁴; or (b) a provision of an order regulating or prohibiting the production, supply, acquisition or use of any crude liquid petroleum, natural gas¹⁵, petroleum products¹⁶ or other substance used as fuel¹⁷, or electricity¹⁸, when the order was made at a time when an Order in Council was in force¹⁹ declaring those powers exercisable to their fullest extent, he is liable on summary conviction to imprisonment for a term of not more than three months, or a fine of not more than the prescribed sum, or to both, or on conviction on indictment to imprisonment for a term of not more than two years or a fine, or to both²⁰. A person guilty of an offence under head (4) or head (5) above is also liable to such a penalty²¹.

1 As to the meaning of 'person' see PARA 604 note 4 ante.

2 Energy Act 1976 s 18(2)(a). Section 18(2)(a) is, however, subject to s 18(3) (as amended) in the case of s 9 (as substituted and amended: see PARA 981 post) and s 12 (as amended: see PARA 982 post) (see PARA 981 the text and note 10, PARA 982 the text and note 12 post): s 18(2)(a) (amended for these purposes by the Oil and Gas (Enterprise) Act 1982 s 37, Sch 4).

3 Energy Act 1976 s 18(2)(b).

4 le any obligation specified in *ibid* s 18(2)(c), Sch 3. The obligations so specified are those arising under any of the following EC Council Regulations as amended from time to time, ie (1) EEC Council Regulation 1055/72 (OJ L120, 25.5.72, p 2) on notifying the Commission of imports of crude oil and natural gas (now repealed); (2) EEC Council Regulation 1056/72 (OJ L120, 25.5.72, p 7) on notification of certain investment projects (now repealed and replaced by EC Council Regulation 736/96 (OJ L102, 25.4.96, p 1: see PARA 631 post)); (3) EEC Council Regulation 293/74 (OJ L32, 5.2.74, p 1) on information for the purposes of Community energy policy (repealed and replaced by EEC Council Regulation 1729/76 (OJ L198, 23.7.76, p 1) concerning the communication of information on the state of the Community's energy supplies, itself repealed by EC Council Regulation 24/97 (OJ L6, 10.1.97, p 6) on the grounds, *inter alia*, that the European Commission now has other, more efficient means of obtaining information on the state of the Community's energy supplies); (4) EEC Council Regulation 3254/74 (OJ L349, 28.12.74, p 1) (now repealed); and (5) EEC Council Regulation 388/75 (OJ L45, 19.2.75, p 1) (repealed by EC Council Regulation 545/96 (OJ L80, 30.3.96, p 1) on the grounds, *inter alia*, that more detailed monthly information on crude oil and natural gas is now obtained via the Statistical Office of the European Community, notably on the basis of the available customs data); and any other regulation made for the same or similar purposes which has been added to the Energy Act 1976 Sch 3 by Order in Council or regulations made under the European Communities Act 1972 s 2(2): Energy Act 1976 Sch 3. The regulations referred to in heads (1), (4) *supra* were repealed by EC Council Regulation 546/96 (OJ L80, 30.03.96, p 2) on the grounds, *inter alia*, that more detailed monthly information on crude oil and natural gas is now obtained via the Statistical Office of the European Community, notably on the basis of the available customs data.

5 Energy Act 1976 s 18(2)(c). As to direct enforceability of Community obligations see eg *Foster v British Gas plc* Case C-188/89 [1991] 2 AC 306, [1991] 2 All ER 705, HL; *Griffin v South West Water Services Ltd* [1995] IRLR 15; *R v Secretary of State for Trade and Industry, ex p Duddridge* [1995] 3 CMLR 231, [1995] Env LR 151 (leave to appeal refused [1996] 2 CMLR 361, CA); *R (on the application of Westminster City Council) v Mayor of London, R (on the application of Preece) v Mayor of London* [2002] EWHC 2440 (Admin), [2003] LGR 611, [2002] All ER (D) 494 (Jul).

6 le for the purposes of the Energy Act 1976 or of an order made or direction given thereunder (see PARA 603 *et seq ante*): s 18(2)(d).

7 *Ibid* s 18(2)(d).

8 le under the Energy Act 1976: s 18(2)(e).

9 *Ibid* s 18(2)(e). As to proof of instruments see s 18(1), Sch 2 para 8(1), (2).

10 *Ibid* s 18(4). Where the affairs of a body corporate are managed by its members, s 18(4) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 18(5).

11 *Ibid* s 19(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this title states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

12 le in the case of a contravention of, or failure to comply with (1) price controls; (2) the Energy Act 1976 s 14(1) or (2) (see PARAS 1216-1217 post); or (3) a direction of the Secretary of State given under s 6 (see PARA 607 ante) or s 14(3) (see PARA 1217 post): s 19(2). For the meaning of 'price controls' see PARA 611 note 2 ante.

13 *Ibid* s 19(2).

14 le under *ibid* s 2: see PARA 604 ante.

15 For the meaning of 'natural gas' see PARA 603 note 3 ante.

16 For the meaning of 'petroleum products' see PARA 603 note 4 ante.

17 le any substance mentioned in the Energy Act 1976 s 1(1): see PARA 603 ante.

18 le an order under *ibid* s 1: s 19(3)(b), (4).

19 le under *ibid* s 3: see PARA 605 ante.

20 Ibid s 19(3), (4) (s 19(3) amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

21 See the Energy Act 1976 s 19(3) (as amended: see note 20 supra).

UPDATE

602-613 Power to impose charges to fund energy functions ... Offences and penalties

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

612-613 Restrictions on disclosure of information ... Offences and penalties

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/ (iii) General Functions with regard to Sustainable Energy and Reduction in Greenhouse Gas Emissions/614. Annual reports on progress towards sustainable energy aims.

(iii) General Functions with regard to Sustainable Energy and Reduction in Greenhouse Gas Emissions

614. Annual reports on progress towards sustainable energy aims.

The Secretary of State¹ must in each calendar year, beginning with 2004, publish a report ('a sustainable energy report') on the progress made in the reporting period² towards:

- 48 (1) cutting the United Kingdom's³ carbon emissions;
- 49 (2) maintaining the reliability of the United Kingdom's energy supplies;
- 50 (3) promoting competitive energy markets in the United Kingdom;
- 51 (4) reducing the number of people living in fuel poverty⁴ in the United Kingdom;
- and
- 52 (5) achieving the statutory target⁵ for the energy efficiency of residential accommodation in England⁶.

The report must include, in particular, all such information as the Secretary of State considers appropriate about:

- 53 (a) things done during the reporting period⁷ for the purposes of the development or the bringing into use of any of the specified energy sources or technologies⁸;
- 54 (b) things done during that period for the purpose of ensuring the maintenance of the scientific and engineering expertise available in the United Kingdom that is necessary for the development of potential energy sources, including sources of nuclear energy;
- 55 (c) things done during that period⁹ for the purpose of promoting community energy projects;
- 56 (d) things done during that period¹⁰ for the purpose of promoting the use of heat produced from renewable sources;
- 57 (e) things done during that period for the purpose of achieving the designated energy efficiency aims¹¹; and
- 58 (f) things done during that period for the purpose of implementing the published strategy¹² for the promotion of microgeneration in Great Britain¹³.

The report must also include estimates of the effect of the progress made in the reporting period towards achieving the statutory target mentioned in head (5) above on emissions of carbon dioxide in England and the number of households in which one or more persons are living in fuel poverty¹⁴.

A sustainable energy report must be based on such information as is available to the Secretary of State when the report is completed, except that if it is published in parts, each of those parts must be based on such information as is so available when that part is completed¹⁵. It must be published in the calendar year in question within the period beginning with 24 February and ending with 31 December ('the publication period')¹⁶. A sustainable energy report may either be

published as a single report or published in a number of parts during the publication period, and any such report or part may be contained in a document containing other material¹⁷.

If a national target for microgeneration is designated¹⁸, then the above provisions apply in relation to every relevant sustainable energy report¹⁹ with the modification that the report must also include such information as the Secretary of State considers appropriate about things done during the reporting period for the purpose of meeting any target so designated²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 'The reporting period', for the purposes of the Sustainable Energy Act 2003 s 1(1)-(1C) (as amended), means the year ending with 23 February in the calendar year in question: s 1(2) (amended by the Energy Act 2004 s 81(1), (3)).

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 For these purposes, a person is to be regarded as living in fuel poverty if he is a member of a household living on a lower income in a home which cannot be kept warm at a reasonable cost: Sustainable Energy Act 2003 s 1(6).

5 Ie the target set out in the Housing Act 2004 s 217(1): see HOUSING vol 22 (2006 Reissue) PARA 673.

6 Sustainable Energy Act 2003 s 1(1) (amended by the Climate Change and Sustainable Energy Act 2006 s 12(1), (2)).

7 References to things done during the reporting period include references to proposals of the Secretary of State published during that period: Sustainable Energy Act 2003 s 1(1C) (s 1(1A)-(1C) added by the Energy Act 2004 s 81(1), (2)).

8 The energy sources and technologies referred to in head (a) in the text are: (1) clean coal technology; (2) coal mine methane; (3) biomass; (4) biofuels; (5) fuel cells; (6) photovoltaics; (7) wave and tidal generation; (8) hydrogeneration; (9) microgeneration; (10) geothermal sources; and (11) other sources of energy, and technologies for the production of energy, the use of which would, in the opinion of the Secretary of State, cut the United Kingdom's carbon emissions: Sustainable Energy Act 2003 s 1(1B) (as added: see note 7 supra).

9 Ie pursuant to the Climate Change and Sustainable Energy Act 2006 s 19: see PARA 621 post.

10 Ie pursuant to *ibid* s 21: see PARA 622 post.

11 Ie the energy efficiency aims designated under the Sustainable Energy Act 2003 ss 2, 3: see PARA 658 post; and HOUSING vol 22 (2006 Reissue) PARA 673.

12 Ie the strategy published under the Energy Act 2004 s 82: see PARA 618 post.

13 Sustainable Energy Act 2003 s 1(1A) (as added (see note 7 supra); amended by the Climate Change and Sustainable Energy Act 2006 ss 6, 22). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

14 Sustainable Energy Act 2003 s 1(1AA) (added by the Climate Change and Sustainable Energy Act 2006 s 12(1), (3)).

15 Sustainable Energy Act 2003 s 1(5).

16 *Ibid* s 1(3).

17 *Ibid* s 1(4).

18 Ie under the Climate Change and Sustainable Energy Act 2006 s 4: see PARA 619 post.

19 For the meaning of 'relevant sustainable energy report' for these purposes see PARA 619 note 16 post.

20 See the Sustainable Energy Act 2003 s 1(1BA) (as added); and PARA 619 post.

UPDATE

614 Annual reports on progress towards sustainable energy aims

TEXT AND NOTES--Sustainable Energy Act 2003 s 1 further amended, Energy Act 2004 s 81(3) repealed: Energy Act 2008 s 87(1), Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/ (iii) General Functions with regard to Sustainable Energy and Reduction in Greenhouse Gas Emissions/615. Annual reports on greenhouse gas emissions.

615. Annual reports on greenhouse gas emissions.

It is the duty of the Secretary of State¹ in the course of each calendar year to lay before Parliament a report on:

- 59 (1) steps taken by government departments during the previous calendar year to reduce emissions of greenhouse gases²; and
- 60 (2) the level of emissions of greenhouse gases in the United Kingdom³ during the previous calendar year, including any increase or decrease in that level recorded during that year⁴.

The principal purpose of the Climate Change and Sustainable Energy Act 2006, by which the above duty is imposed, is to enhance the United Kingdom's contribution to combating climate change⁵; and in performing functions under that Act, the relevant persons and bodies⁶ must have regard to:

- 61 (a) that principal purpose;
- 62 (b) the desirability of alleviating fuel poverty⁷; and
- 63 (c) the desirability of securing a diverse and viable long-term energy supply⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'greenhouse gas' means any of the following: (1) carbon dioxide; (2) methane; (3) nitrous oxide; (4) hydrofluorocarbons; (5) perfluorocarbons; (6) sulphur hexafluoride: Climate Change and Sustainable Energy Act 2006 s 26(1).

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Climate Change and Sustainable Energy Act 2006 s 2.

5 Ibid s 1(1).

6 For these purposes, 'the relevant persons and bodies' means (1) the Secretary of State; (2) any public authority within the meaning of the Human Rights Act 1998 s 6 (ie including a court or tribunal, and any person certain of whose functions are functions of a public nature, but not including either House of Parliament (except the House of Lords in its judicial capacity) or a person exercising functions in connection with proceedings in Parliament: see s 6(3), (4)): Climate Change and Sustainable Energy Act 2006 ss 1(3), 26(1).

7 For these purposes, 'fuel poverty' is to be construed in accordance with the provisions of the Warm Homes and Energy Conservation Act 2000 s 1 (see HOUSING vol 22 (2006 Reissue) PARA 674 note 3): Climate Change and Sustainable Energy Act 2006 s 26(1).

8 Ibid s 1(2).

UPDATE

615 Annual reports on greenhouse gas emissions

TEXT AND NOTES 1-4--Climate Change and Sustainable Energy Act 2006 s 2 repealed:
Climate Change Act 2008 s 82. As to carbon target and budgeting and the Committee
on Climate Change see PARAS 615A, 615B.

NOTE 5--As to the impact of and adaptation to climate change see PARA 615C.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/ (iii) General Functions with regard to Sustainable Energy and Reduction in Greenhouse Gas Emissions/615A. Carbon target and budgeting.

615A. Carbon target and budgeting.

1. The target for 2050

It is the duty of the Secretary of State to ensure that the net United Kingdom carbon account for the year 2050 is at least 80 per cent lower than the 1990 baseline: Climate Change Act 2008 s 1(1). The 1990 baseline means the aggregate amount of net United Kingdom emissions of carbon dioxide for that year and net United Kingdom emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas: s 1(2). 'United Kingdom emissions', in relation to a greenhouse gas, means emissions of that gas from sources in the United Kingdom: Climate Change Act 2008 s 29(1)(a). 'Net United Kingdom emissions for a period', in relation to a greenhouse gas, means the amount of United Kingdom emissions of that gas for the period reduced by the amount for the period of United Kingdom removals of that gas: s 29(1)(c). 'United Kingdom removals', in relation to a greenhouse gas, means removals of that gas from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom: s 29(1)(b). 'Emissions' in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity: s 97. The amount of United Kingdom emissions and United Kingdom removals of a greenhouse gas for a period must be determined consistently with international carbon reporting practice: s 29(2). See the Carbon Accounting Regulations 2009, SI 2009/1257 (amended by SI 2009/3146), which set the units that count as carbon units for the purposes of carbon accounting (reg 3); place a duty on the Secretary of State to open a credit account in the United Kingdom registry in which carbon units that are to be credited to the net United Kingdom carbon account can be held (reg 4); provide a power to credit carbon units to the net United Kingdom carbon account (reg 5); set out the circumstances in which carbon units are to be credited to and debited from the net United Kingdom carbon account during the 2008-2012 budgetary period as a result of the operation of the European Union Emissions Trading Scheme (reg 6); make provision for carbon units to be debited from the net United Kingdom carbon account during the 2008-2012 budgetary period where carbon units have been disposed of in the course of a given year (reg 7); place a duty on the Secretary of State to cancel carbon units at the end of the 2008-2012 budgetary period (reg 8); and place a duty on the Secretary of State to maintain a register of transactions (reg 9). The limit on the net amount of carbon units that may be credited to the net United Kingdom carbon account for the 2008-2012 budgetary period is zero carbon units: Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009, SI 2009/1258, art 3(1). The following carbon units do not count towards the limit in art 3(1): carbon units credited to or debited from the net United Kingdom carbon account in accordance with SI 2009/1257 reg 6; and European Union allowances which are both acquired by the administrator of a trading scheme established in accordance with the Climate Change Act 2008 Pt 3 (ss 44-55) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 264-267) and credited to the net United Kingdom carbon account in accordance with SI 2009/1257 reg 5: SI 2009/1258 art 3(2). Article 3(3) provides that 'European Union allowance' has the meaning given by SI 2009/1257 reg 2; 'European Union allowance' means an assigned amount unit converted into an allowance for the purposes of the European Union Emissions Trading Scheme established under EC Council and European Parliament Directive 2003/87 as implemented by the Greenhouse Gas Emissions Trading Scheme Regulations 2005, SI 2005/925 in accordance with EC Commission Regulation 2216/2004 art 45 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45

(2010) PARAS 15, 260): SI 2009/1257 reg 2. In the Climate Change Act 2008 Pt 1 (ss 1-31) a targeted greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other greenhouse gas designated as a targeted greenhouse gas by order made by the Secretary of State: see s 24. 'Greenhouse gas' means any of the following (1) carbon dioxide (CO₂); (2) methane (CH₄); (3) nitrous oxide (N₂O); (4) hydrofluorocarbons (HFCs); (5) perfluorocarbons (PFCs); and (6) sulphur hexafluoride (SF₆): see s 92. For the purposes of the Climate Change Act 2008 greenhouse gas emissions, reductions of such emissions and removals of greenhouse gas from the atmosphere are to be measured or calculated in tonnes of carbon dioxide equivalent; a 'tonne of carbon dioxide equivalent' means one metric tonne of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential, calculated consistently with international carbon reporting practice: s 93. The Secretary of State may by order (1) amend the percentage specified in s 1(1); and (2) amend s 1 to provide for a different year to be the baseline year; the power in head (1) may only be exercised if it appears to the Secretary of State that there have been significant developments in scientific knowledge about climate change, or European or international law or policy, that make it appropriate to do so, or in connection with the making of an order under s 24 or regulations under s 30 (see PARA 615A.6): see s 2. Before laying before Parliament a draft of a statutory instrument containing an order under s 2, the Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change (see Pt 2 (ss 32-43); and PARA 615B) and take into account any representations made by the other national authorities: see s 3.

The base years for the purposes of the Climate Change Act 2008 for targeted greenhouse gases other than carbon dioxide are 1990 for methane and nitrous oxide and 1995 for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride: see Climate Change Act 2008 s 25. In Pt 1 (ss 1-31) a carbon unit means a unit of a kind specified in regulations made by the Secretary of State and representing a reduction in an amount of greenhouse gas emissions, the removal of an amount of greenhouse gas from the atmosphere, or an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions; the Secretary of State may make provision by regulations for a scheme for registering or otherwise keeping track of carbon units, or for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred by the Secretary of State, and further, the regulations may, in particular, provide for an existing scheme to be adapted for these purposes: see s 26. 'International carbon reporting practice' means accepted practice in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change or such other agreements or arrangements at European or international level as the Secretary of State may specify by order: see s 94. In Pt 1 (ss 1-31) the net United Kingdom carbon account for a period means the amount of net United Kingdom emissions of targeted greenhouse gases for the period (a) reduced by the amount of carbon units credited to the net United Kingdom carbon account for the period in accordance with regulations under s 27, and (b) increased by the amount of carbon units that in accordance with such regulations are to be debited from the net United Kingdom carbon account for the period; the net amount of carbon units credited to the net United Kingdom carbon account for a budgetary period must not exceed the limit set under s 11 (see PARA 615A.3) for the period: see s 27. As to the procedure for regulations under s 26 or s 27 see s 28. Any minister of the Crown or government department or the Welsh Ministers may acquire and dispose of units or interests in units representing a reduction in an amount of greenhouse gas emissions, the removal of an amount of greenhouse gas from the atmosphere, or an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions: see s 87.

2. Carbon budgeting

It is the duty of the Secretary of State to set for each succeeding period of five years beginning with the period 2008-2012 ('budgetary periods') an amount for the net United Kingdom carbon

account ('the carbon budget') and to ensure that the net United Kingdom carbon account for a budgetary period does not exceed the carbon budget: see the Climate Change Act 2008 s 4. The carbon budget (1) for the budgetary period including the year 2020, must be such that the annual equivalent of the carbon budget for the period is at least 34 per cent lower than the 1990 baseline; (2) for the budgetary period including the year 2050, must be such that the annual equivalent of the carbon budget for the period is lower than the 1990 baseline by at least the percentage specified in s 1 (see PARA 615A.1); (3) for the budgetary period including any later year specified by order of the Secretary of State, must be such that the annual equivalent of the carbon budget for the period is lower than the 1990 baseline by at least the percentage so specified, or at least the minimum percentage so specified, and not more than the maximum percentage so specified, lower than the 1990 baseline: s 5(1) (amended by SI 2009/1258). The 'annual equivalent', in relation to the carbon budget for a period, means the amount of the carbon budget for the period divided by the number of years in the period: Climate Change Act 2008 s 5(2). An order under s 5 is subject to affirmative resolution procedure: s 5(3). The Secretary of State may by order amend the percentage specified in head (1) or any percentage specified under head (3): see s 6. Before laying before Parliament a draft of a statutory instrument containing an order under head (3) or s 6 the Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change, and take into account any representations made by the other national authorities: see s 7. The Secretary of State must set the carbon budget for a budgetary period by order: see s 8. The carbon budgets for the 2008-2012, 2013-2017 and 2018-2022 budgetary periods are as follows: (a) the carbon budget for the 2008-2012 budgetary period is 3,018,000,000 tonnes of carbon dioxide equivalent; (b) the carbon budget for the 2013-2017 budgetary period is 2,782,000,000 tonnes of carbon dioxide equivalent; and (c) the carbon budget for the 2018-2022 budgetary period is 2,544,000,000 tonnes of carbon dioxide equivalent: Carbon Budgets Order 2009, SI 2009/1259.

Before laying before Parliament a draft of a statutory instrument containing an order under the Climate Change Act 2008 s 8 the Secretary of State must take into account the advice of the Committee on Climate Change under s 34 (see PARA 615B) and take into account any representations made by the other national authorities: see s 9. Matters to be taken into account in connection with carbon budgets are (i) scientific knowledge about climate change; (ii) technology relevant to climate change; (iii) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy; (iv) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing; (v) social circumstances, and in particular the likely impact of the decision on fuel poverty; (vi) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy; (vii) differences in circumstances between England, Wales, Scotland and Northern Ireland; (viii) circumstances at European and international level; (ix) the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question: see s 10(1), (2). For the purposes of head (ix), the estimated amount of reportable emissions from international aviation and international shipping, in relation to a budgetary period, means the aggregate of the amounts relating to emissions of targeted greenhouse gases from international aviation and international shipping that the Secretary or State or, as the case may be, the Committee estimates the United Kingdom will be required to report for that period in accordance with international carbon reporting practice; such amounts may be estimated using such reasonable method or methods as the Secretary of State or, as the case may be, the Committee considers appropriate: see s 10(3), (4).

3. Limit on use of carbon units; proposals and policies for meeting carbon budgets

It is the duty of the Secretary of State to set a limit on the net amount of carbon units that may be credited to the net United Kingdom carbon account for each budgetary period; the net amount of carbon units means the amount of carbon units credited to the net United Kingdom

carbon account for the period in accordance with regulations under the Climate Change Act 2008 s 27 (see PARA 615A.6), less the amount of carbon units debited from the net United Kingdom carbon account for the period in accordance with such regulations: see s 11. In Pt 1 (ss 1-31) a carbon unit means a unit of a kind specified in regulations made by the Secretary of State and representing a reduction in an amount of greenhouse gas emissions, the removal of an amount of greenhouse gas from the atmosphere, or an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions; the Secretary of State may make provision by regulations for a scheme for registering or otherwise keeping track of carbon units, or for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred by the Secretary of State, and further, the regulations may, in particular, provide for an existing scheme to be adapted for these purposes: see s 26. As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out an indicative annual range for the net United Kingdom carbon account for each year within the period; indicative annual range, in relation to a year, is a range within which the Secretary of State expects the amount of the net United Kingdom carbon account for the year to fall: see s 12. The Secretary of State must prepare such proposals and policies as he considers will enable the carbon budgets that have been set under the Climate Change Act 2008 to be met: see s 13. As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period: see s 14. In exercising functions under the Climate Change Act 2008 Pt 1 involving consideration of how to meet the target for 2050, or the carbon budget for any period, the Secretary of State must have regard to the need for United Kingdom domestic action on climate change: see s 15.

4. Determination whether objectives met

It is the duty of the Secretary of State to lay before Parliament in respect of each year, beginning with the year 2008, a statement containing the following information (Climate Change Act 2008 s 16(1)): (1) in respect of each greenhouse gas, whether or not a targeted greenhouse gas, it must state the amount for the year of United Kingdom emissions (for the meaning of 'United Kingdom emissions' see PARA 614A.1), United Kingdom removals and net United Kingdom emissions of that gas, identify the methods used to measure or calculate those amounts, and state whether any of those amounts represents an increase or decrease compared to the equivalent amount for the previous year (s 16(2)); for the meaning of 'United Kingdom removals', see PARA 615A.1; (2) it must state the aggregate amount for the year of United Kingdom emissions, United Kingdom removals and net United Kingdom emissions of all greenhouse gases (s 16(3)); (3) if in accordance with international carbon reporting practice a change of method is such as to require adjustment of an amount for an earlier year in the same budgetary period, it must specify the adjustment required and state the adjusted amount (s 16(4)); (4) if emissions of a greenhouse gas from international aviation or international shipping are not required to be included in the statement by virtue of s 16(2), it must state any amounts relating to such emissions that the United Kingdom is required to report for the year in accordance with international carbon reporting practice (s 16(5)); (5) it must state the total amount of carbon units that have been credited to or debited from the net United Kingdom carbon account for the year and give details of the number and type of those carbon units (s 16(6)); (6) it must state the amount of the net United Kingdom carbon account for the year; (7) it must state (a) the amount of net United Kingdom emissions of carbon dioxide for the year 1990, (b) the amount of net United Kingdom emissions of each targeted greenhouse gas other than carbon dioxide for the year that is the base year for that gas, and (c) a baseline amount for each greenhouse gas that is not a targeted greenhouse gas, determined on such basis as the Secretary of State considers appropriate (s 16(8)); (8) the amount referred to in head (c) above, may be the amount of net United Kingdom emissions of the gas for the year 1990 or a

different year, or the average amount of net United Kingdom emissions of the gas for a number of years (s 16(9)); (9) the statement required by s 16 must be laid before Parliament not later than 31 March in the second year following that to which it relates (s 16(10)); (10) the Secretary of State must send a copy of the statement to the other national authorities (s 16(11)). The Secretary of State may decide to carry back part of the carbon budget for a budgetary period to the preceding budgetary period: see s 17.

It is the duty of the Secretary of State to lay before Parliament, in respect of each budgetary period, a statement containing the following information (s 18(1)): (a) in respect of each targeted greenhouse gas, it must state the final amount for the period of United Kingdom emissions, United Kingdom removals and net United Kingdom emissions of that gas; that is the total amount of the amounts, or adjusted amounts, stated under s 16 in respect of that gas for the years included in the period (s 18(2)); (b) it must state the final amount of carbon units that have been credited to or debited from the net United Kingdom carbon account for the period, and give details of the number and type of those carbon units (s 18(3)); (c) it must state the final amount of the net United Kingdom carbon account for the period (s 18(4)); (d) it must state whether the Secretary of State has decided to carry an amount back under s 17(1) and if so what amount (s 18(5)); (e) it must state the amount of the carbon budget for the period; that is the amount originally set, subject to any exercise of the powers conferred by s 17 and any alteration of the budget under s 21 (s 18(6)); (f) whether the carbon budget for a period has been met must be determined by reference to the figures given in the statement laid before Parliament under s 18 in respect of that period (s 18(7)); (g) if the carbon budget for the period has not been met, the statement must explain why it has not been met (s 18(8)); (h) the statement required by s 18 must be laid before Parliament not later than 31 May in the second year following the end of the period to which it relates (s 18(9)); (i) the Secretary of State must send a copy of the statement to the other national authorities (s 18(10)). As soon as is reasonably practicable after laying a statement before Parliament under s 18 in respect of a period for which the net United Kingdom carbon account exceeds the carbon budget, the Secretary of State must lay before Parliament a report setting out proposals and policies to compensate in future periods for the excess emissions: see s 19. It is the duty of the Secretary of State to lay before Parliament in respect of the year 2050 a statement containing the following information: (i) in respect of each targeted greenhouse gas, it must state the amount for that year of United Kingdom emissions, United Kingdom removals and net United Kingdom emissions of that gas; that is the amount stated for that year in respect of that gas under s 16; (ii) it must state the amount of carbon units that have been credited to or debited from the net United Kingdom carbon account for the year and give details of the number and type of those carbon units; (iii) it must state the amount of the net United Kingdom carbon account for that year: s 20(1)-(4). Whether the target for 2050 has been met is to be determined by reference to the figures given in the statement laid before Parliament under s 20: s 20(5). If the target has not been met, the statement must explain why it has not been met: s 20(6). The statement required by s 20 must be laid before Parliament not later than 31 March 2052: s 20(7). The Secretary of State must send a copy of the statement to the other national authorities: s 20(8).

5. Alteration of budgets or budgetary periods

An order setting the carbon budget (see PARA 615A) for a period may not be revoked after the date by which a budget for the period was required to be set, and may be amended after the date by which a budget for the period was required to be set only if it appears to the Secretary of State that, since the budget was originally set, or previously altered, there have been significant changes affecting the basis on which the previous decision was made: see Climate Change Act 2008 s 21. Before laying before Parliament a draft of a statutory instrument containing an order under s 21, the Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change (see PARA 615B), and take into account any representations made by the other national authorities: see s 22. The Secretary of State may

by order alter the length of the budgetary periods (see s 4(1)(a); and PARA 615A.2), or the dates in the calendar year on which the budgetary periods begin and end: see s 23.

6. Emissions from aviation or international shipping; territorial scope

Emissions of greenhouse gases from international aviation or international shipping do not count as emissions from sources in the United Kingdom for the purposes of the Climate Change Act 2008 Pt 1 (ss 1-31), except as provided by regulations made by the Secretary of State: see s 30. As to the procedure for regulations under s 30, see s 31. For the purposes of s 30 international aviation consists of (1) the whole of any flight which begins at an aerodrome in the United Kingdom and ends at an aerodrome outside the United Kingdom, or begins at an aerodrome outside the United Kingdom and ends at an aerodrome in the United Kingdom, regardless of whether the flight includes one or more interim stops at aerodromes in the United Kingdom; and (2) the whole of any flight which begins and ends at aerodromes outside the United Kingdom: Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009, SI 2009/1258, art 4(1), (2). 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically: art 4(4).

See the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2009, SI 2009/2301, which (1) define aircraft operator, regulator and authority (regs 3-7); (2) apply where a United Kingdom operator wishes to apply for a free allocation of allowances (regs 8-13); (3) require aircraft operators to submit an application to the regulator for an emissions plan, to monitor emissions in accordance with a plan approved by the regulator in each calendar year from 1 January 2010 and to submit a verified report to the regulator of the monitored emissions by 31 March in the following year (regs 14-17); (4) make provision for requiring aircraft operators to retain information and address non-conformities and misstatements identified by an independent verifier (reg 18); (5) give the regulator the power to determine the emissions of an aircraft operator where the aircraft operator has failed to comply with its obligations to submit a report containing its verified emissions to the regulator (reg 19); (6) make provision for the regulator to serve notices on aircraft operators requiring information to enable the regulator to discharge its functions under SI 2009/2301 (reg 20); (7) provide that where an aircraft operator or United Kingdom operator do not comply with their obligations they will be liable to a civil penalty (regs 21-29); (8) make provision for the detention and sale of aircraft by the regulator where a United Kingdom operator has not paid a civil penalty imposed on it and sets out the steps that the regulator must take before applying to the court for leave to sell an aircraft (regs 30-35, Sch 1); (9) make provision to allow United Kingdom operators and aircraft operators to appeal various notices or deemed refusals of the regulator and relate to the procedure for appeals and for delegating appellate functions under SI 2009/2301 (regs 36, 37, Schs 2-4); (10) give the authority the power to issue directions and guidance to the regulator relating to the discharge of the regulator's functions under SI 2009/2301 (regs 38, 39); (11) make provision for the service of documents under SI 2009/2301 (reg 40, Sch 5); (12) make provision relating to the submission of plans and reports (reg 41); and (13) require the Civil Aviation Authority to provide assistance and advice to the regulator where requested (reg 43).

For the purposes of the Climate Change Act 2008 s 30, international shipping consists of the whole of any navigation by ship which (a) begins at a harbour in the United Kingdom and ends at a harbour outside the United Kingdom; (b) begins at a harbour outside the United Kingdom and ends at a harbour in the United Kingdom; or (c) begins and ends at harbours outside the United Kingdom: SI 2009/1258 art 4(1), (3). 'Harbour' includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers; and 'ship' includes every description of vessel used in navigation: art 4(4).

The provisions of the Climate Change Act 2008 relating to emissions of greenhouse gases apply to emissions from sources or other matters occurring in, above or below United Kingdom coastal waters, or the United Kingdom sector of the continental shelf, as they apply to emissions from sources or matters occurring in the United Kingdom: s 89(1). 'United Kingdom coastal waters' means areas landward of the seaward limit of the territorial sea adjacent to the United Kingdom; 'United Kingdom sector of the continental shelf' means the areas designated under the Continental Shelf Act 1964 s 1(7) (see PARA 1636): Climate Change Act 2008 s 89(2). Section 89 is subject to s 30: s 89(3). Orders and regulations under the Climate Change Act 2008 must be made by statutory instrument: see s 90. As to affirmative and negative resolution procedure under the Climate Change Act 2008 see s 91.

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615B. The Committee on Climate Change.

The Climate Change Act 2008 s 32 establishes the Committee on Climate Change. It is the duty of the Committee to advise the Secretary of State on whether the target for 2050 (see PARA 615A.1) should be amended, and if so, what the amended percentage should be: Climate Change Act 2008 s 33(1). Advice given by the Committee under s 33 must also contain the reasons for that advice: s 33(2). The Committee must give its advice under s 33 not later than 1 December 2008: s 33(3). The Committee must, at the time it gives its advice under s 33 to the Secretary of State, send a copy to the other national authorities: s 33(4). As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate: s 33(5). It is the duty of the Committee to advise the Secretary of State, in relation to each budgetary period (see PARA 615A.2), on (1) the level of the carbon budget (see PARA 615A.2) for the period; (2) the extent to which the carbon budget for the period should be met by reducing the amount of net United Kingdom emissions of targeted greenhouse gases (see PARA 615A.1), or by the use of carbon units that in accordance with regulations under s 26 or 27 (see PARA 615A.1) may be credited to the net United Kingdom carbon account (see PARA 615A.1) for the period; (3) the respective contributions towards meeting the carbon budget for the period that should be made by (a) the sectors of the economy covered by trading schemes (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH VOL 45 (2010) PARAS 264-267), (taken as a whole); and (b) the sectors of the economy not so covered (taken as a whole); (4) the sectors of the economy in which there are particular opportunities for contributions to be made towards meeting the carbon budget for the period through reductions in emissions of targeted greenhouse gases: see s 34. It is the duty of the Committee to advise the Secretary of State on the consequences of treating emissions of targeted greenhouse gases from international aviation and international shipping, as emissions from sources in the United Kingdom for the purposes of Pt 1 (ss 1-31): see s 35. It is the duty of the Committee to lay before Parliament and each of the devolved legislatures each year, beginning with the year 2009, a report setting out the Committee's views on the progress that has been made towards meeting the carbon budgets that have been set under Pt 1 (ss 1-31) and the target for 2050, the further progress that is needed to meet those budgets and that target, and whether those budgets and that target are likely to be met: see s 36. 'Devolved legislature' means the National Assembly for Wales: s 97(b). The Secretary of State must lay before Parliament a response to the points raised by each report of the Committee under s 36: see s 37. The Committee must, at the request of a national authority, provide advice, analysis, information or other assistance to the authority in connection with the authority's functions under the Climate Change Act 2008, the progress made towards meeting the objectives set by or under the Climate Change Act 2008, adaptation to climate change, or any other matter relating to climate change: see s 38. 'National authority' means either the Secretary of State or the Welsh Ministers: see s 95.

Further provision is made as to the general ancillary powers of the Committee (s 39); grants to the Committee (s 40); the national authorities' power to give the Committee guidance (s 41); and the national authorities' power to give the Committee directions (s 42). Schedule 1 contains further provisions about the Committee including details about membership (Sch 1 paras 1, 2); term of office (Sch 1 paras 3-7); remuneration and pensions (Sch 1 paras 8-10); staff (Sch 1 paras 11-14); sub-committees (Sch 1 para 15); the Adaptation Sub-Committee (Sch

1 para 16); proceedings (Sch 1 paras 17-19); discharge of functions (Sch 1 para 20); application of seal and proof of documents (Sch 1 para 21); report and accounts (Sch 1 paras 22-24); information (Sch 1 para 25); publication of advice (Sch 1 para 26); and status (Sch 1 para 27).

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615C. Impact of and adaptation to climate change.

1. National reports and programmes

It is the duty of the Secretary of State to lay reports before Parliament containing an assessment of the risks for the United Kingdom of the current and predicted impact of climate change: Climate Change Act 2008 s 56(1). The first report under s 56 must be laid before Parliament no later than three years after s 56 comes into force: s 56(2). Subsequent reports must be laid before Parliament no later than five years after the previous report was so laid: s 56(3). The Secretary of State may extend the period for laying any such report, but must publish a statement setting out the reasons for the delay and specifying when the report will be laid before Parliament: s 56(4). Before laying such a report under before Parliament, the Secretary of State must take into account the advice of the Committee on Climate Change (see PARA 615B) under s 57: s 56(5). The Secretary of State must send a copy of each report under s 56 to the other national authorities: s 56(6). It is the duty of the Committee on Climate Change to advise the Secretary of State on the preparation of each of the Secretary of State's reports under s 56: see s 57. It is the duty of the Secretary of State to lay programmes before Parliament setting out (1) the objectives of Her Majesty's Government in the United Kingdom in relation to adaptation to climate change; (2) the Government's proposals and policies for meeting those objectives; and (3) the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under s 56. The objectives, proposals and policies must be such as to contribute to sustainable development: see s 58. Each report of the Committee on Climate Change under s 36 (see PARA 615B) to which s 59 applies must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in the programmes laid before Parliament under s 58; s 59(1). Section 59 applies to the report in the second year after that in which the Secretary of State lays the first programme under s 58 before Parliament: s 59(2). After that, s 59 applies to the report under s 36 in every second year after that in which the Committee last made a report to which s 59 applies, subject to any order under s 59(4): see s 59(3). The Secretary of State may by order provide that s 59 will apply to the report under s 36 in the year specified in the order and in every subsequent year: s 59(4). An order under s 59(4) is subject to negative resolution procedure: s 59(5).

2. Reporting authorities: non-devolved functions

The Secretary of State may issue guidance to reporting authorities about (1) assessing the current and predicted impact of climate change in relation to the authority's functions; (2) preparing proposals and policies for adapting to climate change in the exercise of their functions; and (3) co-operating with other reporting authorities for that purpose: see the Climate Change Act 2008 s 61. In ss 61-70 'reporting authority' means (a) a person or body with functions of a public nature; (b) a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt XI (ss 262-283) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009 et seq): see Climate Change Act 2008 s 70(1). Neither a minister of the Crown, nor either House of Parliament, a devolved authority or a devolved legislature are reporting authorities for the purposes of ss 61-70: s

70(2). 'Devolved authority' means the Welsh Ministers, the First Minister or the Counsel General: see s 70(3). The Secretary of State may direct a reporting authority to prepare a report containing any of the following (i) an assessment of the current and predicted impact of climate change in relation to the authority's functions; (ii) a statement of the authority's proposals and policies for adapting to climate change in the exercise of its functions and the time-scales for introducing those proposals and policies; (iii) an assessment of the progress made by the authority towards implementing the proposals and policies set out in its previous reports: see s 62. A reporting authority must comply with any directions under s 62: see s 63. As to the duty of the Secretary of State to obtain the consent of, and consult with, devolved authorities, see s 64. It is the duty of the Secretary of State to lay reports before Parliament setting out how the Secretary of State intends to exercise the power under s 62 to give directions to reporting authorities: see s 65.

3. Reporting authorities: devolved Welsh functions

The Welsh Ministers may issue guidance to reporting authorities about (1) assessing the current and predicted impact of climate change in relation to the authorities' devolved Welsh functions; (2) preparing proposals and policies for adapting to climate change in the exercise of those functions; and (3) co-operating with other reporting authorities for that purpose: Climate Change Act 2008 s 66. References to a reporting authority's devolved functions are to functions conferred or imposed by or under a Measure or Act of the National Assembly for Wales, exercisable in or as regards Wales and relating to matters within the legislative competence of the National Assembly for Wales, or in relation to which functions are exercisable by a devolved authority, and in relation to which no functions are exercisable by a Minister of the Crown: see s 70(4). As to functions not being regarded as exercisable by a Minister of the Crown in relation to a reporting authority's functions, see s 70(5). References to a reporting authority's devolved Welsh functions are to functions (a) conferred or imposed by or under a Measure or Act of the National Assembly for Wales; (b) exercisable in or as regards Wales and relating to matters within the legislative competence of the National Assembly for Wales, or (c) in relation to which functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General: s 70(6). For this purpose functions are not to be regarded as exercisable by the Welsh Ministers, the First Minister or the Counsel General in relation to a reporting authority's functions merely because the agreement of the Welsh Ministers, the First Minister or the Counsel General is required to the exercise of a function by a minister of the Crown in relation to the reporting authority's functions, or the Welsh Ministers, the First Minister or the Counsel General must be consulted by a minister of the Crown about the exercise of a function in relation to the reporting authority's functions: s 70(7). In ss 61-70 'Counsel General' and 'Wales' have the same meanings as in the Government of Wales Act 2006 (see STATUTES) and minister of the Crown includes a government department: s 70(8). The Welsh Ministers may direct a reporting authority to prepare a report containing any of the following (i) an assessment of the current and predicted impact of climate change in relation to the authority's devolved Welsh functions; (ii) a statement of the authority's proposals and policies for adapting to climate change in the exercise of those functions and the time-scales for introducing those proposals and policies; (iii) an assessment of the progress made by the authority towards implementing the proposals and policies set out in its previous reports: see 67. A reporting authority must comply with any directions under s 67: see s 68. As to the duty of the Welsh Ministers to obtain the consent of, and consult with, the Secretary of State, see s 69.

4. Report on climate change: Wales

It is the duty of the Welsh Ministers to lay before the National Assembly for Wales from time to time a report on (1) the objectives of the Welsh Ministers in relation to greenhouse gas emissions and the impact of climate change in Wales; (2) the action that has been taken by the

Welsh Ministers and others to deal with such emissions and that impact; and (3) the future priorities for the Welsh Ministers and others for dealing with such emissions and that impact: Climate Change Act 2008 s 80(1). The report must, in particular, set out how the Welsh Ministers intend to exercise the power to give directions under s 67: s 80(2). Nothing in a report under s 80 affects the exercise of the Welsh Ministers' power under s 67: s 80(3). The second and each subsequent report under s 80 must contain an assessment of the progress made towards implementing the objectives mentioned in the earlier reports: s 80(4). In s 80 Wales has the same meaning as in the Government of Wales Act 2006: Climate Change Act 2008 s 80(5).

5. Guidance on reporting

The Secretary of State must publish guidance on the measurement or calculation of greenhouse gas emissions to assist the reporting by persons on such emissions from activities for which they are responsible and the guidance must be published not later than 1 October 2009: see Climate Change Act 2008 s 83. The Secretary of State must review the contribution that reporting on greenhouse gas emissions may make to the achievement of the objectives of Her Majesty's Government in the United Kingdom in relation to climate change, and lay a report before Parliament setting out the conclusions of that review, which must be laid before Parliament not later than 1 December 2010: see s 84. The Secretary of State must, not later than 6 April 2012 make regulations under the Companies Act 2006 s 416(4) (see COMPANIES vol 15 (2009) PARA 816) requiring the directors' report of a company to contain such information as may be specified in the regulations about emissions of greenhouse gases from activities for which the company is responsible, or lay before Parliament a report explaining why no such regulations have been made: see Climate Change Act 2008 s 85. It is the duty of the Treasury to lay before Parliament in respect of each year, beginning with the year 2008, a report containing an assessment of the progress made in the year towards improving the efficiency and contribution to sustainability of buildings that are part of the civil estate: see s 86.

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616. Publication of energy measures report relating to local authorities.

The Secretary of State¹ is under a duty to publish, not later than 12 months after 21 August 2006², an energy measures report³, namely a document containing information on local authority measures⁴ which would or might in the opinion of the Secretary of State have any of the following effects:

- 64 (1) improving efficiency in the use of electricity, heat, gas, fuel and other descriptions or sources of energy;
- 65 (2) increasing the amount of electricity generated, or heat produced, by microgeneration⁵ or otherwise by plant which relies wholly or mainly on low-emissions sources or technologies⁶;
- 66 (3) reducing emissions of greenhouse gases⁷;
- 67 (4) reducing the number of households in which one or more persons are living in fuel poverty⁸.

The Secretary of State may from time to time publish revised energy measures reports⁹.

Before publishing an energy measures report or a revised energy measures report, the Secretary of State must consult the National Assembly for Wales or the Welsh Ministers¹⁰ and such representatives of local government, and such other persons (if any), as he considers appropriate¹¹.

Every local authority must, in exercising any of its functions, have regard to the most recently published energy measures report, if any¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Not later than 12 months after the date on which the Climate Change and Sustainable Energy Act 2006 s 3 came into force: see ss 3(1)(a), 28(1). The relevant report was published on 18 September 2007: see *Addressing Climate Change and Fuel Poverty--Energy Measures Information for Local Government* (Department for Business, Enterprise and Regulatory Reform; BERR/9/07/NP; URN 07/1439). At the date at which this title states the law, that report was accessible at www.berr.gov.uk.

3 Climate Change and Sustainable Energy Act 2006 s 3(1)(a). As to the matters to which the Secretary of State must have regard in exercising his functions under s 3 see s 1(1)-(3)(a); and PARA 615 ante.

4 For these purposes, 'local authority measure' means any way in which a local authority can exercise any of its functions, including (1) taking any particular step in the exercise of a function; or (2) not exercising a particular power: *ibid* s 3(4). 'Local authority' means any of the following (a) a county council; (b) a county borough council; (c) a district council; (d) a London borough council; (e) the Common Council of the City of London in their capacity as a local authority; (f) the Council of the Isles of Scilly; (g) a parish council; (h) a community council: s 3(6).

5 For the meaning of 'microgeneration' for these purposes see PARA 619 note 2 post.

6 For these purposes, 'low-emissions source or technology' means a source of energy or a technology mentioned in the Climate Change and Sustainable Energy Act 2006 s 26(2) (see PARA 619 note 2 post): s 3(4).

7 For the meaning of 'greenhouse gas' see PARA 615 note 2 ante.

8 Climate Change and Sustainable Energy Act 2006 s 3(3). For the meaning of 'fuel poverty' for these purposes see PARA 615 note 7 ante.

9 Ibid s 3(1)(b); and see note 3 supra.

10 As to the Welsh Ministers see PARA 602 note 1 ante.

11 Climate Change and Sustainable Energy Act 2006 s 3(5).

12 Ibid s 3(2).

UPDATE

616 Publication of energy measures report relating to local authorities

TEXT AND NOTES--The Welsh Ministers must from time to time publish a climate change measures report, and a local authority in Wales must, in exercising its functions, have regard to any current climate change measures report; 'local authority' means a county council, a county borough council or a community council; A climate change measures report means a report containing information about the local authority measures the Welsh Ministers consider would or might have any of the following effects (1) improving efficiency in the use of any description or source of energy; (2) increasing the amount of energy generated, or heat produced, by microgeneration; (3) increasing the amount of energy generated, or heat produced, by plant that relies wholly or mainly on a source of energy or a technology listed in s 26(2) (see PARA 619); (4) reducing emissions of greenhouse gases; (5) reducing the number of households in which one or more persons are living in fuel poverty; (6) addressing the impact of climate change: see the Climate Change and Sustainable Energy Act 2005 s 3A (added by the Climate Change Act 2008 s 81(2)). Climate Change and Sustainable Energy Act 2006 s 3 amended to apply in relation to England only: Climate Change Act 2008 s 81(3).

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617. Publication of report regarding dynamic demand technologies.

The Secretary of State¹ was under a duty to publish, not later than 12 months after 21 August 2006², a report on the contribution that is capable of being made by dynamic demand technologies³ to reducing emissions of greenhouse gases⁴ in Great Britain⁵. The report must state the view of the Secretary of State as to whether it is appropriate to take any steps to promote the use of such technologies, and, if it is, what those steps are⁶. In forming that view the Secretary of State must have regard, in particular, to any matters which would prohibit or inhibit the use of any dynamic demand technology in any circumstance in which its use could be expected to make a contribution to reducing emissions of greenhouse gases in Great Britain; and the report must state the matters to which he has had regard⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Not later than 12 months after the date on which the Climate Change and Sustainable Energy Act 2006 s 18 came into force: see ss 18(1), 28(1). The relevant report was published on 17 August 2007: see *Dynamic Demand--Government Response to Clause 18 of the Climate Change and Sustainable Energy Act* (Department for Business, Enterprise and Regulatory Reform; URN 07/1329). At the date at which this title states the law, that report was accessible at www.berr.gov.uk.

3 For these purposes, 'dynamic demand technology' means any technology which enables (1) the consumption of electricity, at a particular time, by a device connected to a network; or (2) the generation of electricity, at a particular time, by an electricity microgenerating system connected to a network, to be controlled or adjusted automatically by reference to, or to matters relating to, the frequency of alternating current on the network at that time: Climate Change and Sustainable Energy Act 2006 s 18(4). 'Electricity microgenerating system' has the same meaning as in s 4 (see PARA 619 note 6 post); 'network' means a distribution system (within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 note 5 post) or a transmission system (within the meaning of Pt I (as amended): see PARA 1041 note 6 post): Climate Change and Sustainable Energy Act 2006 s 18(4).

4 For the meaning of 'greenhouse gas' see PARA 615 note 2 ante.

5 Climate Change and Sustainable Energy Act 2006 s 18(1). As to the matters to which the Secretary of State must have regard in exercising his functions under s 18 see s 1(1)-(3)(a); and PARA 615 ante. See also s 18(3); and the text and note 7 infra. For the meaning of 'Great Britain' see PARA 602 note 7 ante. As to the relevant report see note 2 supra. At the date at which this title states the law, that report was accessible at www.berr.gov.uk.

6 Ibid s 18(2).

7 Ibid s 18(3).

UPDATE

617 Publication of report regarding dynamic demand technologies

TEXT AND NOTES--Climate Change and Sustainable Energy Act 2006 s 18 repealed: Energy Act 2008 Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(iv) Promotion of Microgeneration/618. Strategy for microgeneration.

(iv) Promotion of Microgeneration

618. Strategy for microgeneration.

The Secretary of State¹ must prepare a strategy for the promotion of microgeneration² in Great Britain³ and may from time to time revise it⁴. He was to publish the strategy within 18 months after 5 October 2004⁵. If he revises the strategy, he must publish the revised strategy⁶.

In preparing or revising the strategy, the Secretary of State must consider the contribution that is capable of being made by microgeneration to:

- 68 (1) cutting emissions of greenhouse gases⁷ in Great Britain;
- 69 (2) reducing the number of people living in fuel poverty⁸ in Great Britain;
- 70 (3) reducing the demands on transmission systems⁹ and distribution systems¹⁰ situated in Great Britain;
- 71 (4) reducing the need for those systems to be modified;
- 72 (5) enhancing the availability of electricity and heat for consumers¹¹ in Great Britain¹².

Before preparing or revising the strategy, the Secretary of State must consult such persons appearing to him to represent the producers and suppliers of plant used for microgeneration, and such other persons, as he considers appropriate¹³.

The Secretary of State must take reasonable steps to secure the implementation of the strategy in the form in which it has most recently been published¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'microgeneration' means the use for the generation of electricity or the production of heat of any plant (1) which in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in the Energy Act 2004 s 82(7); and (2) the capacity of which to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in s 82(8): s 82(6). Those sources of energy and technologies are: (a) biomass; (b) biofuels; (c) fuel cells; (d) photovoltaics; (e) water (including waves and tides); (f) wind; (g) solar power; (h) geothermal sources; (i) combined heat and power systems; and (j) other sources of energy and technologies for the generation of electricity or the production of heat, the use of which would, in the opinion of the Secretary of State, cut emissions of greenhouse gases in Great Britain (s 82(7)); and that capacity is (i) in relation to the generation of electricity, 50 kilowatts; (ii) in relation to the production of heat, 45 kilowatts thermal (s 82(8)). 'Plant' includes any equipment, apparatus or appliance: s 82(9). For the meaning of 'greenhouse gases' see note 7 infra; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 Ibid s 82(1)(a).

4 Ibid s 82(1)(b).

5 Ibid s 82(2)(a). 5 October 2004 is the date when s 82 came into force: see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1. The strategy was published on 29 March 2006: see *Our Energy Challenge--Microgeneration Strategy--Power from the People* (Department for Trade and Industry; URN 06/993). At the date at which this title states the law, that strategy was accessible at www.berr.gov.uk.

6 Energy Act 2004 s 82(2)(b).

7 For these purposes, 'greenhouse gases' means (1) carbon dioxide; (2) methane; (3) nitrous oxide; (4) hydrofluorocarbons; (5) perfluorocarbons; and (6) sulphur hexafluoride: *ibid* s 82(9).

8 For these purposes, 'fuel poverty' has the same meaning as in the Sustainable Energy Act 2003 s 1 (as amended) (see PARA 614 note 4 ante); Energy Act 2004 s 82(9).

9 For the meaning of 'transmission system' see PARA 1041 note 6 post (definition applied by *ibid* s 82(9)).

10 For the meaning of 'distribution system' see PARA 1041 note 5 post (definition applied by *ibid* s 82(9)).

11 For these purposes, 'consumers' includes both existing and future consumers: *ibid* s 82(9).

12 *Ibid* s 82(3).

13 *Ibid* s 82(4).

14 *Ibid* s 82(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(iv) Promotion of Microgeneration/619. National targets for microgeneration.

619. National targets for microgeneration.

The Secretary of State¹ must, during the period beginning with 1 November 2008 and ending with 31 March 2009:

- 73 (1) designate one or more national microgeneration² targets; and
- 74 (2) publish a statement of that fact together with a copy of the target or targets³;

but this does not apply unless on 1 November 2008 the Secretary of State considers that it would be appropriate to designate one or more such targets⁴. For these purposes, a national microgeneration target is a target in respect of:

- 75 (a) the number of microgeneration systems⁵ installed in England and Wales; and
- 76 (b) the number of electricity microgenerating systems⁶ installed in Scotland,

as at a date specified in the target ('the target date')⁷.

The matters to which the Secretary of State must have regard in determining whether the duty under heads (1) and (2) above applies include, in particular:

- 77 (i) the number of microgeneration systems installed in England and Wales;
- 78 (ii) the number of electricity microgenerating systems installed in Scotland;
- 79 (iii) the strategy for microgeneration published under the relevant provision of the Energy Act 2004⁸; and
- 80 (iv) the results of any research carried out into the effect that designating a target under those heads could be expected to have on the number of microgeneration systems that are installed in England and Wales, and the number of electricity microgenerating systems that are installed in Scotland, by the target date⁹.

If a target is designated under heads (1) and (2) above, the Secretary of State must take reasonable steps to secure that the target is met¹⁰. If the Secretary of State does not so designate a target, he must publish forthwith a statement of his reasons¹¹.

At any time before the target date, the Secretary of State may review a target and, if he considers it appropriate to do so, revise the target¹². If the Secretary of State so revises a target:

- 81 (A) he must publish a statement of that fact together with a copy of the revised target; and
- 82 (B) the revised target is treated for the statutory purposes¹³ as a target designated under heads (1) and (2) above in place of the target which has been revised¹⁴.

If a target is designated under the above provisions, then the Secretary of State's statutory duty to make annual reports on progress towards sustainable energy aims¹⁵ applies in relation

to every relevant sustainable energy report¹⁶ with the modification that the report must also include such information as the Secretary of State considers appropriate about things done during the reporting period¹⁷ for the purpose of meeting any target so designated¹⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'microgeneration' means the use for the generation of electricity or the production of heat of any plant (which, for this purpose, includes any equipment, apparatus or appliance): (1) which, in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in the Climate Change and Sustainable Energy Act 2006 s 26(2); and (2) the capacity of which to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in s 26(3): s 26(1). Those sources of energy and technologies are: (a) biomass; (b) biofuels; (c) fuel cells; (d) photovoltaics; (e) water (including waves and tides); (f) wind; (g) solar power; (h) geothermal sources; (i) combined heat and power systems (s 26(2)); and that capacity is (i) in relation to the generation of electricity, 50 kilowatts; (ii) in relation to the production of heat, 45 kilowatts thermal (s 26(3)). The Secretary of State may by order amend s 26(2) by adding to the sources of energy and technologies for the time being listed any other source of energy or technology for the generation of electricity or production of heat if he considers that the use of that source of energy or technology would cut emissions of greenhouse gases in Great Britain: s 26(4). The power to make such an order is exercisable by statutory instrument, and includes power to make such supplemental or consequential provision (including provision modifying s 26) and such transitional or saving provision as the Secretary of State thinks fit: s 26(5). No such order may be made unless a draft of the order has been laid before Parliament, and has been approved by a resolution of each House: s 26(6). At the date at which this title states the law, no such order had been made.

For the meaning of 'greenhouse gas' see PARA 615 note 2 ante.

3 Ibid s 4(1). As to the matters to which the Secretary of State must have regard in exercising his functions under s 4 see s 1(1)-(3)(a); and PARA 615 ante.

4 Ibid s 4(2).

5 For these purposes, 'microgeneration system' means any plant or system of plant for generating electricity or producing heat (1) which, in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in the Energy Act 2004 s 82(7) (see PARA 618 note 2 ante); and (2) whose capacity to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in s 82(8) (see PARA 618 note 2 ante); and 'plant' includes any equipment, apparatus or appliance: Climate Change and Sustainable Energy Act 2006 s 4(9).

6 For these purposes, 'electricity microgenerating system' means a microgeneration system for generating electricity: ibid s 4(9).

7 Ibid s 4(3).

8 Ie under the Energy Act 2004 s 82: see PARA 618 ante.

9 Climate Change and Sustainable Energy Act 2006 s 4(4).

10 Ibid s 4(5).

11 Ibid s 4(6).

12 Ibid s 4(7).

13 Ie for the purposes of ibid s 4(5) (see the text and note 10 supra) and s 5 (see the text and notes 15-18 infra).

14 Ibid s 4(8).

15 Ie the Sustainable Energy Act 2003 s 1 (as amended): see PARA 614 ante.

16 For these purposes, 'sustainable energy report' means a sustainable energy report which is required to be published under ibid s 1 (as amended); and a sustainable energy report is a relevant sustainable energy report in relation to a target designated under the Climate Change and Sustainable Energy Act 2006 s 4(1) if the reporting period to which the report relates includes the period, or any part of the period, to which the target relates: s 5(3)(a), (d). A target designated under s 4(1) relates to the period beginning when it is designated and ending with the target date (within the meaning of s 4); and 'reporting period', in relation to a

sustainable energy report, has the meaning given by the Sustainable Energy Act 2003 s 1 (as amended) (see PARA 614 note 2 ante): Climate Change and Sustainable Energy Act 2006 s 5(3)(b), (c).

17 le including proposals of the Secretary of State published during that period: Sustainable Energy Act 2003 s 1(1C) (amended for these purposes by the Climate Change and Sustainable Energy Act 2006 s 5(1), (2)).

18 Sustainable Energy Act 2003 s 1(1BA) (added for these purposes by the Climate Change and Sustainable Energy Act 2006 s 5(1), (2)).

UPDATE

619 National targets for microgeneration

NOTE 2--See Climate Change and Sustainable Energy Act 2006 (Sources of Energy and Technologies) Order 2008, SI 2008/1767.

NOTES 17, 18--Sustainable Energy Act 2003 s 1(1C) repealed, Climate Change and Sustainable Energy Act 2006 s 5(2) amended: Energy Act 2008 s 87(1)(c), (2), Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(iv) Promotion of Microgeneration/620. Review of permitted development orders.

620. Review of permitted development orders.

For the purpose of enabling the Secretary of State¹ to form a view as to what provision, or further provision, permitted development orders made under the Town and Country Planning Act 1990² should make to facilitate development in England consisting of the installation, within the curtilage of a dwelling house³, of equipment, apparatus or appliances for microgeneration⁴, he must carry out a review of the effect in England of such development orders⁵. As soon as reasonably practicable after he has carried out the review, the Secretary of State must lay before Parliament a report of the review, including his view as mentioned above and the reasons for it⁶. The report must also set out what provision, or further provision, if any, he proposes to make in development orders⁷ in consequence of the review⁸.

Where the Secretary of State proposes to make provision, or further provision, in development orders in consequence of the review, he must:

- 83 (1) exercise his statutory powers⁹ so as to provide that development orders made by virtue of the relevant provision of the Town and Country Planning Act 1990¹⁰ make such provision in consequence of the review as he considers appropriate; and
- 84 (2) exercise those powers as soon as reasonably practicable after laying the report before Parliament¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. made by virtue of the Town and Country Planning Act 1990 s 59(2)(a): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252.

3 For these purposes, 'dwelling house' does not include a building containing one or more flats, or a flat contained within such a building; and 'flat' means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally: Climate Change and Sustainable Development Act 2006 s 10(6).

4 For the meaning of 'microgeneration' see PARA 619 note 2 ante.

5 See the Climate Change and Sustainable Development Act 2006 s 10(1), (2).

6 Ibid s 10(3).

7 I.e. by virtue of the Town and Country Planning Act 1990 s 59(2)(a): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252.

8 Climate Change and Sustainable Development Act 2006 s 10(4). See *Domestic Installation of Microgeneration Equipment--Final report from a Review of the related Permitted Development Regulations* (Department for Communities and Local Government, April 2007). At the date at which this title states the law, that report was accessible at www.communities.gov.uk.

9 I.e. his powers under the Town and Country Planning Act 1990 s 59.

10 I.e. by virtue of ibid s 59.

11 Climate Change and Sustainable Development Act 2006 s 10(5).

UPDATE

620 Review of permitted development orders

NOTE 4--As to the installation of domestic microgeneration equipment, see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 40 (added by SI 2008/675 (England); SI 2009/2193 (Wales); and amended by SI 2008/2362 (England)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/ (v) Promotion of Community Energy Projects and Renewable Heat/621. Promotion of community energy projects.

(v) Promotion of Community Energy Projects and Renewable Heat

621. Promotion of community energy projects.

It is the duty of the Secretary of State¹ to take such steps as he considers appropriate to promote community energy projects², namely:

- 85 (1) the use of relevant plant³ for a community purpose⁴;
- 86 (2) the installation of relevant plant for use for a community purpose; or
- 87 (3) the adaptation of any plant for use as relevant plant for a community purpose⁵.

In the exercise of this duty, the Secretary of State must have regard to the desirability of promoting:

- 88 (a) schemes whose purpose or effect is the promotion of community energy projects;
- 89 (b) investment by others in such schemes and community energy projects; and
- 90 (c) the provision of advice and assistance, whether by public authorities⁶ or any other persons, to persons establishing and operating, or proposing to establish and operate, community energy projects⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Climate Change and Sustainable Energy Act 2006 s 19(1). As to the matters to which the Secretary of State must have regard in exercising his functions under s 19 see s 1(1)-(3)(a); and PARA 615 ante. See also s 19(2); and the text and notes 6-7 infra.

3 For these purposes, 'plant' includes any equipment, apparatus or appliance; and 'relevant plant' means any plant which (1) in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in the Energy Act 2004 s 82(7) (microgeneration: see PARA 618 note 2 ante); and (2) satisfies the condition in the Climate Change and Sustainable Energy Act 2006 s 19(4): s 19(3). Plant satisfies the condition in s 19(4) if its capacity does not exceed (a) in the case of plant for the generation of electricity, 20 megawatts; and (b) in the case of plant for the production of heat, 100 megawatts thermal: s 19(4).

4 'Community purpose' means the purpose of (1) generating electricity for consumption wholly or mainly in qualifying premises; or (2) producing heat for use wholly or mainly for heating qualifying premises; 'premises' means any building or buildings (and for this purpose 'building' includes part of a building); and 'qualifying premises' means premises which (a) are used wholly or mainly for purposes other than carrying on a trade, business or profession; and (b) in the case of premises which consist wholly or mainly of a dwelling or dwellings, contain at least five dwellings: ibid s 19(3).

5 See ibid s 19(3).

6 I.e. public authorities within the meaning of the Human Rights Act 1998 s 6 (see PARA 615 note 6 ante): see the Climate Change and Sustainable Energy Act 2006 s 28(1).

7 Ibid s 19(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/ (v) Promotion of Community Energy Projects and Renewable Heat/622. Promotion of renewable heat.

622. Promotion of renewable heat.

It is the duty of the Secretary of State¹ to take such steps as he considers appropriate to promote the use of heat produced from renewable sources²; and for these purposes, heat produced by any plant³ is produced from renewable sources to the extent that the plant is fuelled by renewable sources⁴.

The steps which the Secretary of State may take for these purposes include, in particular, steps for the purpose of promoting:

- 91 (1) the installation of plant which is or may be fuelled by renewable sources;
- 92 (2) the adaptation of plant so as to enable it to be fuelled by renewable sources;
- or
- 93 (3) the production of heat by plant which is fuelled partly by renewable sources and partly by other sources⁵.

1 As to the Secretary of State see PARA 602 note 1 ante.

2 Climate Change and Sustainable Energy Act 2006 s 21(1). As to the matters to which the Secretary of State must have regard in exercising his functions under s 21 see s 1(1)-(3)(a); and PARA 615 ante. 'Renewable sources' means sources of energy other than fossil fuel or nuclear fuel; and 'fossil fuel' means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum or petroleum products: s 21(4). For the meanings of 'natural gas' and 'petroleum products' see PARA 603 notes 3-4 ante (definitions applied by s 21(4)).

3 For these purposes, 'plant' includes any equipment, apparatus or appliance: *ibid* s 21(4).

4 *Ibid* s 21(2).

5 *Ibid* s 21(3).

UPDATE

622 Promotion of renewable heat

TEXT AND NOTES--The Secretary of State may make regulations (1) establishing a scheme to facilitate and encourage renewable generation of heat, and (2) about the administration and financing of the scheme: see Energy Act 2008 s 100.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(vi) Functions and Duties regarding Combined Heat and Power/A. COMBINED HEAT AND POWER TARGETS/623. Combined heat and power targets.

(vi) Functions and Duties regarding Combined Heat and Power

A. COMBINED HEAT AND POWER TARGETS

623. Combined heat and power targets.

Before the end of 2003, the Secretary of State¹ was to make a statement specifying one or more CHP targets and specifying the period² that each CHP target is for³. A CHP target is the percentage of the amount of electricity for government use in the period the target is for⁴ that the Secretary of State considers will be capable, at a reasonable cost to the government, of being supplied from CHP electricity⁵. At any time after making that statement, the Secretary of State may make a further statement doing either or both of the following:

- 94 (1) specifying one or more CHP targets and specifying the period that each CHP target is for⁶;
- 95 (2) revoking a CHP target contained in an earlier statement under these provisions⁷.

The Secretary of State must lay any statement so made before Parliament⁸.

The Secretary of State may by order⁹:

- 96 (a) specify the departments and other bodies which, taken together, are to constitute 'the government' for these purposes¹⁰;
- 97 (b) provide for the exclusion from any estimation of the amount of electricity that the government will use in a period of:
 - 3
 - 3. (i) the use of electricity for purposes specified in the order or in circumstances so specified;
 - 4. (ii) the use of electricity by any part of the government specified in the order¹¹.
 - 4

No proceedings may be brought to enforce any CHP target contained in a statement made under these provisions or otherwise to review any act done, or any failure to act, in relation to any such CHP target¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 One of the periods specified must begin with 1 January 2010 and end with 31 December 2010: Sustainable Energy Act 2003 s 5(6).

3 Ibid s 5(1). In December 2003 the government set a target for the government estate to source at least 15% of electricity from good quality CHP by 2010: see 415 HC Official Report (6th series) 18 December 2003, written statements col 153. See also the *Government's Strategy for Combined Heat and Power to 2010* (Department for Environment, Food and Rural Affairs, April 2004, PB 9539). At the date at which this title states the law, that strategy was accessible at www.defra.gov.uk.

4 For these purposes, 'amount of electricity for government use in the period the target is for' means the amount of electricity that the Secretary of State estimates that the government will use in that period: Sustainable Energy Act 2003 s 5(4). As to 'government use' see further the text and note 10 infra.

5 Ibid s 5(3). 'CHP electricity' means electricity that (1) is generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity; and (2) satisfies any other requirements specified in an order made by the Secretary of State: s 5(4). Any power to make an order under s 5 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 5(8). At the date at which this title states the law, no order had been made for the purposes of head (2) supra.

6 Ie specifying as mentioned in ibid s 5(1).

7 Ibid s 5(2).

8 Ibid s 5(7).

9 As to the power to make such orders see ibid s 5(8), cited in note 5 supra.

10 Ibid s 5(5)(a). In the exercise of this power, the Secretary of State has made the Sustainable Energy (CHP Provisions) Order 2003, SI 2003/2987, which came into force on 15 December 2003: art 1(1). For the government departments and other bodies which together constitute 'the government' for these purposes see art 2, Schedule.

11 Sustainable Energy Act 2003 s 5(5)(b). For the purposes of any CHP target specified by the Secretary of State in a statement made pursuant to s 5(1), there is to be excluded in the period specified in relation to that target from the estimation of the amount of electricity that the government will use, electricity used: (1) in circumstances where the premises in which it is used are outside England and Wales; or (2) by the following parts of the government: (a) the Office of the Judge Advocate General of the Forces; (b) the Vehicle and Operator Services Agency; (c) the Information Technology Services Agency; (d) the National Insurance Contributions Office; (e) the Invest in Britain Bureau; (f) the National Savings; (g) the Probation Service; (h) the Farming and Rural Conservation Agency; (i) the NHS Estates: Sustainable Energy (CHP Provisions) Order 2003, SI 2003/2987, art 3.

12 Sustainable Energy Act 2003 s 5(9).

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B. GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION

624. Issue of CHPGOs.

Guarantees of origin¹ of electricity produced from high-efficiency cogeneration² ('CHPGOs') are to be issued by the Secretary of State³ as the competent authority in accordance with the following provisions⁴.

A producer of electricity may request a CHPGO from the competent authority⁵; but no such request may be made for a CHPGO where the electricity is produced outside Great Britain⁶. A request is not to be considered duly made until the competent authority is provided with:

- 98 (1) all the specified information⁷;
- 99 (2) the required statement⁸; and
- 100 (3) any charge⁹ payable¹⁰.

Where the competent authority receives a request made in accordance with the above provisions, and is satisfied that the electricity to which the request relates is produced from high-efficiency cogeneration, the authority must issue a CHPGO in respect of that electricity¹¹. A CHPGO must be issued to the person making the request or such other person as that person may request¹². It must contain the specified matters¹³ and may contain such other matters as the competent authority considers appropriate¹⁴.

Where a CHPGO has been issued but not revoked¹⁵, no further CHPGO in respect of the electricity to which the CHPGO relates is to be issued by the competent authority¹⁶.

1 'Guarantee of origin' means, except in relation to the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 10(3)-(5) (see PARA 628 post), a certificate issued by the competent authority certifying that the electricity in respect of which the certificate is issued is electricity produced from high-efficiency cogeneration: reg 2(2). 'The competent authority' is the Secretary of State for Environment, Food and Rural Affairs: reg 2(1).

2 'High-efficiency cogeneration' means cogeneration of electricity that meets the criteria of European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) on the promotion of cogeneration based on a useful heat demand in the internal energy market, Annex III: Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 2(1), (2).

3 See note 1 supra. As to the Secretary of State see generally para 601 note 1 ante.

4 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, regs 2(2), 3(1), (2).

5 Ibid reg 4(1).

6 Ibid reg 4(2). For these purposes, 'Great Britain' includes (1) the territorial sea of the United Kingdom which is adjacent to Great Britain; and (2) any area designated under the Continental Shelf Act 1964 (see s 1(7) (as amended); and PARA 1636 post): Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 2(1). For the meaning of 'United Kingdom' see PARA 602 note 7

ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

7 Ie the information in *ibid* reg 4(3)(a), Sch 1. That information is: (1) the name and address (if a corporation or Scottish firm, the registered or principal office) and, if a company, the registered number, of the person requesting the issue of the CHPGO; (2) where the person signing the statement required under reg 4(4) (see note 8 *infra*) is not the person making the request, the name and address of the person signing the statement; (3) whether the person requesting the issue of the CHPGO is the producer of the electricity in respect of which the CHPGO is requested and, if not, the name and address (if a corporation or Scottish firm, the registered or principal office) and, if a company, the registered number, of the producer; (4) the beginning and end of the period covered by the request; (5) the place where the electricity in respect of which the CHPGO is requested was produced, and the name, if any, of the plant; (6) the quantity of electricity in respect of which the CHPGO is requested, together with the total quantity of electricity produced by the plant during the period covered by the request; (7) the information relating to the plant which a person would be required to provide if they requested a certificate in relation to that plant under the Combined Heat and Power Quality Assurance Standard, Issue 1 (November 2000), published by the Department for Environment, Food and Rural Affairs; (8) the primary fuel source from which the electricity was produced; (9) the heat to power ratio of the plant; (10) the amount of useful heat utilised during the period covered by the request; (11) such further information as the competent authority may, in the particular circumstances of the case, reasonably require (a) for the purposes of ascertaining the accuracy of the information required to be provided under heads (1)-(10) *supra*; or (b) to enable the competent authority to be satisfied that any electricity produced is from high-efficiency cogeneration: Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, Sch 1.

8 Ie the statement required under *ibid* reg 4(4). The person making the request must provide a statement that in respect of the electricity which is the subject of the request (1) he is entitled to the issue of a CHPGO under the 2007 Regulations; and (2) he has not made and does not intend to make a request for the issue of a CHPGO to any person outside Great Britain: reg 4(4).

9 Ie any charge payable under *ibid* reg 9. The competent authority may require the payment of a charge from a producer of electricity who requests a CHPGO under reg 4: reg 9(1)(a). A charge so payable must not exceed the costs of the competent authority in complying with the request: reg 9(2). The competent authority is not required to issue a CHPGO until the charge is paid: reg 9(3).

10 *Ibid* reg 4(3).

11 *Ibid* reg 5(1).

12 *Ibid* reg 5(2).

13 Ie the matters set out in *ibid* reg 5(3), Sch 2. Those matters are: (1) the name and address (if a corporation or Scottish firm, the registered or principal office) and, if a company, the registered number, of the person to whom the CHPGO has been, or was originally, issued; (2) the date of issue of the CHPGO; (3) an identifier; (4) the beginning and end of the period to which the CHPGO relates; (5) the place where the electricity to which the CHPGO relates was produced and the name, if any, of the plant; (6) the lower calorific value of the fuel source from which the electricity was produced; (7) the use of the heat generated together with the electricity produced during the period to which the CHPGO relates; (8) the quantity of electricity from high-efficiency cogeneration calculated in accordance with European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) Annex II; (9) the primary energy savings calculated in accordance with Annex III(b); (10) the primary fuel source from which the electricity was produced; (11) the quantity of fuel from which the electricity was produced; (12) the amount of heat utilised during the period to which the CHPGO relates; (13) the achieved power efficiency; (14) the achieved overall efficiency; and (15) the total quantity of electricity generated over the period to which the CHPGO relates: Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, Sch 2.

14 *Ibid* reg 5(3).

15 As to revocation see *ibid* reg 8; and PARA 627 *post*.

16 *Ibid* reg 5(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(vi) Functions and Duties regarding Combined Heat and Power/B. GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION/625. Replacement CHPGOs.

625. Replacement CHPGOs.

The CHPGO holder¹ may request the Secretary of State as the competent authority² to issue a replacement CHPGO if:

- 101 (1) the CHPGO holder believes that the CHPGO is inaccurate; and
- 102 (2) the request is made in writing to the competent authority within 21 days of the issue of the CHPGO³.

A request must:

- 103 (a) state the particulars of the CHPGO that the CHPGO holder believes are inaccurate; and
- 104 (b) provide all necessary information in support of that request⁴;

and the competent authority must acknowledge to the CHPGO holder the receipt of the request within seven days of receipt⁵.

The competent authority must, on the basis of the information provided in the request:

- 105 (i) decide whether or not to revoke the CHPGO and to issue a replacement CHPGO; and
- 106 (ii) make that decision within 40 days⁶ of the receipt of the request⁷.

If the competent authority decides:

- 107 (A) to revoke the CHPGO, it must give written notice⁸;
- 108 (B) not to revoke the CHPGO, it must as soon as possible give written notice to the CHPGO holder, with reasons for that decision;
- 109 (C) to issue a replacement CHPGO, it must do so as soon as possible⁹.

1 'The CHPGO holder' means the person to whom the CHPGO is issued or transferred: Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 2(2). For the meaning of 'CHPGO' see PARA 624 ante.

2 See PARA 624 note 1 ante. As to the Secretary of State see generally para 601 note 1 ante.

3 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 6(1).

4 Ibid reg 6(2).

5 Ibid reg 6(3).

6 The 40-day period may be extended if so agreed by the CHPGO holder and the competent authority: ibid reg 6(5).

7 Ibid reg 6(4).

8 le under ibid reg 8(2): see PARA 627 post.

9 Ibid reg 6(6).

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626. Transfer of CHPGOs.

If a CHPGO holder¹ no longer operates the plant to which the CHPGO relates, he may request the Secretary of State as the competent authority² to transfer the CHPGO to the person who does operate that plant³. If the competent authority receives:

- 110 (1) a written request for such a transfer;
- 111 (2) satisfactory evidence of the matters referred to above; and
- 112 (3) any charge payable⁴,

it must effect the transfer of the CHPGO⁵.

1 For the meaning of 'CHPGO holder' see PARA 625 note 1 ante.

2 See PARA 624 note 1 ante. As to the Secretary of State see generally para 601 note 1 ante.

3 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 7(1).

4 *Ie* under *ibid* reg 9. The competent authority may require the payment of a charge from a CHPGO holder who requests a transfer of a CHPGO under reg 7: reg 9(1)(b). A charge so payable must not exceed the costs of the competent authority in complying with the request: reg 9(2). The competent authority is not required to transfer a CHPGO until the charge is paid: reg 9(3).

5 *Ibid* reg 7(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(vi) Functions and Duties regarding Combined Heat and Power/B. GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION/627. Revocation of CHPGOs.

627. Revocation of CHPGOs.

The competent authority¹ must revoke a CHPGO² where:

- 113 (1) it decides the CHPGO is inaccurate;
- 114 (2) it is satisfied that the information provided when the request to issue it was made³ is incorrect in a material particular; or
- 115 (3) it is otherwise satisfied that the CHPGO should not have been issued, is inaccurate or was issued to the wrong person⁴.

Where the competent authority revokes a CHPGO, it must as soon as possible give written notice to the CHPGO holder⁵. A CHPGO that is revoked under head (1) above is to be treated as if it had not been issued⁶; and a CHPGO that is revoked under head (2) or head (3) above ceases to have effect from the date that such notice is given⁷.

¹ I.e. the Secretary of State: see PARA 624 note 1 ante. As to the Secretary of State see generally para 601 note 1 ante.

² For the meaning of 'CHPGO' see PARA 624 ante.

³ I.e. the information provided under the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 4: see PARA 624 ante.

⁴ Ibid reg 8(1).

⁵ Ibid reg 8(2).

⁶ Ibid reg 8(3)(a).

⁷ Ibid reg 8(3)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(1) GENERAL FUNCTIONS OF THE SECRETARY OF STATE/(vi) Functions and Duties regarding Combined Heat and Power/B. GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION/628. Recognition of CHPGOs.

628. Recognition of CHPGOs.

A public authority¹ must recognise a CHPGO² issued by the Secretary of State as the competent authority³ as proof of the specified⁴ matters⁵. A public authority must also recognise, as proof of certain matters⁶, a CHPGO which has been issued⁷ outside Great Britain⁸; but it is not so required to recognise to that extent a CHPGO issued outside Great Britain if:

- 116 (1) it has been requested to refuse or withdraw such recognition by the authority which issued or supervised the issue of the CHPGO; or
- 117 (2) on the basis of objective, transparent and non-discriminatory criteria, it is satisfied that the CHPGO should not have been issued or that refusal of recognition is necessary for the prevention of fraud⁹.

Where a public authority has refused to recognise a CHPGO issued in another member state, it must recognise that CHPGO where the European Commission requires¹⁰ such recognition¹¹.

Nothing in the above provisions requires a public authority to satisfy itself that a CHPGO issued outside Great Britain has been properly issued¹².

1 For these purposes, a public authority means any minister, government department, public body of any description or any person holding public office: Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 10(2).

2 For the meaning of 'CHPGO' see PARA 624 ante.

3 See PARA 624 note 1 ante. As to the Secretary of State see generally para 601 note 1 ante.

4 I.e the matters referred to in European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 5(5).

5 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 10(1).

6 I.e the matters referred to in *ibid* Sch 2 paras 4-9: see PARA 624 note 13 heads (4)-(9) ante.

7 I.e in accordance with European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 5.

8 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 10(3).

9 *Ibid* reg 10(4).

10 I.e under European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) art 5(6).

11 Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007, SI 2007/292, reg 10(5).

12 *Ibid* reg 10(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(2) RELEVANT FUNCTIONS OF LOCAL AUTHORITIES/629. Parish councils and community councils; powers in relation to local energy saving measures.

(2) RELEVANT FUNCTIONS OF LOCAL AUTHORITIES

629. Parish councils and community councils; powers in relation to local energy saving measures.

A parish council or community council may encourage or promote any of the following¹:

- 118 (1) microgeneration² within its area;
- 119 (2) the use within its area of electricity generated, or heat produced, by microgeneration;
- 120 (3) efficiency in the use, by persons in its area, of electricity, heat, gas, fuel and other descriptions or sources of energy;
- 121 (4) reductions in the amounts of such energy, or sources of energy, used by persons in its area;
- 122 (5) production in its area of biomass, or any fuel derived from biomass;
- 123 (6) use in its area of, or of electricity generated or heat produced from, biomass or any such fuel³.

The power so conferred includes, in particular, power:

- 124 (a) on application, to provide information about goods or services available within its area, whether offered or provided by public authorities or by any other persons; or
- 125 (b) to provide advice or assistance⁴,

for the purpose of encouraging or facilitating any of the matters mentioned in heads (1) to (6) above⁵.

In exercising these functions, a parish or community council must have regard to the most recently published energy measures report⁶, if any⁷.

1 The appropriate person may by order amend the list of matters mentioned in the Climate Change and Sustainable Energy Act 2006 s 20(1) (see heads (1)-(6) in the text) by (1) adding any other matter whose addition would in the opinion of the person making the order be likely to contribute to reduction of greenhouse gases in England and Wales; (2) omitting any matter for the time being included in the list: s 20(6). For these purposes, 'the appropriate person' means (1) in relation to England, the Secretary of State; and (2) in relation to Wales, the National Assembly for Wales or the Welsh Ministers: s 20(7). As to the Secretary or State, the Assembly and the Welsh Ministers see PARA 601 note 1 ante; and for the meaning of 'greenhouse gas' see PARA 615 note 2 ante.

The power conferred by s 20(6) includes (a) power to make different provision for different cases; and (b) power to make such supplemental or consequential provision (including provision modifying s 20) and such transitional or saving provision as the person making the order thinks fit: s 20(8). The power of the Secretary of State to make such an order is exercisable by statutory instrument (s 20(9)); and no such order may be made by him unless a draft of the order has been laid before Parliament, and approved by a resolution of each House (s 20(10)).

2 For the meaning of 'microgeneration' see PARA 619 note 2 ante.

3 Climate Change and Sustainable Energy Act 2006 s 20(1). As to the matters to which public authorities must have regard in exercising their functions under s 20 see s 1(1), (2), (3)(b); and PARA 615 ante.

4 Assistance provided under *ibid* s 20(1) may, if the council giving the assistance thinks appropriate, be made subject to conditions, or otherwise be provided on such terms as the council thinks appropriate: s 20(3).

5 *Ibid* s 20(2). For the purposes of the Local Government Act 1972 s 137(4)-(7B) (as amended) (power of local authorities to incur expenditure for certain purposes not otherwise authorised: see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 519): (1) any expenditure incurred by a parish council or community council under the Climate Change and Sustainable Energy Act 2006 s 20 is to be treated as having been incurred under the Local Government Act 1972 s 137 (as amended); and (2) any purpose for which expenditure may be incurred under the Climate Change and Sustainable Energy Act 2006 s 20 is to be treated as a purpose for which such a council is authorised by the Local Government Act 1972 s 137 (as amended) to incur expenditure: Climate Change and Sustainable Energy Act 2006 s 20(4). Section 20(4) applies to expenditure incurred by a parish council or community council under the Local Government Act 1972 s 142 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 545) on information as to the services provided by it under the Climate Change and Sustainable Energy Act 2006 s 20, or otherwise relating to its functions under s 20, as it applies to expenditure incurred under s 20: s 20(5).

6 For the meaning of 'energy measures report' see PARA 616 ante.

7 See the Climate Change and Sustainable Energy Act 2006 s 3(2); and PARA 616 ante.

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630. Other relevant powers, duties and functions of local authorities.

District councils, London borough councils, the Common Council of the City of London and county and county borough councils in Wales have statutory powers to ensure the restoration of a domestic gas or electricity supply in certain circumstances¹. Local authorities have the right to be served with notice of certain matters² and to have certain documents deposited with them³. Documents so deposited must be made available for public inspection⁴.

Local authorities have power to establish combined heat and power schemes⁵. They are subject to statutory restrictions on the keeping and use of radioactive materials on their premises⁶ and have a statutory right to be consulted before certain authorisations relating to radioactive waste are granted⁷ or before facilities for the disposal or accumulation of radioactive waste are provided⁸. They may be required to accept radioactive waste and deal with it if the terms of an authorisation so provide⁹. They must prepare, and keep up to date, arrangements to give information to members of the public in their area in the case of a radiation emergency¹⁰. These, and other relevant matters relating to local authorities, are discussed in more detail below.

Every local authority must, in exercising any of its functions, have regard to the most recently published energy measures report¹¹, if any¹².

1 See the Local Government (Miscellaneous Provisions) Act 1976 s 33 (as amended); and PARA 775 post.

2 See eg the Gas Act 1965 Sch 2 para 4(2)(a) (as amended) (proposals for gas storage authorisation orders); and PARA 984 post.

3 See eg *ibid* Sch 2 para 10(7) (as amended) (copy of gas storage authorisation order and its accompanying map); and PARA 992 post; the Radioactive Substances Act 1993 s 7(3) (as amended) (applications for registration of premises under that Act); and PARA 1442 post.

4 See note 3 *supra*.

5 See the Local Government (Miscellaneous Provisions) Act 1976 s 11 (amended by the Electricity Act 1989 s 112(1), (4), Sch 16 para 20, Sch 18); and PARA 1286 note 9 post.

6 See the Radioactive Substances Act 1993; and PARA 1439 *et seq* post.

7 See *ibid* s 18(1) (as amended); and PARA 1455 post.

8 See *ibid* s 29(2); and PARA 1460 post.

9 See *ibid* s 18(3); and PARA 1462 post.

10 See the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16; and PARA 1569 post.

11 For the meaning of 'energy measures report' see PARA 616 *ante*.

12 See the Climate Change and Sustainable Energy Act 2006 s 3(2); and PARA 616 *ante*.

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(3) EUROPEAN UNION LEGISLATION

(i) Information Requirements; Security

631. Notification of investment projects.

Member states of the European Community are required to furnish the European Commission each year with information on certain major investment projects in the petroleum, natural gas and electricity sectors¹. These are:

- 126 (1) in the case of petroleum refining:
 - 5
 - 5. (a) distillation plants with a capacity of not less than 1 million tonnes² a year;
 - 6. (b) extension of distilling capacity beyond 1 million tonnes a year;
 - 7. (c) reforming/cracking plants with a minimum capacity of 500 tonnes a day;
 - 8. (d) desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products;
 - 6
 - 127 but chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded;
 - 128 (2) in the case of the transport of natural gas:
 - 7
 - 9. (a) transfrontier gas pipelines and projects of common interest³;
 - 10. (b) terminals for the importation of liquefied natural gas;
 - 8
 - 129 but gas pipelines and terminals for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded;
 - 130 (3) in the case of the distribution of natural gas, underground storage installations with a capacity of not less than 150 million cubic metres; but installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded;
 - 131 (4) in the case of the production of electricity:
 - 9
 - 11. (a) thermal power stations (generators with a unit capacity of 200 megawatts or more);
 - 12. (b) hydro-electric power stations (power stations having a capacity of 50 megawatts or more);
 - 10
 - 132 (5) in the case of the transporting of electricity:
 - 11
 - 13. (a) overhead transmission lines, if they have been designed for a voltage of 345 kilovolts or more;
 - 14. (b) underground and submarine transmission cables, if they have been designed for a voltage of 100 kilovolts or more and constitute essential links in national or international interconnecting networks;

15. (c) projects⁴ of common interest⁵.
12

The information must be communicated to the Commission before 15 April of each year in relation to such projects on which work is scheduled to start within three years, in the case of projects in the petroleum and natural gas sectors, or within five years, in the case of projects in the electricity sector; and such communication must take account of the latest developments in the situation⁶. In order to fulfil that obligation, the persons and undertakings concerned must, before 15 March of each year, communicate details of such investment projects to the member states in whose territory they are planning to carry them out; but this does not apply where the member state concerned decides to use other means of supplying the Commission with information on those investment projects⁷. The communication so provided for must also indicate the volume of capacities in commission or under construction or which are scheduled to be taken out of commission within three years⁸ and investment projects of which the major features⁹ may, in whole or in part, be subject to further review or to final authorisation by a competent authority¹⁰. With regard to investment projects which are planned or in progress, any such communication must indicate the following:

- 133 (i) the precise purpose and nature of such investments;
- 134 (ii) the planned capacity or power;
- 135 (iii) the probable date of commissioning;
- 136 (iv) the type of raw materials used;

and as regards any proposed withdrawal from service, communications must indicate the character and the capacity or power of the installations concerned and the probable date when the installations will be withdrawn from service¹¹.

The Commission must place before the EC Council a summary of the information obtained pursuant to these provisions¹². Information forwarded pursuant to these provisions is to be treated as confidential, but this does not prevent the publication of general information or of summaries not containing particulars concerning individual undertakings¹³.

A person who contravenes or fails to comply with any obligation under these provisions, or who in furnishing any information in purported compliance with such an obligation makes or causes to be made on his behalf a statement which he knows to be false or does not believe to be true, is guilty of an offence under domestic law¹⁴.

Under the Euratom Treaty¹⁵, persons and undertakings engaged in certain industrial activities must communicate to the European Commission investment projects relating to new installations and also to replacements or conversions which fulfil certain criteria as to type and size¹⁶. Those activities are:

- 137 (A) mining of uranium and thorium ore;
- 138 (B) concentration of such ores;
- 139 (C) chemical processing and refining of uranium and thorium concentrates;
- 140 (D) preparation of nuclear fuels, in any form;
- 141 (E) fabrication of nuclear fuel elements;
- 142 (F) production of uranium hexafluoride;
- 143 (G) production of enriched uranium;
- 144 (H) processing of irradiated fuels for the purpose of separating some or all of the elements contained therein;
- 145 (I) production of reactor moderators;
- 146 (J) production of hafnium free zirconium or compounds thereof;
- 147 (K) nuclear reactors of all types and for all purposes;

- 148 (L) facilities for the industrial processing of radioactive waste, set up in conjunction with one or more of the facilities specified in heads (A) to (K) above or head (M) below;
- 149 (M) semi-industrial installations intended to prepare the way for the construction of plants involved in any of the activities listed in heads (C) to (J) above¹⁷.

Those projects must be communicated to the Commission and, for information purposes, to the member state concerned not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months¹⁸ before the work begins¹⁹. The Commission must discuss with the persons or undertakings all aspects of investment projects which relate to the objectives of the Euratom Treaty and must communicate its views to the member state concerned²⁰. It may, with the consent of the member states, persons and undertakings concerned, publish any investment projects communicated to it²¹.

1 See EC Council Regulation 736/96 (OJ L102, 25.4.96, p 1) on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors.

2 When calculating capacities or dimensions mentioned in *ibid* Annex, the member states, persons or undertakings concerned must take into account all parts of a project, in so far as together they constitute a technically indivisible whole, even where the project is carried out in several successive stages: art 1(4).

3 *Ie* identified in the guidelines established under the EC Treaty art 155 (ex art 129c).

4 *Ie* projects of common interest identified as described in note 3 *supra*.

5 EC Council Regulation 736/96 (OJ L102, 25.4.96, p 1), art 1(1), Annex.

6 *Ibid* art 1(1). Member states must add to their communications any comments they may have: art 1(1).

7 *Ibid* art 1(2).

8 *Ibid* art 1(3).

9 *Ie* location, contractor, undertaking, technical features, etc: see *ibid* art 1(4).

10 *Ibid* art 1(4).

11 *Ibid* art 2(1).

12 *Ibid* art 3.

13 *Ibid* art 4.

14 See the Energy Act 1976 s 18(2)(c), (d); and *PARA* 613 *ante*.

15 As to the Euratom Treaty and its citation in this title see *PARA* 1337 *post*.

16 See the Euratom Treaty art 41. The criteria referred to in the text are laid down by the Council on a proposal from the Commission: see art 41; and Euratom Council Regulation 2587/1999 (OJ L315, 9.12.99, p 1).

17 Euratom Treaty art 41, Annex II. The list of industrial activities may be altered by the Council, acting by a qualified majority on a proposal from the Commission, which must first obtain the opinion of the Economic and Social Committee: art 41.

18 The Council may, acting on a proposal from the Commission, alter this time limit: *ibid* art 42.

19 *Ibid* art 42.

20 *Ibid* art 43.

21 *Ibid* art 44.

UPDATE

631 Notification of investment projects

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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632. Information concerning crude oil imports.

Any person or undertaking importing crude oil from third countries or receiving a crude oil delivery from another member state is obliged to provide information to the member state in which he is established concerning the characteristics¹ of the imports or deliveries². The relevant information must be forwarded to the member state concerned in respect of each period not exceeding one month³.

On the basis of that information, member states must, at regular intervals, forward to the European Commission such information as will enable a true picture to be obtained of the developments in the conditions under which the imports or deliveries have taken place; and this information must be circulated to the member states⁴. The information so collected and forwarded is confidential; but this does not prevent the publication of general information or information in summary form which does not contain details relating to individual undertakings⁵. The information which member states are so obliged to communicate to the Commission must be forwarded within one month of the end of each relevant month⁶ and must consist, for each type of crude oil, of an aggregation of the data which the member states receive from persons and undertakings. For each type of crude oil, the information must comprise:

- 150 (1) the designation of the crude oil, including the average API gravity;
- 151 (2) the quantity in barrels;
- 152 (3) the average cif price;
- 153 (4) the number of companies reporting; and
- 154 (5) the percentage sulphur content⁷.

The Commission must analyse the information gathered by it pursuant to this provision and communicate it to the member states each month⁸. The member states and the Commission must consult each other at regular intervals at the request of a member state or on the initiative of the Commission⁹. Consultations may be organised with international organisations and third countries which have set up similar information systems¹⁰.

The information communicated pursuant to¹¹, and information provided for in¹², these provisions is confidential; but this does not prevent the distribution of information in a form which does not disclose details relating to individual undertakings, that is, information which refers to at least three undertakings¹³.

If the Commission discovers, in the information communicated to it by the member states, the existence of anomalies or inconsistencies which prevent it from obtaining a true picture of developments in the conditions under which imports and deliveries have taken place, it may ask the member states to allow it access to the relevant unaggregated information provided by the undertakings and the calculation and assessment procedures used to arrive at the aggregated information¹⁴.

1 For these purposes, the characteristics of each import or delivery of crude oil into a member state include: (1) the designation of the crude oil, including the API gravity; (2) the quantity in barrels; (3) the cif price paid per barrel; (4) the percentage sulphur content: EC Council Regulation 2964/95 (OJ L310, 22.12.95, p 5) introducing registration for crude oil imports and deliveries in the Community, art 5.

2 Ibid art 1. The information which persons or undertakings are obliged to communicate to the member state in which they are established relates to each import or delivery of crude oil at a specific price: art 4(1). 'Import' means each quantity of crude oil which enters the customs territory of the Community for purposes other than transit; and 'delivery' means each quantity of crude oil coming from another member state for purposes other than transit. Imports or deliveries carried out on behalf of companies situated outside the importing country and intended for refining under contract and subsequent export in their entirety in the form of refined products are excluded: art 4(2). However, oil extracted from the sea bed over which a member state exercises exclusive rights for the purposes of exploitation is not to be considered, when it enters the customs territory of the Community, as being an import within the meaning of art 4(2): art 4(3).

3 Ibid art 6.

4 Ibid art 2.

5 Ibid art 3.

6 Ie each month referred to in ibid art 6: see the text and note 3 supra.

7 Ibid art 7.

8 Ibid art 8(1).

9 Such consultations must relate in particular to the communications from the Commission referred to in ibid art 8(1): art 8(2).

10 Ibid art 8(2). The information forwarded to the Commission on the basis of art 7 (see the text and notes 6-7 supra) and the communications referred to in art 8(1) (see the text and note 8 supra) can only be used for the purposes of art 8(2): art 9(2).

11 Ie pursuant to ibid art 4: see note 2 supra.

12 Ie in ibid art 7: see the text and notes 6-7 supra.

13 Ibid art 9(1).

14 Ibid art 9(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(3) EUROPEAN UNION LEGISLATION/(i) Information Requirements; Security/633. Information relating to prices of crude oil and petroleum products.

633. Information relating to prices of crude oil and petroleum products.

Member states must communicate to the European Commission information relating to the crude oil supply cost¹ cif and the consumer prices² of petroleum products³. The information must be obtained by aggregating the data received and must be presented in such a way as to give as representative a picture as possible of each member state's oil market⁴. On the basis of the information collected pursuant to this requirement, the Commission must publish in an appropriate form:

- 155 (1) each month, the crude oil supply cost cif and the consumer prices of petroleum products net of duties and taxes and inclusive of duties and taxes charged on the fifteenth day of each month;
- 156 (2) each week, the consumer prices of petroleum products net of duties and taxes charged on Monday⁵.

All information so communicated is confidential; but this does not prevent the distribution of general or summary information in terms which do not disclose details relating to individual undertakings, that is in terms which refer to at least three undertakings. Member states may refrain from submitting details which relate to such individual undertakings⁶. If the Commission finds that there are anomalies or inconsistencies in the information communicated to it by the member states, it may ask the member states to permit it to acquaint itself with the calculation and assessment procedures used to arrive at the aggregated information⁷.

1 For these purposes, 'supply cost' means the cost of all crude oil imports and deliveries, as well as crude oil produced in a member state; 'crude oil imports' means all quantities of crude oil entering into the Community for purposes other than transit which are intended to cover the needs of a member state; 'crude oil deliveries' means all quantities of crude oil entering into the territory of a member state from another member state for purposes other than transit which are intended to cover the needs of the former member state; 'crude oil produced in a member state' means all crude oil produced and refined in a member state, where such production represents more than 15% on an annual basis of the total crude oil supply of that member state: EC Council Decision 1999/280 (OJ L110, 28.4.99, p 8) regarding a Community procedure for information and consultation on crude oil supply costs and the consumer prices of petroleum products, art 2(1)-(4).

2 'Consumer prices' means the most representative price levels actually charged to consumers in a given category: *ibid* art 2(5).

3 See *ibid* art 1. For a list of petroleum products see art 1, Annex; and as to the manner of communication see art 3.

4 *Ibid* art 1.

5 *Ibid* art 4. Member states and the Commission must consult each other on related matters, such as the information collected pursuant these provisions: see art 5.

6 *Ibid* art 6.

7 *Ibid* art 7.

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634. Supplies and stocks of crude oil and petroleum products.

A European Directive imposes an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products¹. The provisions of that Directive are discussed in a later part of this title².

An earlier Directive requires member states to take all necessary measures to provide the competent authorities with the necessary powers in the event of difficulties arising in the supply of crude oil and petroleum products which might appreciably reduce the supply of these products and cause severe disruption. Those powers are to enable the authorities to draw on emergency stocks, to impose specific or broad restrictions on consumption, depending on the estimated shortages, to give priority to supplies of petroleum products to certain groups of users, and to regulate prices in order to prevent abnormal price rises³. The member states must appoint the bodies to be responsible for implementing the measures to be taken in execution of those powers⁴ and must draw up intervention plans for use in the event of difficulties arising with regard to the supply of crude oil and petroleum products⁵. If difficulties arise with regard to the supply of crude oil and petroleum products in the Community or one of the member states, the European Commission must convene as soon as possible, at the request of one of the member states or on its own initiative, a group of delegates from the member states whose names must be made known beforehand, under the chairmanship of the Commission⁶. This group must carry out the necessary consultations in order to ensure co-ordination of the measures taken or proposed under the powers provided for in the Directive⁷.

1 Ie EC Council Directive 2006/67 (OJ L217, 8.8.2006, p 8) imposing an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products: see PARA 1631 post.

2 See PARA 1631 post.

3 See EEC Council Directive 73/238 (OJ L228, 16.8.73, p 1) on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products, art 1.

4 Ibid art 2(1).

5 Ibid art 2(2).

6 Ibid art 3(1).

7 Ibid art 3(2).

UPDATE

634 Supplies and stocks of crude oil and petroleum products

TEXT AND NOTES--Directives 73/238, 2006/67 replaced: EC Council Directive 2009/119 (OJ L265, 9.10.2009, p 9). As to emergency stocks and procedures see Directive 2009/119 arts 3, 5, 6, 18, 20.

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635. Measures to safeguard security of electricity supply and infrastructure investment.

By 24 February 2008, member states are required to bring into force the laws, regulations and administrative provisions necessary to comply with a 2005 European Directive concerning measures to safeguard the security of electricity supply and infrastructure investment¹. That Directive establishes measures aimed at safeguarding the security of electricity supply² so as to ensure the proper functioning of the internal market for electricity³ and to ensure an adequate level of generation capacity, an adequate balance between supply and demand⁴ and an appropriate level of interconnection between member states⁵ for the development of the internal market⁶. Member states must ensure a high level of security of electricity supply by taking the necessary measures to facilitate a stable investment climate and by defining the roles and responsibilities of competent authorities, including regulatory authorities⁷ where relevant, and all relevant market actors⁸ and publishing information thereon⁹. In implementing the measures aimed at safeguarding the security of electricity supply, member states must take account of:

- 157 (1) the importance of ensuring continuity of electricity supplies;
- 158 (2) the importance of a transparent and stable regulatory framework;
- 159 (3) the internal market and the possibilities for cross-border co-operation in relation to security of electricity supply;
- 160 (4) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;
- 161 (5) the importance of ensuring proper implementation of the European Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market¹⁰ and of the European Directive on the promotion of cogeneration based on a useful heat demand in the internal energy market¹¹, in so far as their provisions are related to security of electricity supply;
- 162 (6) the need to ensure sufficient transmission and generation reserve capacity for stable operation; and
- 163 (7) the importance of encouraging the establishment of liquid wholesale markets¹².

In implementing those measures, member states may also take account of:

- 164 (a) the degree of diversity in electricity generation at national or relevant regional level;
- 165 (b) the importance of reducing the long-term effects of the growth of electricity demand;
- 166 (c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation; and
- 167 (d) the importance of removing administrative barriers to investments in infrastructure and generation capacity¹³.

Member states must ensure that any measures adopted in accordance with the Directive are non-discriminatory and do not place an unreasonable burden on the market actors, including market entrants and companies with small market shares; and they must also take into account, before their adoption, the impact of the measures on the cost of electricity to final customers¹⁴.

Member states or the competent authorities must ensure that transmission system operators set the minimum operational rules and obligations on network security¹⁵. Member states must ensure that transmission and, where appropriate, distribution system operators comply with the minimum operational rules and obligations on network security¹⁶ and must require transmission system operators to maintain an appropriate level of operational network security¹⁷. In particular, member states must ensure that interconnected transmission and, where appropriate, distribution system operators exchange information relating to the operation of networks in a timely and effective fashion in line with the minimum operational requirements. The same requirements are to apply, where appropriate, to transmission and distribution system operators that are interconnected with system operators outside the Community¹⁸. Member states or the competent authorities must ensure that transmission and, where appropriate, distribution system operators set and meet quality of supply and network security performance objectives¹⁹. Member states must ensure that curtailment of supply in emergency situations is to be based on predefined criteria relating to the management of imbalances by transmission system operators. Any safeguard measures must be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information²⁰.

Member states must take appropriate measures to maintain a balance between the demand for electricity and the availability of generation capacity. In particular, they must, without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption and must require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures²¹. Member states may²² also take additional measures, including but not limited to the following:

- 168 (i) provisions facilitating new generation capacity and the entry of new generation companies to the market;
- 169 (ii) removal of barriers that prevent the use of interruptible contracts;
- 170 (iii) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;
- 171 (iv) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;
- 172 (v) encouragement of energy conservation measures;
- 173 (vi) tendering procedures or any procedure equivalent²³ in terms of transparency and non-discrimination²⁴.

They must publish the measures to be taken pursuant to this provision and must ensure the widest possible dissemination of them²⁵.

Member states must establish a regulatory framework that provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market and facilitates maintenance and, where necessary, renewal of their networks²⁶. They may²⁷ allow for merchant investments in interconnection and must ensure that decisions on investments in interconnection are taken in close co-operation between relevant transmission system operators²⁸.

Member states must ensure that the report referred to in the specified provision of the European Directive concerning common rules for the internal market in electricity²⁹ covers the

overall adequacy of the electricity system to supply current and projected demands for electricity, comprising:

- 174 (A) operational network security;
- 175 (B) the projected balance of supply and demand for the next five-year period;
- 176 (C) the prospects for security of electricity supply for the period between five and 15 years from the date of the report; and
- 177 (D) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity³⁰.

Member states or the competent authorities must prepare the report in close co-operation with transmission system operators; and transmission system operators must, if appropriate, consult with neighbouring transmission system operators³¹.

1 See European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) concerning measures to safeguard security of electricity supply and infrastructure investment, art 8(1).

2 For these purposes, 'security of electricity supply' means the ability of an electricity system to supply final customers with electricity, as provided for under European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22): art 2(b).

3 As to the internal market for electricity see PARA 653 post.

4 For these purposes, 'balance between supply and demand' means the satisfaction of foreseeable demands of consumers to use electricity without the need to enforce measures to reduce consumption: European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 2(d).

5 In ensuring an appropriate level of interconnection between member states, special consideration must be given to: (1) each member state's specific geographical situation; (2) maintaining a reasonable balance between the costs of building new interconnectors and the benefit to final customers; and (3) ensuring that existing interconnectors are used as efficiently as possible: *ibid* art 3(5).

6 *Ibid* art 1(1). The Directive establishes a framework within which member states are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity: art 1(2).

7 For these purposes, 'regulatory authority' means the regulatory authorities in member states, as designated in accordance with European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) art 23 (see PARA 653 post): European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 2(a).

8 The relevant market actors include, *inter alia*, transmission and distribution system operators, electricity generators, suppliers and final customers: *ibid* art 3(1).

9 *Ibid* art 3(1).

10 *Ie* European Parliament and EC Council Directive 2001/77 (OJ L283, 27.10.2001, p 33): see PARA 639 post.

11 *Ie* European Parliament and EC Council Directive 2004/8 (OJ L52, 21.2.2004, p 50): see PARA 641 post.

12 European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 3(2).

13 *Ibid* art 3(3).

14 *Ibid* art 3(4).

15 *Ibid* art 4(1)(a). Before setting such rules and obligations, they must consult with the relevant actors in the countries with which interconnection exists: art 4(1)(a). Notwithstanding the text to this note, member states may require transmission system operators to submit such rules and obligations to the competent authority for approval: art 4(1)(b).

16 *Ibid* art 4(1)(c).

17 Ibid art 4(1)(d). To that effect, transmission system operators must maintain an appropriate level of technical transmission reserve capacity for operational network security and co-operate with the transmission system operators concerned to which they are interconnected; and the level of foreseeable circumstances in which security must be maintained is defined in the operational network security rules: art 4(1)(d). 'Operational network security' means the continuous operation of the transmission and, where appropriate, the distribution network under foreseeable circumstances: art 2(c).

18 Ibid art 4(1)(e).

19 Ibid art 4(2). These objectives must be subject to approval by the member states or competent authorities and their implementation must be monitored by them. They must be objective, transparent and non-discriminatory and must be published: art 4(2).

In taking the measures referred to in European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) art 24 (see PARA 653 post) and in EC Council Regulation 1228/2003 (OJ L176, 15.7.2003, p 1) art 6 (see PARA 653 post), member states must not discriminate between cross-border contracts and national contracts: European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 4(3).

20 Ibid art 4(4).

21 Ibid art 5(1).

22 Ie without prejudice to the EC Treaty arts 87, 88.

23 Ie in accordance with European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37), art 7(1): see PARA 653 post.

24 European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 5(2).

25 Ibid art 5(3).

26 Ibid art 6(1).

27 Ie without prejudice to EC Council Regulation 1228/2003 (OJ L176, 15.7.2003, p 1): see PARA 653 post.

28 European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 6(2).

29 Ie the report referred to in European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) art 4: see PARA 653 post.

30 European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 7(1). The section of the report relating to interconnection investment intentions, referred to in art 7(1)(d) (see head (d) in the text), must take account of: (1) the principles of congestion management, as set out in EC Council Regulation 1228/2003 (OJ L176, 15.7.2003, p 1) (see PARA 653 post); (2) existing and planned transmission lines; (3) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures; and (4) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in European Parliament and EC Council Decision 1229/2003 (OJ L176, 15.7.2003, p 11) Annex I (now repealed and replaced by European Parliament and EC Council Decision 1364/2006 (OJ L262, 22.9.2006, p 1): see PARA 653 post). Member states must ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity. They may also require transmission system operators to provide information on investments related to the building of internal lines that materially affect the provision of cross-border interconnection: European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 7(3). Member states or the competent authorities must ensure that the necessary means for access to the relevant data are facilitated to the transmission system operators and/or to the competent authorities where relevant in the development of this task; and the non-disclosure of confidential information must be ensured: art 7(4). On the basis of the information referred to in art 7(1)(d), received from the competent authorities, the Commission must report to the member states, the competent authorities and the European Regulators Group on Electricity and Gas established by EC Commission Decision 2003/796 (OJ L296, 14.11.2003, p 34) (see PARA 653 post) on the investments planned and their contribution to the objectives set out in European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22) art 1(1) (see the text and notes 1-6 supra): art 7(5). This report may be combined with the reporting provided for in European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) art 28(1)(c) (see PARA 653 post) and must be published: European Parliament and EC Council Directive 2005/89 (OJ L33, 4.2.2006, p 22), art 7(5).

31 Ibid art 7(2).

UPDATE

635 Measures to safeguard security of electricity supply and infrastructure investment

NOTE 10--Directive 2001/77 prospectively repealed: see PARA 639.

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636. Nuclear security.

The Euratom Treaty¹ makes provision relating to nuclear security. Information which the Community acquires as a result of carrying out its research programme, and the disclosure of which is liable to harm the defence interests of one or more member states, is subject to a security system under regulations laying down security gradings². Where, as a result of their communication to the Commission, unpublished applications for patents or utility models, or patents or utility models classified for defence reasons, are improperly used or come to the knowledge of an unauthorised person, the Community must make good the damage suffered by the party concerned. Without prejudice to its own rights against the person responsible for the damage, the Community is, to the extent that it has made good such damage, to acquire any rights of action enjoyed by those concerned against third parties; but this does not affect the right of the Community to take action against the person responsible for the damage in accordance with the general provisions in force³. Where an agreement or contract for the exchange of scientific or industrial information in the nuclear field between a member state, a person or an undertaking on the one hand, and a third state, an international organisation or a national of a third state on the other, requires, on either part, the signature of a state acting in its sovereign capacity, it must be concluded by the Commission; but the Commission may⁴, on such conditions as it considers appropriate, authorise a member state, a person or an undertaking to conclude such agreements⁵.

1 As to the Euratom Treaty and its citation in this title see PARA 1337 post; and as to its provisions see further PARAS 1338-1339 post.

2 See the Euratom Treaty arts 24-27.

3 Ibid art 28.

4 I.e. subject to the provisions of ibid arts 103, 104 (obligations on member states to communicate to the Commission draft agreements, and information about concluded contracts, with a third state, an international organisation or a national of a third state).

5 Ibid art 29.

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(ii) Environmental and Energy Efficiency Legislation

637-642 Environmental and Energy Efficiency Legislation

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(iii) Co-ordination of Procedures for the Award of Supply and Works Contracts

643. The Utilities Directive and its implementation; in general.

Member states of the European Community are required to co-ordinate procedures for the award of supply, works and service contracts by certain entities operating, inter alia, in the energy sector¹. As from 8 March 2006, however, the Utilities Directive² does not apply to contracts awarded by contracting entities and intended to enable them to carry out electricity generation in England, Scotland and Wales, on the basis that the activity in question is directly exposed to competition on markets to which access is not restricted³.

The Utilities Directive is implemented in domestic law by the Utilities Contracts Regulations 2006⁴, which do not extend to Scotland⁵. Those regulations apply whenever a utility⁶ seeks offers in relation to a proposed supply contract⁷, works contract⁸ or a certain type of services contract⁹ or a dynamic purchasing system¹⁰, other than a contract or dynamic purchasing system which is excluded¹¹ from their operation¹². Specified provisions of those regulations¹³ apply whenever a utility seeks offers in relation to a proposed contract for certain other services¹⁴, other than one excluded¹⁵ from their operation¹⁶.

A utility must not enter into separate contracts with the intention of avoiding the application of the Utilities Contracts Regulations 2006 or the Public Contracts Regulations 2006¹⁷, where applicable¹⁸.

When the Utilities Contracts Regulations 2006 apply, a utility must not treat a person who is not a national of a relevant state¹⁹ and established in a relevant state more favourably than one who is²⁰.

A utility may reserve the right to participate in a contract award procedure or dynamic purchasing system to economic operators which operate supported factories²¹, supported businesses²² or supported employment programmes²³. Where a utility has so reserved that right, it must follow the contract award procedures set out in the Utilities Contracts Regulations 2006²⁴ and must, when seeking offers in relation to a contract or dynamic purchasing system, specify in the contract notice²⁵ if it is using that approach²⁶.

1 See European Parliament and EC Council Directive 2004/17 (OJ L134, 30.4.2004, p 1) co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ('the Utilities Directive') (amended by EC Commission Regulation 1874/2004 (OJ L326, 29.10.2004, p 17; EC Commission Directive 2005/51 (OJ L257, 1.10.2005, p 127); EC Commission Regulation 2083/2005, (OJ L333, 20.12.2005, p 28); and EC Council Directive 2006/97 (OJ L363, 20.12.2006, p 107)). See also EEC Council Directive 92/13 (OJ L76, 23.3.92, p 14) co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ('the Utilities Remedies Directive'). As to attestation under the Utilities Remedies Directive see arts 4-6; and the Utilities Contracts Regulations 2006, SI 2006/6, reg 44; and as to conciliation under it see reg 46; and PARA 651 post.

2 See note 1 supra.

3 See EC Commission Decision 2006/211 (OJ L76, 15.3.2006, p 6). See also the Utilities Contracts Regulations 2006, SI 2006/6, reg 9.

4 ie the Utilities Contracts Regulations 2006, SI 2006/6: see the text and notes 5-26 infra; and PARA 645 et seq post.

5 Ibid reg 1(2).

6 For these purposes, a utility is a relevant person specified in one of the Parts of ibid Sch 1 carrying out an activity in that Part: regs 2(1), 3(1). 'Relevant person' means a person who is a contracting authority, a public undertaking, or not a contracting authority or a public undertaking, but whose activities include an activity specified in Sch 1 col 2 (paras 1-21) and who carries out that activity on the basis of a special or exclusive right; 'public undertaking' means a person over whom one or more contracting authorities are able to exercise directly or indirectly a dominant influence by virtue of their ownership of that person, their financial participation in that person or the rights accorded to them by the rules which govern that person; and 'special or exclusive rights' means rights granted by a competent authority by way of any legislative, regulatory or administrative provision, the effect of which is to limit the exercise of activities specified in Sch 1 col 2 to one or more entities, and which substantially affects the ability of other entities to carry out such activities: reg 3(2). For the purposes of the definition of 'public undertaking' a contracting authority is considered to be able to exercise a dominant influence over a person when it directly or indirectly (1) possesses the majority of the issued share capital of that person or controls the majority of the voting power attached to the issued share capital of that person; or (2) may appoint (a) more than half of the individuals who are ultimately responsible for managing that person's affairs; (b) more than half of its members; or (c) in the case of a group of individuals, more than half of those individuals: reg 3(2). For these purposes, 'contracting authority' has the meaning given to it by the Public Contracts Regulations 2006, SI 2006/5, reg 3 (ie a Minister of the Crown; a government department; the House of Commons; the House of Lords; the Northern Ireland Assembly Commission; the Scottish Ministers; the Scottish Parliamentary Corporate Body; the National Assembly for Wales; a local authority and certain other public bodies: see LOCAL GOVERNMENT vol 69 (2009) PARA 418): Utilities Contracts Regulations 2006, SI 2006/6, reg 3(2).

In relation to the energy sector, the following are relevant persons and the activities specified in relation to them (Sch 1 Pts D-M), ie:

1 (i) with regard to electricity:

1. (A) a person licensed under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post) or the corresponding Northern Ireland legislation, in relation to the provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of electricity;
1
2. (B) a relevant person not specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 Pt F (see head (i)(c) infra), in relation to the supply of electricity to a network referred to in Sch 1 col 2 para 6 (see head (i)(A) supra);
2
3. (C) a relevant person other than a contracting authority who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in Sch 1 col 2 (paras 1-21) and who supplies only the excess to a network referred to in Sch 1 col 2 para 6 (see head (i)(A) supra), in relation to the supply of electricity to a network referred to in Sch 1 col 2 para 6 but only if the electricity supplied in the period of 36 months ending at the relevant time as defined in reg 11(19) (see PARA 644 note 23 post) has exceeded 30% of the total produced by the utility in that period;
3

2 (ii) with regard to gas:

4. (A) a gas transporter as defined in the Gas Act 1986 s 7(1) (as substituted and amended) (see PARA 805 post) or a person declared to be an undertaker for the supply of gas under the relevant Northern Ireland legislation, in relation to the provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of gas;
4
5. (B) a relevant person not specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 Pt I (see head (ii)(c) infra), in relation to the supply of gas to a network referred to in Sch 1 col 2 para 9 (see head (ii)(A) supra);
5
6. (C) a relevant person other than a contracting authority who produces gas only as the unavoidable consequence of carrying out an activity not specified in Sch 1 col 2 and who supplies gas for the sole purpose of the economic exploitation of the production to a network referred to in Sch 1 col 2 para 9 (see head (ii)(A) supra), in relation to the supply of gas to a network referred to in Sch 1 col 2 para 9 but only if

the total consideration payable in the period of 36 months ending at the relevant time as defined in reg 11(19) on account of such supply has exceeded 20% of the total turnover of the utility in that period;
6

3 (iii) with regard to heat:

7. (A) a local authority, a person licensed under the Electricity Act 1989 s 6(1)(a) (as substituted) the whose licence includes the provisions referred to in s 10(3) (as amended) see PARA 1286 post), or the Northern Ireland Housing Executive, in relation to the provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat;
7
 8. (B) a relevant person not specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 Pt L (see head (iii)(C) infra), in relation to the supply of heat to a network referred to in Sch 1 col 2 para 12 (see head (iii)(A) supra);
8
 9. (C) a relevant person other than a contracting authority who produces heat as the unavoidable consequence of carrying out an activity not specified in Sch 1 col 2 and who supplies heat for the sole purpose of the economic exploitation of the production to a network referred to in Sch 1 col 2 para 12 (see head (iii)(A) supra, in relation to the supply of heat to a network referred to in Sch 1 col 2 para 12 but only if the total consideration payable in the 36 months ending at the relevant time as defined in reg 11(19) on account of such supply has exceeded 20% of the total turnover of the utility in that period;
9
- 4 (iv) with regard to exploration and extraction of oil and gas, a person operating by virtue of a licence granted or having effect as if granted under the Petroleum Act 1998 (see PARA 1639 et seq post) or a person licensed under the Petroleum (Production) Act (Northern Ireland) 1964, in relation to the exploitation of a geographical area for the purpose of exploring for or extracting oil or gas.

For these purposes, 'local authority' means, in relation to a local authority in England, an authority referred to in the Public Contracts Regulations 2006, SI 2006/5, reg 3(2); and in relation to a local authority in Wales, an authority referred to in reg 3(3) (see LOCAL GOVERNMENT vol 69 (2009) PARA 418): Utilities Contracts Regulations 2006, SI 2006/6, reg 3(2).

7 'Supply contract' means a contract, in writing, for consideration (whatever the nature of the consideration) (1) for the purchase of goods by a utility (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event); or (2) for the hire of goods by a utility (both where the utility becomes the owner of the goods after the end of the period of hire and where it does not); and for any siting and installation of those goods, but where, under such a contract, services are also to be provided, the contract is only a supply contract where the value of the consideration attributable to the goods and any siting or installation of the goods, is equal to or greater than the value attributable to the services: *ibid* reg 2(1). 'Written' or 'in writing' means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means; and 'goods' includes electricity, substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under a supply contract and any ship, aircraft or vehicle: reg 2(1). 'Ship' includes any boat and other description of a vessel used in navigation; and 'substance' means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of vapour: reg 2(1). 'Electronic means' means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means: reg 2(1).

8 'Works contract' means a contract, in writing, for consideration (whatever the nature of the consideration) (1) for the carrying out of a work or works for a utility; or (2) under which a utility engages a person to procure by any means the carrying out for the utility of a work corresponding to specified requirements; 'work' means the outcome of any works which is sufficient of itself to fulfil an economic and technical function; 'works' means any of the activities specified in Sch 2; and 'carrying out' in relation to a work or works means the construction or the design and construction of that work or those works: reg 2(1).

9 Ie a part A services contract. Subject to *ibid* reg 2(3) (see note 14 *infra*), 'a Part A services contract' is a contract under which services specified in Sch 3 Pt A are to be provided: reg 2(2)(a). 'Services contract' means a contract, in writing, for consideration (whatever the nature of the consideration) under which a utility engages a person to provide services but does not include (1) a works contract; or (2) a supply contract; but a contract for both goods and services is to be considered to be a services contract if the value of the consideration attributable to those services exceeds that of the goods covered by the contract and a contract for services which includes activities specified in Sch 2 that are only incidental to the principal object of the contract is to be considered to be a services contract: reg 2(1).

10 'Dynamic purchasing system' means a completely electronic system of limited duration which is (1) established by a utility to purchase commonly used goods, work, works or services; and (2) open throughout its duration for the admission of economic operators which (a) satisfy the selection criteria specified by the utility; and (b) submit an indicative tender to the utility or person operating the system on its behalf which complies with the specification required by that utility or person: *ibid* reg 2(1). 'Indicative tender' means a tender prepared by an economic operator seeking admission to a dynamic purchasing system which sets out the terms on which it would be prepared to enter into a contract with a utility should that utility propose to award a contract under the system: reg 2(1). 'To award' means to accept an offer made in relation to a proposed contract: reg 2(1).

An 'economic operator' means a contractor, a supplier or a services provider: regs 2(1), 4(1). 'Contractor' means a person who offers on the market work or works and (i) who sought, who seeks, or would have wished, to be the person to whom a works contract is awarded; and (ii) who is a national of and established in a relevant state; 'supplier' means a person who offers on the market goods for purchase or hire and (A) who sought, who seeks, or who would have wished, to be the person to whom a supply contract is awarded; and (B) who is a national of and established in a relevant state; and 'services provider' means a person who offers on the market services and (aa) who sought, who seeks, or who would have wished either to be the person to whom a services contract is awarded or to participate in a design contest; and (bb) who is a national of and established in a relevant state: reg 2(1). As to design contests see PARA 647 post. A relevant state is a member state or a state listed Sch 4 col 1; the agreements with the European Union by which the provisions in relation to public procurement are extended to those states are specified in Sch 4 col 2 and the statutory provision designating them as European Treaties under the European Communities Act 1972 s 1(3) is specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 4 col 3: regs 2(2), 4(4).

A utility must treat economic operators equally and in a non-discriminatory way and act in a transparent way: see reg 4(3).

11 *Ie* by *ibid* reg 6 (general exclusions), reg 7 (exclusion of contracts awarded to affiliated undertakings or joint ventures), reg 8 (exemption in respect of certain utilities operating in the energy sector), reg 9 (exemption of contracts where activity is directly exposed to competition) or reg 11 (thresholds): see PARAS 644-645 post.

12 *Ibid* reg 5(1).

13 *Ie* *ibid* Pt 1 (regs 1-11) (general provisions); Pts 9, 10 (regs 45-48) (applications to the court (see PARA 651 post) and revocation, savings and transitional provisions); and the following provisions in Pts 2-8 (regs 12-44), *ie* (1) reg 12 (technical specifications in contract documents); (2) reg 32 (contract award notices); (3) reg 38 (statistical and other reports); (4) reg 39 (provision of reports); and (5) reg 40 (publication of notices): *ibid* reg 5(2).

14 *Ie* a proposed Part B services contract. Subject to *ibid* reg 2(3), 'a Part B services contract' is a contract under which services specified in Sch 3 Pt B are to be provided: reg 2(2)(b). Where services specified in both Sch 3 Pt A and Sch 3 Pt B are to be provided under a single contract, then the contract is to be treated as (1) a Part A services contract if the value of the consideration attributable to the services specified in Sch 3 Pt A is greater than that attributable to those specified in Sch 3 Pt B; and (2) a Part B services contract if the value of the consideration attributable to the services specified in Sch 3 Pt B is equal to or greater than that attributable to those specified in Sch 3 Pt A: reg 2(3).

15 See note 11 *supra*.

16 Utilities Contracts Regulations 2006, SI 2006/6, reg 5(2).

17 *Ie* the Public Contracts Regulations 2006, SI 2006/5: see LOCAL GOVERNMENT vol 69 (2009) PARAS 418-423.

18 Utilities Contracts Regulations 2006, SI 2006/6, reg 5(3). Where a utility seeks offers in relation to a contract for the purpose of carrying out (1) one or more activities specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 col 2; and (2) one or more activities not specified therein but to which the Public Contracts Regulations 2006, SI 2006/5, apply, and it is impossible, on objective grounds, to determine the activity for which the contract is principally intended, the utility must award the contract in accordance with the Public Contracts Regulations 2006/5: Utilities Contracts Regulations 2006, SI 2006/6, reg 5(4). Where a utility seeks offers in relation to a contract for the purpose of carrying out (a) one or more activities specified in Sch 1 col 2; and (b) one or more activities not specified therein nor subject to the Public Contracts Regulations 2006, SI 2006/5, and it is impossible, on objective grounds, to determine the activity for which the contract is principally intended, the utility must award the contract in accordance with the Utilities Contracts Regulations 2006, SI 2006/6: reg 5(5).

19 'National of a relevant state' means, in the case of a person who is not an individual, a person formed in accordance with the laws of a relevant state and which has its registered office, central administration or

principal place of business in a relevant state: *ibid* reg 2(1). For the meaning of 'relevant state' see note 10 *supra*.

20 *Ibid* reg 4(2).

21 'Supported factory' means an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported factories' is to be interpreted accordingly: *ibid* reg 10(1). 'Disabled person' means any person recognised as disabled within the meaning of the Disability Discrimination Act 1995 and 'disabled persons' is to be interpreted accordingly; and 'disability' has the same meaning as in that Act: Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1). See further *DISCRIMINATION* vol 13 (2007 Reissue) PARA 509 et seq.

22 'Supported business' means a service where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported businesses' is to be interpreted accordingly; *ibid* reg 10(1).

23 *Ibid* reg 10(2). 'Supported employment programme' means a scheme under which work is provided for disabled persons and where more than 50% of the workers so supported are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported employment programmes' is to be interpreted accordingly: reg 10(1).

24 *Ibid* reg 10(3). As to procedures leading to the award of a contract see PARA 647 post.

25 'Contract notice' means, except in *ibid* reg 48 (savings and transitional provisions), a contract notice sent to the Official Journal in accordance with reg 16(2)(b) (see PARA 647 post): reg 2(1).

26 *Ibid* reg 10(4).

UPDATE

643 The Utilities Directive and its implementation; in general

NOTE 1--Directive 2004/17 further amended: EC Commission Regulation 1422/2007 (OJ L317, 5.12.07, p 34), EC Commission Regulation 213/2008 (OJ L74, 15.3.2008, p 1), European Parliament and EC Council Directive 2009/81 (OJ L216, 20.8.2009, p 76).

TEXT AND NOTE 3--From 26 February 2007, the Utilities Directive is no longer applicable to contracts for the supply of electricity and gas in England, Scotland and Wales, as such activities are directly exposed to competition on markets to which access is not restricted: EC Commission Decision 2007/141 (OJ L62, 1.3.2007, p 23).

NOTES 8, 9, 14--SI 2006/6 Schs 2, 3 substituted: SI 2008/2256.

NOTE 10--SI 2006/6 Sch 4 amended: SI 2007/3542.

NOTE 17--As to SI 2006/5 see *BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS* vol 4(3) (Reissue) PARA 23A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(3) EUROPEAN UNION LEGISLATION/(iii) Co-ordination of Procedures for the Award of Supply and Works Contracts/644. General exclusions and exemptions.

644. General exclusions and exemptions.

The Utilities Contracts Regulations 2006¹ do not apply to the seeking of offers in relation to a proposed contract² or dynamic purchasing system³:

- 178 (1) other than for the purpose of carrying out a specified activity⁴ or in respect of certain other proposed contracts⁵;
 - 179 (2) for the purpose of carrying out any activity outside the territory of the European Communities but only if the carrying out of that activity does not involve the physical use of a network or geographical area within the Communities;
 - 180 (3) for the purpose of acquiring goods⁶, works⁷ or services in order to sell, hire or provide them to another person unless the utility has a special or exclusive right to sell, hire or provide such goods, works or services or other persons are not free to sell, hire or provide them under the same conditions;
 - 181 (4) which is classified as secret or where the performance of the contract must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom⁸ or when the protection of the essential interests of the security of the United Kingdom requires it;
 - 182 (5) where different rules govern the procedures leading to the award of the contract and it is to be entered into in accordance with:
- 13
- 16. (a) an international agreement concluded in conformity with the EC Treaty to which the United Kingdom and a state which is not a relevant state⁹ are parties and it relates to goods or the carrying out of a work¹⁰ or works or the provision of services intended for the joint implementation or exploitation of a project related to that agreement;
 - 17. (b) an international agreement relating to the stationing of troops; or
 - 18. (c) the contract award procedures of an organisation of which only states are members (an 'international organisation') or of which only states or international organisations are members;
- 14
- 183 (6) by a utility operating in the water sector¹¹ for the purchase of water;
 - 184 (7) by a utility operating in the energy sector¹² for the purchase of energy or of fuel for the production of energy;
 - 185 (8) by certain utilities operating in the transport sector¹³ for the purpose of engaging in a specified activity¹⁴ where that activity is provided in a geographical area in which other persons are free to provide the service under the same conditions as the utility;
 - 186 (9) under which services are to be provided by a contracting authority¹⁵, or by a person which is a contracting authority in another relevant state because that contracting authority or person has an exclusive right either to provide the services or which is necessary for the provision of the services, in accordance with any published law, regulation or administrative provision which is compatible with the EC Treaty;

- 187 (10) for the acquisition of land, including existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- 188 (11) for arbitration or conciliation services;
- 189 (12) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, in particular transactions by the utility to raise money or capital;
- 190 (13) for employment and other contracts of service;
- 191 (14) for research and development services unless the benefits are to accrue exclusively to the utility for its use in the conduct of its own affairs and the services are to be wholly paid for by the utility; or
- 192 (15) which is a works concession contract¹⁶ or a services concession contract¹⁷ which is awarded by a utility carrying out a specified activity¹⁸, where the concession contract is awarded for carrying out or providing that activity¹⁹.

Contracts awarded to affiliated undertakings or joint ventures are also excluded²⁰; and there is an exemption for contracts where the activity in question is directly exposed to competition²¹. Further, the 2006 Regulations do not apply to the seeking of offers in relation to a proposed contract, dynamic purchasing system or framework agreement where the estimated value of the contract, dynamic purchasing system or framework agreement²² (net of value added tax) at the relevant time²³ is less than the relevant threshold²⁴. A utility must not, however, enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of the 2006 Regulations to those contracts²⁵.

1 Ie the Utilities Contracts Regulations 2006, SI 2006/6: see PARA 643 ante, PARA 645 et seq post.

2 'Contract' means any services contract, supply contract or works contract: *ibid* reg 2(1). For the meanings of 'supply contract', 'works contract' and 'services contract' see PARA 643 notes 7-9 ante.

3 For the meaning of 'dynamic purchasing system' see PARA 643 note 10 ante.

4 Ie an activity specified in the Part of the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 in which the utility is specified. Utilities operating in the energy sector are specified in Sch 1 Pts D-M: see PARA 643 note 6 ante.

5 Ie a proposed contract referred to in *ibid* reg 5(5): see PARA 643 note 18 ante.

6 For the meaning of 'goods' see PARA 643 note 7 ante.

7 For the meaning of 'works' see PARA 643 note 8 ante.

8 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

9 For the meaning of 'relevant state' see PARA 643 note 10 ante.

10 For the meanings of 'carrying out' and 'work' see PARA 643 note 8 ante.

11 Ie a utility carrying out an activity specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 category 1 (Pt A).

12 Ie a utility carrying out an activity specified in *ibid* Sch 1 categories 2-6 (Pts D-N). As to Sch 1 Pts D-M see PARA 643 note 6 ante. Schedule 1 Pt N relates to utilities operating in relation to coal and other solid fuel.

13 Ie a utility specified in *ibid* Sch 1 Pt S col 1.

14 Ie an activity specified in *ibid* Sch 1 Pt S col 2.

15 For the meaning of 'contracting authority' see PARA 643 note 6 ante.

16 'Works concession contract' means a works contract under which the consideration given by a utility consists of or includes the grant of a right to exploit the work or works to be carried out under the contract: Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1).

17 'Services concession contract' means a services contract under which the consideration given by the utility consists of or includes the right to exploit the service or services to be provided under the contract: *ibid* reg 2(1).

18 *Ie* an activity specified in *ibid* Sch 1 col 2.

19 *Ibid* reg 6.

20 See *ibid* reg 7.

21 See *ibid* reg 9. The European Commission has adopted a decision that such an exemption applies to contracts awarded by contracting entities and intended to enable them to carry out electricity generation: see PARA 643 ante.

22 'Framework agreement' means an agreement or other arrangement, which is not in itself a supply contract, a works contract or a services contract, between one or more utilities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a utility in the period during which the framework agreement applies: *ibid* reg 2(1).

23 For these purposes, 'the relevant time' means (1) if the utility selects economic operators to tender for or to negotiate the contract in accordance with a qualification system established in accordance with *ibid* reg 25 (see PARA 648 post), the date on which the selection commences; (2) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with reg 16(2)(a)(i) (see PARA 647 post), the date on which the notice is sent to the Official Journal; or (3) in any other case, the date on which a contract notice would be sent to the Official Journal if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by sending such a notice: reg 11(19).

24 See *ibid* reg 11(1). Except where reg 11(17) applies, for these purposes the relevant threshold is (1) 422,000 euros for a supply contract or a services contract; and (2) 5,278,000 euros for a works contract: reg 11(2). The relevant threshold for the purposes of reg 11(1) for a dynamic purchasing system or a framework agreement is the threshold for (a) a works contract, where that framework agreement or dynamic purchasing system relates to the carrying out of work or works; (b) a services contract where that framework agreement or dynamic purchasing system relates to the provision of services; or (c) a supply contract where that framework agreement or dynamic purchasing system relates to the purchase or hire of goods: reg 11(17). As to the method of valuation see reg 11(3)-(16).

25 *Ibid* reg 11(18).

UPDATE

644 General exclusions and exemptions

TEXT AND NOTE 20--SI 2006/6 reg 7 amended: SI 2007/3542.

NOTE 24--SI 2006/6 reg 11(2) amended, reg 11(2A) added: SI 2007/3542.

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645. Exemption in respect of certain utilities operating in the energy sector.

In addition to the general exclusions and exemptions¹, a utility² carrying out one or more of the following activities³, namely the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas⁴, is excluded from having to comply with the provisions of the Utilities Contracts Regulations 2006⁵ regarding:

- 193 (1) technical specifications⁶;
- 194 (2) procedures leading to the award of a contract⁷;
- 195 (3) the qualification and selection of economic operators⁸;
- 196 (4) the award of a contract⁹;
- 197 (5) design contests for specialised contracts¹⁰;
- 198 (6) obligations relating to taxes, environmental protection, employment protection and working conditions¹¹;
- 199 (7) the preservation of records¹²;
- 200 (8) statistical and other reports¹³ (but this is subject to an exception¹⁴);
- 201 (9) the publication of notices¹⁵; and
- 202 (10) sub-contracting¹⁶,

in seeking offers in relation to a contract¹⁷ to be awarded for the purpose of carrying out one or more such activities¹⁸.

A utility which relies on the exemption set out above must observe the principles of non-discrimination and competitive procurement, and in particular must hold a competition unless it can objectively justify not doing so, and must make decisions objectively on the basis of relevant criteria in:

- 203 (a) making information about its procurement intentions available to economic operators;
- 204 (b) specifying its requirements to them;
- 205 (c) establishing and using a qualification system;
- 206 (d) selecting economic operators to tender for or to negotiate the contract;
- 207 (e) holding any design contest; and
- 208 (f) awarding the contract¹⁹.

It must, in respect of a contract awarded by it the value of which²⁰ exceeds 5 million euros, send to the European Commission not later than 48 days²¹ after the award the following information:

- 209 (i) the name and address of the utility;
- 210 (ii) the nature of the contract, namely whether it is a supply contract, a services contract or a works contract and whether it is a framework agreement²²;
- 211 (iii) a clear indication of the nature²³ of the goods to be purchased or hired under the contract, the work or works to be carried out under the contract or the services to be provided under the contract;

- 212 (iv) whether the contract was advertised and, if so, in which publication and, if not, the procedure or method used to decide to whom the contract should be awarded;
- 213 (v) the number of offers received;
- 214 (vi) the date of the award of the contract;
- 215 (vii) the name and address of the person to whom the contract was awarded;
- 216 (viii) the value of the contract²⁴;
- 217 (ix) the expected duration of the contract;
- 218 (x) any share of the contract which has been, or may be, sub-contracted, to which over 10 per cent of the value of the consideration to be given under the contract is attributable;
- 219 (xi) in the case of a supply contract, the country of origin of the goods and in the case of a works contract or a services contract, the principal country from which the contract is to be performed;
- 220 (xii) where the contract was awarded on the basis of the offer which was the most economically advantageous, the main criteria on which the decision was based; and
- 221 (xiii) whether the contract was awarded to an economic operator which offered a variant on the requirements specified in the contract documents²⁵.

In respect of a supply contract or a services contract awarded by it the value of which²⁶ equals or exceeds 400,000 euros but does not exceed 5 million euros, a utility relying on that exemption must retain the information specified in heads (i) to (ix) above for not less than four years after the award²⁷. If the Commission requests that information in relation to any such contract, the utility must forthwith send it to the minister²⁸. Where no such request has been made, the utility must send that information to the European Commission not later than 48 days after the end of the period of three months ending on the last day of March, June, September or December in which the contract was awarded²⁹.

Contracts awarded by contracting entities and intended to enable them to carry out electricity generation are exempted by virtue of the general exemption of contracts where the activity in question is directly exposed to competition³⁰.

1 See the Utilities Contracts Regulations 2006/6, reg 6 (general exclusions); reg 7 (exclusion of contracts awarded to affiliated undertakings or joint ventures); reg 9 (exemption of contracts where activity is directly exposed to competition); reg 11 (thresholds); and see PARA 644 ante.

2 For the meaning of 'utility' see PARA 643 note 6 ante.

3 I.e. the activities referred to in EC Commission Decision 97/367 (OJ L156, 13.06.97, p 55).

4 See *ibid* art 1.

5 I.e. the provisions of the Utilities Contracts Regulations 2006, SI 2006/6: see PARAS 643-644 ante, PARA 646 et seq post.

6 I.e. *ibid* Pt 2 (regs 12-13): see PARA 646 post.

7 I.e. *ibid* Pt 3 (regs 14-22): see PARA 647 post.

8 I.e. *ibid* Pt 4 (regs 23-29): see PARA 648 post. For the meaning of 'economic operator' see PARA 643 note 10 ante.

9 I.e. *ibid* Pt 5 (regs 30-33): see PARA 649 post.

10 I.e. *ibid* reg 34: see PARA 647 post.

11 I.e. *ibid* reg 35: see PARA 649 post.

- 12 Ie ibid reg 37: see PARA 650 post.
- 13 Ie ibid reg 38: see PARA 650 post.
- 14 The utility must comply with ibid reg 38(2)(a): reg 8(1).
- 15 Ie ibid reg 40: see PARA 650 post.
- 16 Ie ibid reg 43: see PARA 650 post.
- 17 For the meaning of 'contract' see PARA 644 note 2 ante.
- 18 Utilities Contracts Regulations 2006, SI 2006/6, reg 8(1).
- 19 Ibid reg 8(2).
- 20 Ie calculated in accordance with ibid reg 11: see PARA 644 ante.
- 21 Where a thing is required to be done under the Utilities Contracts Regulations 2006, SI 2006/6: (1) within a certain period after an action is taken, the day on which that action is taken is not to be counted in the calculation of that period; (2) within a certain period, that period must include at least two working days; and (3) except for reg 33(3) (see PARA 649 post), within a certain period and the last day of that period is not a working day, the period must be extended to include the next working day: reg 2(4). 'Working day' means a day other than a Saturday, Sunday or bank holiday within the meaning of the Banking and Financial Dealings Act 1971: Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1).
- 22 For the meaning of 'framework agreement' see PARA 644 note 22 ante.
- 23 Eg, by using the classification of products by activity.
- 24 See note 20 supra.
- 25 Utilities Contracts Regulations 2006, SI 2006/6, reg 8(3)(a). 'Contract documents' means the invitation to tender for or to negotiate the contract, the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the utility and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto: reg 2(1).
- 26 See note 20 supra.
- 27 Utilities Contracts Regulations 2006, SI 2006/6, reg 8(3)(b)(i).
- 28 Ibid reg 8(3)(b)(ii)(aa). This requirement is enforceable, on the application of the minister responsible to the High Court, by mandatory order: reg 39(4). The minister to whom a report is sent in accordance with this requirement must send the report to the Office of Government Commerce for onward transmission to the Commission: reg 39(6). 'Office of Government Commerce' means the office of the Treasury having that title: reg 2(1).

Any reference to the minister in the 2006 Regulations is deemed to be a reference to the minister responsible for that utility; and the minister responsible for a utility is the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the utility: regs 2(1), 39(1), (2). 'Minister of the Crown' means the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury: reg 2(1). Any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a utility must be determined by the Office of Government Commerce whose determination is final: reg 39(3). In the application of reg 39 to Northern Ireland references to the minister include references to the head of a Northern Ireland Department: reg 39(5).
- 29 Ibid reg 8(3)(b)(ii)(bb).
- 30 See ibid reg 9; and EC Commission Decision 2006/211 (OJ L76, 15.3.2006, p 6).

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646. Technical specifications.

Where a utility¹ wishes to lay down technical specifications² which must be met by:

- 222 (1) the services to be provided under a services contract and the materials and goods used in or for it;
- 223 (2) the goods to be purchased or hired under a supply contract; or
- 224 (3) the work or works to be carried out³ under a works contract and the materials and goods used in or for it,

it must specify those technical specifications in the contract documents⁴. When laying down technical specifications in accordance with this requirement, a utility must wherever possible take into account accessibility criteria for disabled persons or the suitability of the design for all users⁵.

A utility must ensure that technical specifications afford equal access to economic operators⁶ and do not have the effect of creating unjustified obstacles to the opening up of public procurement to competition⁷. It must not⁸ lay down technical specifications in the contract documents which refer to materials or goods of a specific make or source or to a particular process, or to trademarks, patents, types, origin or means of production, which have the effect of favouring or eliminating particular economic operators⁹.

A utility may indicate in the contract documents that the materials, goods or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents and must accept any other appropriate means¹⁰ of proof that the materials, goods or services comply with those technical specifications¹¹.

A utility must¹² provide to any economic operator which is interested in obtaining a contract¹³, and which makes a request, a copy of the technical specifications which are regularly laid down as terms of the contracts which that utility awards or which it intends to lay down as terms of a contract which has been indicated in a periodic indicative notice¹⁴ sent¹⁵ to the Official Journal¹⁶. Where, however, those technical specifications are based on documents which are separately available to economic operators, that obligation is satisfied by informing any economic operator which makes a request of the documents which include those technical specifications¹⁷.

Where a utility intends to award¹⁸ a contract on the basis of the offer which is the most economically advantageous¹⁹, it must indicate in the contract notice²⁰ whether or not it authorises economic operators to submit offers which contain variants on the requirements specified in the contract documents and a utility must not accept an offer which contains a variant without that indication²¹. Where a utility so authorises a variation, it must state in the contract notice the minimum requirements to be met by the variants and any specific requirements for the presentation of an offer which contains variants²²; and it may only consider variants which meet its minimum requirements as stated in the contract documents in accordance with that provision²³. A utility must not reject an offer which contains variants on the requirements specified in the contract documents on the ground that:

- 225 (a) where it intends to award a services contract, the offer would lead to the award of a supply contract; or
- 226 (b) where it intends to award a supply contract, the offer would lead to the award of a services contract²⁴.

1 For the meaning of 'utility' see PARA 643 note 6 ante.

2 For these purposes, 'technical specifications' means: (1) in the case of a services contract or a supply contract, a specification in a document defining the required characteristics of materials, goods or services, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of a product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures; and (2) in the case of a works contract, the totality of the technical prescriptions contained, in particular, in the contract documents, defining the characteristics required of the work, works, materials or goods, which permits the work, works, materials or goods to be described in a manner such that it fulfils the use for which it is intended by the utility and these characteristics must include (a) levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods; (b) rules relating to design and costing, the test, inspection and acceptance conditions for work or works and methods or techniques of construction; and (c) all other technical conditions which the utility is in a position to prescribe, under general or specific regulations, in relation to the finished work or works and to the materials or parts which they involve: Utilities Contracts Regulations 2006, SI 2006/6, reg 12(1).

For the meanings of 'supply contract', 'works contract' and 'services contract' see PARA 643 notes 7-9 ante; for the meaning of 'goods' see PARA 643 note 7 ante; for the meanings of 'work' and 'works' see PARA 643 note 8 ante; for the meaning of 'contract documents' see PARA 645 note 25 ante; and for the meaning of 'disabled person' see PARA 643 note 21 ante.

3 For the meaning of 'carrying out' in relation to a work or works see PARA 643 note 8 ante.

4 Utilities Contracts Regulations 2006, SI 2006/6, reg 12(2). As to definition of the technical specifications see reg 12(5)-(12). A utility must accept certificates from recognised bodies established in other member states when considering whether a tender for a contract conforms with the technical specifications laid down by the utility in accordance with reg 12(2): reg 12(15). 'Recognised bodies' means test and calibration laboratories and certification and inspection bodies which comply with applicable European standards and 'recognised body' is to be interpreted accordingly; and 'European standard' means a standard adopted by a European standards organisation and made available to the general public: reg 12(1).

5 Ibid reg 12(3).

6 For the meaning of 'economic operator' see PARA 643 note 10 ante.

7 Utilities Contracts Regulations 2006, SI 2006/6, reg 12(4).

8 *le* subject to *ibid* reg 12(17): see note 9 *infra*.

9 *Ibid* reg 12(16). Notwithstanding reg 12(16), exceptionally, a utility may incorporate the references referred to in reg 12(16) into the technical specifications in the contract documents, provided that the references are accompanied by the words 'or equivalent', where (1) the subject of the contract makes the use of such references indispensable; or (2) the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all economic operators: reg 12(17).

10 'Appropriate means' includes a technical dossier of a manufacturer or a test report from a recognised body: *ibid* reg 12(14).

11 *Ibid* reg 12(13).

12 *le* subject to *ibid* reg 12(19): see note 17 *infra*.

13 For the meaning of 'contract' see PARA 644 note 2 ante.

14 'Periodic indicative notice' means a notice sent to the Official Journal in accordance with the Utilities Contracts Regulations 2006, SI 2006/6, reg 15 (see PARA 647 post): reg 2(1).

15 le in accordance with *ibid* reg 15.

16 *Ibid* reg 12(18).

17 *Ibid* reg 12(19).

18 For the meaning of 'to award' see *PARA 643* note 10 *ante*.

19 le in accordance with the Utilities Contracts Regulations 2006, SI 2006/6, reg 30(1)(a): see *PARA 649* *post*.

20 For the meaning of 'contract notice' see *PARA 643* note 25 *ante*.

21 Utilities Contracts Regulations 2006, SI 2006/6, reg 13(1).

22 *Ibid* reg 13(2).

23 *Ibid* reg 13(3).

24 *Ibid* reg 13(4).

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647. Procedures leading to award of contract.

For the purpose of seeking offers in relation to a proposed contract¹ a utility² must use the open³, the restricted⁴ or the negotiated⁵ procedure⁶.

At least once every 12 months a utility must⁷ send a notice in the required form⁸ and containing the specified information⁹ to the European Commission or publish it on that utility's buyer profile¹⁰ as soon as possible after:

- 227 (1) the beginning of the financial year¹¹ in the case of supply contracts¹², services contracts¹³ or framework agreements¹⁴ for the purchase or hire of goods¹⁵ or for the provision of services; or
- 228 (2) the decision authorising the programme of works contracts¹⁶ or framework agreements for the carrying out of work or works¹⁷, in the case of works contracts or framework agreements for the carrying out of work or works¹⁸.

This obligation to publish a periodic indicative notice applies only to proposed contracts or framework agreements which are not excluded¹⁹ from the application of the Utilities Contracts Regulations 2006²⁰ and where, at the date of dispatch of the notice:

- 229 (a) the total consideration which the utility expects to be payable under supply contracts or framework agreements for the purchase or hire of goods falling within the same product area, or certain services contracts²¹ or framework agreements for the provision of services falling within the same specified category²² is equal to or exceeds 750,000 euros; or
- 230 (b) the total consideration which the utility expects to be payable under works contracts or framework agreements for the carrying out of work or works is equal to or exceeds 5,278,000 euros²³.

It applies only where the utility takes the option²⁴ of shortening time limits for the receipt of tenders²⁵; and does not apply to a proposed contract or framework agreement where the procedure for the award or conclusion of the framework agreement is a contract award procedure²⁶ without a call for competition²⁷.

Subject to prescribed exceptions²⁸, for the purposes of seeking offers in relation to a proposed contract a utility must make a call for competition²⁹. A utility may regard a framework agreement as a contract and award it in accordance with the relevant regulations³⁰ and may, if it has so awarded that agreement, award a contract under the framework agreement without making a call for competition in certain circumstances³¹. It may not, however, misuse a framework agreement in order to prevent, restrict or distort competition³².

A utility using a dynamic purchasing system³³ must comply with prescribed requirements as to means of communication³⁴ when seeking to establish it and must use only electronic means³⁵ to establish that system and to award contracts³⁶ under it³⁷. The utility must use the open procedure to establish a dynamic purchasing system up to the beginning of the procedure for the award of contracts under the system set out³⁸ in relation to such systems³⁹. The utility must not charge any economic operator seeking admission to a dynamic purchasing system or which

has been admitted to such a system in relation to any aspect of that system⁴⁰. A dynamic purchasing system established by the utility must not be operated for more than four years, unless there are exceptional circumstances⁴¹; and the utility must not use a dynamic purchasing system improperly or in such a way as to prevent, restrict or distort competition⁴².

A utility may hold an electronic auction⁴³ when using the open procedure, the restricted procedure, the negotiated procedure with a prior call for competition or the procedure⁴⁴ on the opening of competition for contracts to be awarded under a dynamic purchasing system⁴⁵. It must not, however, hold an electronic auction to precede the award of a services contract or a works contract having as its subject matter intellectual performance, such as the design of works⁴⁶; and it may only hold an electronic auction to precede the award of a contract when the contract specification can be established with precision⁴⁷.

A utility may purchase work, works, goods or services from or through a central purchasing body⁴⁸; and where it so makes purchases, it is deemed to have complied with the relevant regulations to the extent that the central purchasing body has complied with them⁴⁹.

Time limits are prescribed for certain of the above procedures⁵⁰. Subject to the minimum time limits so specified, a utility must take account of all the circumstances, in particular the complexity of the contract and the time required for drawing up tenders, when fixing time limits for receipt by it of requests to be selected to tender for or to negotiate the contract and for the receipt by it of tenders⁵¹.

Provision is made with regard to design contests⁵² organised by a utility for the purposes of certain specialised contracts⁵³.

1 For the meaning of 'contract' see PARA 644 note 2 ante.

2 For the meaning of 'utility' see PARA 643 note 6 ante.

3 'Open procedure' means a procedure leading to the award of a contract whereby all interested economic operators may tender for the contract: Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1). For the meaning of 'economic operator' see PARA 643 note 10 ante.

4 'Restricted procedure' means a procedure leading to the award of a contract whereby only economic operators selected by the utility may submit tenders for the contract: *ibid* reg 2(1).

5 'Negotiated procedure' means a procedure leading to the award of a contract whereby the utility negotiates the terms of the contract with one or more economic operators selected by it: *ibid* reg 2(1).

6 *Ibid* reg 14.

7 *Ie* subject to *ibid* reg 15(4), (6), (7): see the text and notes 19-27 *infra*.

8 *Ie* in the form of the periodic indicative notice in EC Commission Regulation 1564/2005 (OJ L257, 1.10.2005, p 1) Annex IV.

9 *Ie* the information specified in the notice described in note 8 *supra*.

10 'Buyer profile' means a page on the internet set up by a utility containing one or more of the following: periodic indicative notices, information on ongoing invitations to tender, prospective and concluded contracts, cancelled procedures and useful general information, such as a contact point, a telephone number, a facsimile number, a postal address or an email address: Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1).

11 'Financial year' means, except where the context otherwise requires, the period of 12 months ending on the date in any year in respect of which the accounts of a utility are prepared: *ibid* reg 2(1).

12 For the meaning of 'supply contract' see PARA 643 note 7 ante.

13 For the meaning of 'services contract' see PARA 643 note 9 ante.

14 For the meaning of 'framework agreement' see PARA 644 note 22 ante.

- 15 For the meaning of 'goods' see PARA 643 note 7 ante.
- 16 For the meaning of 'works contract' see PARA 643 note 8 ante.
- 17 For the meanings of 'work', 'works' and 'carrying out' in relation to them see PARA 643 note 8 ante.
- 18 Utilities Contracts Regulations 2006, SI 2006/6, reg 15(1). As to the information to be contained in the notice under reg 15(1) see reg 15(2). Where a utility publishes a notice on its buyer profile in accordance with reg 15(1), it must also send a notice informing of such publication to the Commission by electronic means: see reg 15(3). A notice sent to the Commission or published on the utility's buyer profile in accordance with reg 15(1) need not repeat information about contracts included in a previous periodic indicative notice, provided that the notice clearly states that it is an additional notice: reg 15(5). For the meaning of 'electronic means' see PARA 643 note 7 ante.
- 19 Ie by *ibid* regs 6, 7, 8, 9 or 11: see PARAS 644-645 ante.
- 20 Ie the Utilities Contracts Regulations 2006, SI 2006/6: see PARA 643 et seq ante, PARA 648 et seq post.
- 21 Ie Part A services contracts. For the meaning of 'Part A services contract' see PARA 643 note 9 ante.
- 22 Ie the same category specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 3 Pt A.
- 23 *Ibid* reg 15(4).
- 24 Ie in accordance with *ibid* reg 22(3): see note 50 *infra*.
- 25 *Ibid* reg 15(6).
- 26 Ie in accordance with *ibid* reg 17: see note 28 *infra*.
- 27 *Ibid* reg 15(7).
- 28 Ie subject to *ibid* reg 17. For the circumstances in which a utility may seek offers in relation to a proposed contract without a call for competition see reg 17(1)(a)-(l), (2).
- 29 *Ibid* reg 16(1). See further reg 16(2)-(5).
- 30 See *ibid* reg 18(1).
- 31 See *ibid* reg 18(2), (3).
- 32 *Ibid* reg 18(4).
- 33 For the meaning of 'dynamic purchasing system' see PARA 643 note 10 ante.
- 34 Ie the Utilities Contracts Regulations 2006, SI 2006/6, reg 42(2)-(7): see PARA 650 post.
- 35 For the meaning of 'electronic means' see PARA 643 note 7 ante.
- 36 For the meaning of 'to award' see PARA 643 note 10 ante; and for the meaning of 'contract' see PARA 644 note 2 ante.
- 37 Utilities Contracts Regulations 2006, SI 2006/6, reg 19(1), (2).
- 38 Ie in *ibid* reg 19. See further reg 19(4)-(14).
- 39 *Ibid* reg 19(3).
- 40 *Ibid* reg 19(15).
- 41 *Ibid* reg 19(16).
- 42 *Ibid* reg 19(17).
- 43 'Electronic auction' means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which (1) takes place after the initial evaluation of tenders; and (2) enables tenders to be ranked using automatic evaluation methods: *ibid* reg 2(1).

44 le the procedure set out in *ibid* reg 19: see the text and notes 32-42 *supra*.

45 *Ibid* reg 20(1), (2). See further reg 20(5)-(19).

46 *Ibid* reg 20(3).

47 *Ibid* reg 20(4).

48 *Ibid* reg 21(1). 'Central purchasing body' means a utility which is a contracting authority and which (1) acquires goods or services intended for one or more utilities; (2) awards contracts intended for one or more utilities; or (3) concludes framework agreements for work, works, goods or services intended for one or more utilities: reg 2(1). For the meaning of 'contracting authority' see *PARA* 643 note 6 *ante*.

49 See *ibid* reg 21(2).

50 See *ibid* reg 22.

51 *Ibid* reg 22(1).

52 'Design contest' means a competition, particularly in the fields of planning, architecture, civil engineering and data processing (1) which is conducted by or on behalf of a utility and in which that utility invites the entry by economic operators of plans and designs; (2) under the rules of which the plans or designs entered will be judged by a jury; (3) under which prizes may or may not be awarded; and (4) which enables the utility to acquire the use or ownership of plans or designs selected by the jury: *ibid* reg 2(1).

53 See *ibid* reg 34.

UPDATE

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TEXT AND NOTES 19-23--SI 2006/6 reg 15(4) amended: SI 2007/3542.

NOTE 22--SI 2006/6 Sch 3 substituted: SI 2008/2256.

NOTE 48--Definition of 'central purchasing body' amended: SI 2007/3542.

TEXT AND NOTES 52, 53--SI 2006/6 reg 34 amended: SI 2007/3542.

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648. Qualification and selection of economic operators.

A utility¹ may establish and operate a system of qualification of economic operators² if that system complies³ with the prescribed requirements⁴. Provision is made for the criteria on which economic operators are to be rejected⁵.

A utility using the open procedure⁶ must establish selection criteria on the basis of objective criteria and rules which it determines and which it makes available to economic operators which request them⁷; and a utility using the restricted procedure⁸ or the negotiated procedure⁹, with or without a call for competition, must make the selection of the economic operators to be invited to tender for or to negotiate the contract on the basis of objective criteria and rules which it determines and which it makes available to economic operators which request them¹⁰. Where the selection criteria include requirements relating to the economic and financial capacity or the technical or professional abilities of the economic operator:

- 231 (1) the economic operator, or a group of economic operators¹¹, may rely on the capacity or abilities of other entities or members in the group, regardless of the legal nature of the link between the economic operator or the group of economic operators and the other entities; and
- 232 (2) the economic operator, or the group of economic operators, must prove to the utility that the resources necessary to perform the contract will be available to it, and such proof may in particular include an undertaking from those entities to that effect¹².

The criteria may¹³ be based on the need of the utility to reduce the number of economic operators selected to tender for or to negotiate the contract to a level which is justified by the characteristics of the award procedure and the resources required to complete it¹⁴. The utility must take account of the need to ensure adequate competition in determining the number of economic operators selected to tender for or to negotiate the contract¹⁵.

A utility must not treat the tender of a consortium¹⁶ as ineligible nor decide not to include a consortium amongst those economic operators from which it will make the selection of economic operators to be invited to tender for or to negotiate a contract or to be admitted to a dynamic purchasing system¹⁷ on the grounds that the consortium has not formed a legal entity for the purpose of tendering for or negotiating the contract or being admitted to a dynamic purchasing system¹⁸. Nor may it treat the tender of a services provider¹⁹ as ineligible nor decide not to include a services provider amongst those services providers from which it will make the selection of services providers to be invited to tender for or to negotiate a contract or to be admitted to a dynamic purchasing system on the ground that under the law of any part of the United Kingdom²⁰ the services provider is required to be an individual, a corporation or other type of body, if under the law of the relevant state²¹ in which the services provider is established, that services provider is authorised to provide such services²².

Where a utility establishes criteria for the rejection of economic operators²³ it must exclude any economic operator which meets those criteria when making its selection of the economic operators to be awarded a contract, to be invited to tender for, or to negotiate the contract²⁴. A utility must make its selection of the economic operators to be awarded a contract, to be

invited to tender for, or to negotiate the contract in accordance with the selection criteria established²⁵ by it²⁶. A utility using the restricted or negotiated procedure with a call for competition must reduce, where appropriate²⁷, the number of economic operators so selected²⁸. Where a utility makes a call for competition in respect of a contract by publishing a notice on the existence of a qualification system, when making its selection of the economic operators to be invited to tender for or to negotiate that contract, the utility must qualify economic operators²⁹ and apply the provisions set out above³⁰ which are relevant to the restricted procedure or the negotiated procedure to such qualified economic operators³¹. A utility must verify that the tenders submitted by the economic operators which have been selected by the utility comply with the rules and requirements applicable to tenders and must award the contract on the basis of the prescribed³² criteria³³.

When using the negotiated procedure or the restricted procedure and in determining what rules and criteria are to be met by economic operators to be invited to tender for or to negotiate a contract or to qualify under a qualification system, a utility must not:

- 233 (a) impose conditions of an administrative, technical or financial nature on some economic operators which are not imposed on others; or
- 234 (b) require tests or the submission of evidence which duplicates objective evidence already available³⁴.

For the purpose of assessing an economic operator's technical ability, a utility may request that economic operator to provide certain certificates and evidence³⁵. Where the contract to be awarded is a works contract or a services contract, it may also, where appropriate, request an indication of the environmental management measures which the economic operator will apply when performing the contract³⁶.

1 For the meaning of 'utility' see PARA 643 note 6 ante.

2 For the meaning of 'economic operator' see PARA 643 note 10 ante.

3 *Ie* complies with the Utilities Contracts Regulations 2006, SI 2006/6, reg 25.

4 *Ibid* reg 25(1). See further reg 25(2)-(18).

5 See *ibid* reg 26.

6 For the meaning of 'open procedure' see PARA 647 note 3 ante.

7 Utilities Contracts Regulations 2006, SI 2006/6, reg 27(1).

8 For the meaning of 'restricted procedure' see PARA 647 note 4 ante.

9 For the meaning of 'negotiated procedure' see PARA 647 note 5 ante.

10 Utilities Contracts Regulations 2006, SI 2006/6, reg 27(2).

11 *Ie* as referred to in *ibid* reg 28: see note 16 *infra*.

12 *Ibid* reg 27(3).

13 *Ie* without prejudice to the generality of *ibid* reg 27(2).

14 *Ibid* reg 27(4).

15 *Ibid* reg 27(5).

16 For these purposes, a 'consortium' means two or more persons, at least one of whom is an economic operator, acting jointly for the purpose of being awarded a contract: *ibid* reg 28(1). References to an economic operator where the economic operator is a consortium include a reference to each person who is a member of that consortium: reg 28(4).

17 For the meaning of 'dynamic purchasing system' see PARA 643 note 10 ante.

18 Utilities Contracts Regulations 2006, SI 2006/6, reg 28(2). Where a utility awards a contract to a consortium it may, if it is justified for the satisfactory performance of the contract, require the consortium to form a legal entity before entering into, or as a term of, the contract: reg 28(3).

19 For the meaning of 'services provider' see PARA 643 note 10 ante.

20 For the meaning of 'United Kingdom' see PARA 602 note 7 ante

21 For the meaning of 'relevant state' see PARA 643 note 10 ante.

22 Utilities Contracts Regulations 2006, SI 2006/6, reg 29(1). In the case of (1) a services contract; (2) a works contract; or (3) a supply contract which includes services or siting and installation of operations, a utility may require an economic operator which is not an individual to indicate in the tender, the indicative tender or in the request to be selected to tender for or to negotiate the contract, the names and relevant professional qualifications of the staff who will be responsible for the performance of the contract: reg 29(2). For the meanings of 'supply contract', 'works contract' and 'services contract' see PARA 643 notes 7-9 ante.

23 Ie in accordance with ibid reg 26(1) or (3) or reg 27(1) or (2).

24 Ibid reg 23(1).

25 Ie in accordance with ibid regs 26, 27.

26 Ibid reg 23(2).

27 Ie and in accordance with ibid reg 27.

28 Ibid reg 23(3).

29 Ie in accordance with ibid reg 25.

30 Ie the provisions of ibid reg 23(1)-(3): see the text and notes 23-28 supra.

31 Ibid reg 23(4).

32 Ie in accordance with the criteria referred to in ibid reg 30: see PARA 649 post.

33 Ibid reg 23(5).

34 Ibid reg 24(1).

35 See ibid reg 24(2), (3).

36 See ibid reg 24(3).

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649. The award of a contract.

A utility¹ must² award a contract³ on the basis of the offer⁴ which:

- 235 (1) is the most economically advantageous⁵ from the point of view of the utility;
or
- 236 (2) offers the lowest price⁶.

If an offer for a contract is abnormally low, the utility may reject that offer but only if it has:

- 237 (a) requested in writing⁷ an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low⁸;
- 238 (b) taken account of any evidence provided in response to a request in writing;
and
- 239 (c) subsequently verified the offer or parts of the offer being abnormally low with the economic operator⁹.

Where a utility establishes that a tender is abnormally low because the economic operator has obtained state aid, the offer may be rejected on that ground alone only after consultation with the economic operator and after the economic operator is unable to prove within a reasonable time limit fixed by the utility, that the aid has been granted in a way which is compatible with the EC Treaty¹⁰. Where a utility rejects an abnormally low offer in accordance with that provision, it must send a report justifying the rejection to the minister¹¹ for onward transmission to the European Commission¹².

Notwithstanding the above provisions, a utility need not accept an offer of third country origin¹³.

Provision is made for sending contract award notices to the Official Journal¹⁴ and as to the utility's obligation to inform any economic operator which submitted an offer or applied to be included amongst the economic operators to be selected to tender for or to negotiate the contract, or applied to be a party to a framework agreement¹⁵, of its decision in relation to the award of the contract or the conclusion of the framework agreement¹⁶.

A utility may include in the contract documents relating to a works contract or a services contract information as to where a contractor or services provider may obtain information about the obligations relating to taxes, environmental protection, employment protection and working conditions which will apply to the work or works to be carried out under the works contract or the services to be provided under the services contract¹⁷. A utility which provides that information must request contractors¹⁸ or services providers¹⁹ to indicate that they have taken account of the obligations relating to those employment protection provisions and those working conditions in preparing their tender or in negotiating the contract²⁰. A utility may also stipulate conditions relating to the performance of a contract, provided that those conditions are compatible with Community law and are indicated either in the notice used as a means of calling for competition and the contract documents or in the contract documents²¹; and those conditions may, in particular, include social or environmental considerations²².

1 For the meaning of 'utility' see PARA 643 note 6 ante.

2 be subject to the Utilities Contracts Regulations 2006, SI 2006/6, regs 30(6), (9), 31: see the text and notes 7-9, 11-13 *infra*.

3 For the meaning of 'contract' see PARA 644 note 2 *ante*.

4 For these purposes, 'offer' includes a bid by one part of a utility to provide services, to carry out work or works or to make goods available to another part of the utility when the former part is invited by the latter part to compete with the offers sought from other persons: Utilities Contracts Regulations 2006, SI 2006/6, reg 30(10).

5 A utility must use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous including delivery date or period for completion, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after sales service and technical assistance, commitments with regard to parts, security of supply and price or otherwise: *ibid* reg 30(2). Where a utility intends to award a contract on the basis of the offer which is the most economically advantageous, it must state the weighting which it gives to each of the criteria chosen in the contract notice or in the contract documents: reg 30(3). When stating the weightings referred to in reg 30(3), a utility may give the weighting a range and specify a minimum and maximum weighting where it considers it appropriate in view of the subject matter of the contract: reg 30(4). Where, in the opinion of the utility, it is not possible to provide weightings for the criteria referred to in reg 30(3) on objective grounds, the utility must indicate the criteria in descending order of importance in the contract notice or contract documents: reg 30(5). For the meaning of 'contract notice' see PARA 643 note 25 *ante*; and for the meaning of 'contract documents' see PARA 645 note 25 *ante*.

6 *Ibid* reg 30(1).

7 For the meaning of 'in writing' see PARA 643 note 7 *ante*.

8 Where a utility so requests an explanation, the information requested may, in particular, include (1) the economics of the method of construction, the manufacturing process or the services provided; (2) the technical solutions suggested by the economic operator or the exceptionally favourable conditions available to the economic operator for the execution of the work or works, for the supply of goods or for the provision of the services; (3) the originality of the work, works, goods or services proposed by the economic operator; (4) compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed; or (5) the possibility of the economic operator obtaining state aid: Utilities Contracts Regulations 2006, SI 2006/6, reg 30(7). For the meaning of 'economic operator' see PARA 643 note 10 *ante*; for the meaning of 'work' and 'works' see PARA 643 note 8 *ante*; and for the meaning of 'goods' see PARA 643 note 7 *ante*.

9 *Ibid* reg 30(6).

10 *Ibid* reg 30(8).

11 For the meaning of 'minister' see PARA 645 note 28 *ante*.

12 Utilities Contracts Regulations 2006, SI 2006/6, reg 30(9).

13 See *ibid* reg 31. For these purposes, 'an offer of third country origin' means an offer to enter a supply contract under which more than 50% of the total value of the goods offered originate in states with which the Communities have not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings in member states to the markets of those states or in states to which the benefit of the provisions of the Utilities Directive has not been extended; and 'goods' includes software used in telecommunications network equipment: reg 31(1). As to the Utilities Directive see PARA 643 *ante*.

14 See the Utilities Contracts Regulations 2006, SI 2006/6, reg 32.

15 For the meaning of 'framework agreement' see PARA 644 note 22 *ante*.

16 See the Utilities Contracts Regulations 2006, SI 2006/6, reg 33.

17 *Ibid* reg 35(1).

18 For the meaning of 'contractor' see PARA 643 note 10 *ante*.

19 For the meaning of 'services provider' see PARA 643 note 10 *ante*.

20 Utilities Contracts Regulations 2006, SI 2006/6, reg 35(2).

21 Ibid reg 36(1).

22 Ibid reg 36(2).

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650. Records, reports and information.

When the Utilities Contracts Regulations 2006¹ apply to the seeking of offers in relation to a contract², a utility³ must keep appropriate information on each contract sufficient to justify decisions taken in connection with the qualification and selection of economic operators⁴ and the award of contracts, and the use of a procedure⁵ without a prior call for competition⁶.

When a utility decides not to apply those regulations to the seeking of offers in relation to a contract⁷ it must keep appropriate information on such a contract sufficient to justify that decision⁸.

A utility must take appropriate steps to document the progress of contract award procedures conducted by electronic means⁹.

The information referred to above must be preserved for at least four years from the date of the award of the contract¹⁰.

A utility must each year¹¹, by the date notified to it by the minister¹², send to the minister a report specifying:

- 240 (1) the aggregate value (estimated if necessary) of the consideration payable under contracts awarded in the previous year which have been excluded from the operation of the Utilities Contracts Regulations 2006 by reason of falling below the prescribed threshold¹³ for the purpose of carrying out the specified activities¹⁴; and
- 241 (2) the type of activities for which those contracts were awarded¹⁵.

When requested a utility must, for the purpose of informing the European Commission, send to the minister a report:

- 242 (a) containing such information as the minister may from time to time require in respect of a particular contract (including contracts excluded or exempted from the application of all or some of the relevant regulations¹⁶);
- 243 (b) specifying which of its activities it considers are not specified activities¹⁷, or are activities outside the territory of the Communities not involving the physical use of a network or geographical area within the Communities; and
- 244 (c) specifying the categories of goods¹⁸, work, works¹⁹ or services it considers comprise the goods, work, works or services which it acquires in order to sell, hire or provide them to another person, but which it does not have a special or exclusive right to sell, hire or provide and which other persons are free to sell, hire or provide under the same conditions²⁰.

Certain utilities²¹ must, not later than 31 July in each year, send to the minister a report specifying in relation to each contract awarded by the utility in the previous year (including contracts excluded or exempted from the application of some or all of the relevant regulations²²):

- 245 (i) the value (estimated if necessary) of the consideration payable under the contract;

- 246 (ii) the principal category of works or services carried out or to be carried out under the contract according to the prescribed nomenclature²³ or the type of goods purchased or hired under the contract; and
- 247 (iii) the nationality of the economic operator to which the contract was awarded and the relevant state²⁴ in which that economic operator is established²⁵.

Provision is made with regard to the publication of notices²⁶ and the means of communication with a utility²⁷.

A utility which makes information available to an economic operator in accordance with the Utilities Contracts Regulations 2006 may impose requirements on that operator for the purpose of protecting the confidentiality of that information²⁸. Subject to the provisions of those regulations, the utility must not disclose information forwarded to it by an economic operator which the economic operator has reasonably designated as confidential²⁹; and confidential information includes technical or trade secrets and the confidential aspects of tenders³⁰. A utility may require an economic operator to indicate in its tender any part of the contract that the economic operator intends to sub-contract to another person and the identity of any person to whom that economic operator proposes to sub-contract any part of the contract³¹.

- 1 Ie the Utilities Contracts Regulations 2006, SI 2006/6: see PARA 643 et seq ante, PARA 651 post.
- 2 As to the application of the Utilities Contracts Regulations 2006, SI 2006/6, see PARAS 643-645 ante; and for the meaning of 'contract' see PARA 644 note 2 ante.
- 3 For the meaning of 'utility' see PARA 643 note 6 ante.
- 4 For the meaning of 'economic operator' see PARA 643 note 10 ante; and as to their qualification and selection see PARA 648 ante.
- 5 Ie by virtue of the Utilities Contracts Regulations 2006, SI 2006/6, reg 17: see PARA 647 ante.
- 6 Ibid reg 37(1).
- 7 Ie in accordance with ibid reg 6, reg 7, reg 8, reg 9 or reg 11: see PARAS 643-645 ante.
- 8 Ibid reg 37(2).
- 9 Ibid reg 37(3). For the meaning of 'electronic means' see PARA 643 note 7 ante.
- 10 Ibid reg 37(4).
- 11 'Year' means calendar year: ibid reg 2(1).
- 12 For the meaning of 'minister' see PARA 645 note 28 ante.
- 13 Ie excluded by the Utilities Contracts Regulations 2006, SI 2006/6, reg 11: see PARA 644 ante.
- 14 Ie the activities in each Part of ibid Sch 1 in which the utility is specified. As to the Parts in which utilities operating in the energy sector are specified see PARA 643 note 6 ante.
- 15 Ibid reg 38(1).
- 16 Ie by ibid reg 6, reg 7, reg 8, reg 9 or reg 11: see PARAS 643-645 ante.
- 17 Ie activities specified in the Part of ibid Sch 1 in which the utility is specified. See also note 14 supra.
- 18 For the meaning of 'goods' see PARA 643 note 7 ante.
- 19 For the meanings of 'a work' and 'works' see PARA 643 note 8 ante.
- 20 Utilities Contracts Regulations 2006, SI 2006/6, reg 38(2). A utility may indicate that any of the information in a report sent to the minister in accordance with reg 38(2)(c) (see head (c) in the text) is of a sensitive commercial nature, and require that it not be published: reg 38(5).

21 Ie a utility specified in *ibid* Sch 1 Pts A-F, O, P, R or S. This includes utilities operating in relation to electricity, but not in relation to gas, heat or exploration and extraction of oil and gas: see PARA 643 note 6 ante.

22 See note 16 *supra*.

23 Ie the nomenclature used in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 2 or Sch 3.

24 For the meaning of 'relevant state' see PARA 643 note 10 ante.

25 Utilities Contracts Regulations 2006, SI 2006/6, reg 38(3). The report referred to in the text need not include information concerning contracts for (1) research and development services specified in Sch 3 Pt A category 8; (2) certain telecommunications services; or (3) the services specified in Sch 3 Pt B: see reg 38(4).

26 See *ibid* reg 40.

27 See *ibid* reg 42.

28 *Ibid* reg 41(1).

29 *Ibid* reg 41(2).

30 *Ibid* reg 41(3).

31 *Ibid* reg 43.

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650 Records, reports and information

NOTES 23, 25--SI 2006/6 reg 38(4) amended, Schs 2, 3 substituted: SI 2008/2256.

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651. Enforcement of obligations.

The obligation on a utility¹ to comply with the relevant provisions of the Utilities Contracts Regulations 2006², and with any enforceable Community obligation in respect of a contract³ or design contest⁴ (other than one excluded⁵ from the application of those regulations) is a duty owed to an economic operator⁶. With certain exceptions⁷, that duty is a duty owed also to a GPA economic operator⁸.

A breach of the duty owed in accordance with the above provisions is actionable by any economic operator⁹ which in consequence suffers, or risks suffering, loss or damage and those proceedings are to be in the High Court¹⁰. Proceedings under these provisions may not be brought unless:

- 248 (1) the economic operator bringing the proceedings has informed the utility of the breach or apprehended breach of the duty so owed to it by that utility and of its intention to bring such proceedings in respect of it; and
- 249 (2) those proceedings are brought promptly and in any event within three months from the date when grounds for the bringing of the proceedings first arose unless the court considers that there is good reason for extending the period within which proceedings may be brought¹¹.

The court may¹²:

- 250 (a) by interim order suspend the procedure leading to the award of the contract or the procedure leading to the determination of a design contest in relation to the award of the contract of which the breach of the duty so owed is alleged, or suspend the implementation of any decision or action taken by the utility in the course of following such a procedure; and
- 251 (b) if satisfied that a decision or action taken by a utility was in breach of the duty so owed:

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- 19. (i) order the setting aside of that decision or action or order the utility to amend any document;
- 20. (ii) award damages to an economic operator which has suffered loss or damage as a consequence of the breach; or
- 21. (iii) do both of those things¹³.

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In proceedings under these provisions the court does not, however, have power to order any remedy other than an award of damages in respect of a breach of the duty owed in accordance with the above provisions if the contract in relation to which the breach occurred has been entered into¹⁴.

Where, in proceedings under these provisions, the court is satisfied that an economic operator would have had a real chance of being awarded a contract or winning a design contest if that chance had not been adversely affected by a breach of the duty owed to it by the utility, the economic operator is entitled to damages amounting to its costs in preparing its tender and in

participating in the procedure leading to the award of the contract or its costs of participating in the procedure leading to the determination of the design contest¹⁵. This does not affect a claim by an economic operator that it has suffered other loss or damage or that it is entitled to relief other than damages and is without prejudice to the matters on which an economic operator may be required to satisfy the court in respect of any other such claim¹⁶.

An economic operator which considers that a utility has breached or may breach the duty referred to above, and that in consequence that economic operator has suffered, or risks suffering, loss or damage, and which wishes to use the conciliation procedure provided for in the Utilities Remedies Directive¹⁷ must send a request for the application of the procedure to the minister¹⁸ for onward transmission as soon as possible to the European Commission¹⁹. Neither the request for, nor any action taken in accordance with, that conciliation procedure affects the rights or liabilities of the economic operator requesting it, the utility in respect of which the request is made or any other person²⁰.

1 For the meaning of 'utility' see PARA 643 note 6 ante.

2 I.e. the provisions of the Utilities Contracts Regulations 2006, SI 2006/6 (see PARA 643 et seq ante) other than reg 30(9) (see PARA 649 ante) and reg 38 (see PARA 650 ante).

3 For the meaning of 'contract' see PARA 644 note 2 ante.

4 For the meaning of 'design contest' see PARA 647 note 52 ante.

5 I.e. by the Utilities Contracts Regulations 2006, SI 2006/6, reg 6, reg 7, reg 8, reg 9 or reg 11 (see PARAS 643-645 ante) or by reg 34 (see PARA 647 ante).

6 Ibid reg 45(1). For the meaning of 'economic operator' see PARA 643 note 10 ante.

7 I.e. except in relation to (1) a Part B services contract; and (2) a contract for research and development services specified in ibid Sch 3 Pt A category 8: reg 45(2). For the meaning of 'Part B services contract' see PARA 643 note 14 ante.

8 Ibid reg 45(2). For these purposes, 'GPA economic operator' means a person from a GPA state who sought, who seeks, or would have wished, to be the person to whom the contract is awarded; 'GPA state' means any country other than a relevant state which at the relevant time is a signatory to the GPA and has agreed with the European Community that the GPA is to apply to a contract of the type to be awarded; and 'relevant time' means (1) if the utility selects economic operators to tender for or to negotiate the contract in accordance with a qualification system established in accordance with reg 25 (see PARA 648 ante), the date on which the selection commences; (2) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with reg 16(2)(a)(i) (see PARA 647 ante), the date on which the notice is sent to the Official Journal; or (3) in any other case, the date on which a contract notice or design contest notice would be sent to the Official Journal if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by sending such a notice: reg 45(11). 'GPA' means the Government Procurement Agreement (ie the Agreement on Government Procurement between certain parties to the World Trade Organisation (WTO) signed in Marrakesh on 15 April 1994): Utilities Contracts Regulations 2006, SI 2006/6, reg 2(1).

9 References to an 'economic operator' in ibid reg 45(4), (5), (8) and (9) are to be construed as including a reference to a GPA economic operator: reg 45(3).

10 Ibid reg 45(4).

11 Ibid reg 45(5).

12 I.e. subject to ibid reg 45(7), but otherwise without prejudice to any other powers of the court in proceedings brought under reg 45: reg 45(6).

13 Ibid reg 45(6).

14 Ibid reg 45(7).

15 Ibid reg 45(8).

16 Ibid reg 45(9).

Notwithstanding the Crown Proceedings Act 1947 s 21 (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 134), in proceedings brought under the Utilities Contracts Regulations 2006/6, reg 45 against the Crown the court has power to grant an injunction: see reg 45(10).

17 Ie EEC Council Directive 92/13 (OJ L76, 23.3.92, p 14) co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ('the Utilities Remedies Directive'), arts 10, 11.

18 For the meaning of 'minister' see PARA 645 note 28 ante.

19 Utilities Contracts Regulations 2006, SI 2006/6, reg 46(1).

20 Ibid reg 46(2).

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NOTE 7--SI 2006/6 Sch 3 substituted: SI 2008/2256.

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(iv) Competition Law and the Single Energy Market

652. European Community competition law.

The energy supply industry in England and Wales is subject to general rules governing competition within the Community¹. These rules cover much the same subject matter as domestic competition law², but are primarily directed at agreements and practices which prevent, restrict or distort the free passage of goods and services across national boundaries³.

European Community law prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the Community, in particular those which:

- 252 (1) directly or indirectly fix purchase or selling prices or any other trading conditions;
- 253 (2) limit or control production, markets, technical development or investment;
- 254 (3) share markets or sources of supply;
- 255 (4) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- 256 (5) make the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts⁴.

It also prohibits any abuse by one or more undertakings of a dominant position within the Community or a substantial part of it, in so far as it may affect trade between member states. Such abuse may, in particular, consist in:

- 257 (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- 258 (b) limiting production, markets or technical development to the prejudice of consumers;
- 259 (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- 260 (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts⁵.

State aid⁶ in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings or the production of certain goods is also prohibited so far as it affects trade between member states⁷. State aid may, however, be authorised by the EC Commission and certain categories of aid may be exempted⁸.

In addition, the EC Commission has jurisdiction, generally to the exclusion of national competition authorities of national states, over competition aspects of mergers and other specified types of concentrations with a Community dimension above certain thresholds⁹.

In the exercise of his powers to grant licences in relation to petroleum production¹⁰, and in carrying out his functions relating to energy supply¹¹, the Secretary of State¹² is required, as a matter of general principle, not to discriminate against nationals of other member states on grounds of nationality¹³ and not to restrict the freedom of establishment or the freedom to provide services of such nationals¹⁴.

1 See the text and notes 4-8 infra.

2 See COMPETITION vol 18 (2009) PARA 3.

3 See the text and notes 4-8 infra.

4 EC Treaty art 81(1). Any agreements or decisions prohibited pursuant to art 81 are automatically void: art 81(2). The provisions of art 81(1) may, however, be declared inapplicable in the case of: (1) any agreement or category of agreements between undertakings; (2) any decision or category of decisions by associations of undertakings; (3) any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question: art 81(3).

5 See *ibid* art 82.

6 There is no definition of what constitutes state aid in the EC Treaty itself though the EC Commission declared that 'aid' included direct subsidies, tax exemptions, preferential interest rates, guarantees of loans on expressly favourable terms, acquisition of land or buildings whether gratuitously or on favourable terms, provision of goods and services on preferential terms, and indemnities against losses: see OJ 1963 p 2235. See also EC Commission Directive 2006/111 (OJ L318, 17.11.2006, p 17) on the transparency of financial relations between member states and public undertakings as well as on financial transparency within certain undertakings. For a discussion of the case law on state aids see EUROPEAN COMMUNITIES.

7 See the EC Treaty art 87(1). See also art 87(2) (categories of aid which are automatically compatible with the Community) and art 87(3) (categories of aid which may be so compatible).

8 See *ibid* arts 87(3)(e), 88(2), 89.

9 See EC Council Regulation 139/2004 (OJ L24, 29.1.2004, p 1) on the control of concentrations between undertakings ('the EC Merger Regulation').

10 See PARA 1639 et seq post.

11 See PARA 789 et seq post (gas), PARA 1041 et seq post (electricity).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 See the EC Treaty art 12.

14 See *ibid* arts 43-55.

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NOTE 4--See Case C-279/06 *CEPSA Estaciones de Servicio SA v LV Tobar e Hijos SL* [2008] All ER (D) 72 (Sep), ECJ; and Case C-269/07 *Pedro IV Sevicios SL v Total Espana SA* [2009] 5 CMLR 1291, ECJ (exception from prohibition on agreements preventing, restricting or distorting competition).

NOTE 6--See Financial Transparency (EC Directive) Regulations 2009, SI 2009/2331, which implements EC Commission Directive 2006/111.

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653. The single energy market.

The EC Commission has announced a series of initiatives relating to energy which are designed to create an open market for electricity and other forms of energy. European Directives have now established common rules for the generation, transmission, distribution and supply of electricity¹ and for the internal market in natural gas²; and a European Regulation has laid down conditions for access to the network for cross-border exchanges in electricity³. There is a European Regulators Group for electricity and gas⁴. Either at its own initiative or at the request of the European Commission, that Group is to advise and assist the Commission in consolidating the internal energy market, in particular with respect to the preparation of draft implementing measures in the field of electricity and gas, and on any matters related to the internal market for electricity and gas. The Group must facilitate consultation, co-ordination and co-operation of national regulatory authorities, contributing to a consistent application, in all member states, of the provisions set out in the Directives and the Regulation mentioned above, as well as of possible future Community legislation in the field of electricity and gas⁵. There is also European legislation setting non-discriminatory rules for access conditions to natural gas transmission systems⁶ and laying down guidelines for trans-European electricity and gas networks⁷.

The Price Transparency Directive requires member states to ensure that undertakings which supply energy to industrial end users communicate to the Statistical Office of the European Community ('SOEC') (1) the prices and terms of sale to industrial end users; (2) the price system in use; and (3) the breakdown of consumers and the corresponding volumes by category of consumption to ensure that these categories are represented at national level⁸.

The Hydrocarbons Licensing Directive establishes common rules to ensure equal access to prospecting, exploration for and producing hydrocarbons for all companies with the necessary capabilities⁹.

Investment projects of interest to the Community in the petroleum, natural gas and electricity sectors must be communicated to the Commission¹⁰.

The Community framework for the taxation of energy products and electricity has been restructured by a 2003 Directive¹¹.

The European Atomic Energy Community ('Euratom') and the Euratom Treaty are discussed in a later part of this title¹².

In 2006, the European Union entered into the Energy Community Treaty with certain non-member states¹³ and with the United Nations Interim Administration Mission in Kosovo¹⁴.

1 See European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) concerning common rules for the internal market in electricity (amended by EC Council Directive 2004/85 (OJ L236, 7.7.2004, p 10)). In the United Kingdom, that Directive is implemented by certain provisions of the Electricity Act 1989 and by the Electricity (Fuel Mix Disclosure) Regulations 2005, SI 2005/391. As to those regulations see PARA 1075 post.

2 See European Parliament and EC Council Directive 2003/55 (OJ L176, 15.7.2003, p 57) concerning common rules for the internal market in natural gas. In the United Kingdom, that Directive is implemented by certain provisions of the Gas Acts 1986 and 1995, the Petroleum Act 1998, the Utilities Act 2000 and the Energy Act 2004; and by the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended) (see PARA 903 et seq post), the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended) (see PARA 911 et seq post).

post) and the Gas (Third Party Access) Regulations 2004, SI 2004/2043 (amending the Gas Acts 1986 and 1995 and the Petroleum Act 1998).

3 See European Parliament and EC Council Regulation 1228/2003 (OJ L176, 15.7.2003, p 1) on conditions for access to the network for cross-border exchanges in electricity (amended by EC Council Regulation 1223/2004 (OJ L233, 2.7.2004, p 3) and EC Commission Decision 2006/770 (OJ L312, 11.11.2006, p 59)).

4 See EC Commission Decision 2003/796 (OJ L296, 14.11.2003, p 34) on establishing the European Regulators Group for Electricity and Gas, art 1(1). The Group is composed of the heads of the national regulatory authorities or their representatives: art 2(1). As to regulation of the gas and electricity industries in the United Kingdom see PARA 706 et seq post.

5 See ibid art 1(2).

6 See European Parliament and EC Council Regulation 1775/2005 (OJ L289, 3.11.2005, p 1) on conditions for access to the natural gas transmission networks.

7 See European Parliament and EC Council Decision 1364/2006 (OJ L262, 22.9.2006, p 1) laying down guidelines for trans-European energy networks.

8 See EEC Council Directive 90/377 (OJ L185, 17.7.90, p 16) concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (amended by EEC Commission Directive 93/87 (OJ L277, 10.11.93, p 32), European Parliament and EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1) and EC Council Directive 2006/108 (OJ L363, 20.12.2006) p 414)). That Directive is implemented in the United Kingdom by certain provisions of the Energy Act 1976 and the Electricity Act 1989.

9 See European Parliament and EC Council Directive 94/22 (OJ L164, 30.6.94, p 3) on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons. That Directive is implemented in the United Kingdom by the Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434: see PARAS 1639 note 3, 1641-1643, 1668 post.

10 See EC Council Regulation 736/96 (OJ L102, 25.4.96, p 1); and PARA 631 ante.

11 See EC Council Directive 2003/96 (OJ L283, 31.10.2003, p 51) restructuring the Community framework for the taxation of energy products and electricity (as amended). That Directive is implemented in the United Kingdom by, inter alia, the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005, SI 2005/1714: see PARA 667 post.

12 See PARAS 1337-1339 post.

13 Ie Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Romania and Serbia.

14 See the Energy Community Treaty (OJ L198/18, 20.7.2006, p 18).

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NOTES--See European Parliament and EC Council Regulation 713/2009 (OJ L211, 14.8.2009, p 1) establishing an Agency for the Co-operation of Energy Regulators.

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--Directive 2003/54 replaced: European Parliament and EC Council Directive 2009/72 (OJ L211, 14.8.2009, p 55).

NOTE 2--Directive 2003/55 replaced: European Parliament and EC Council Directive 2009/73 (OJ L211, 14.8.2009, p 94).

NOTE 3--Regulation 1228/2003 replaced: European Parliament and EC Council Regulation 714/2009 (OJ L211, 14.8.2009, p 15).

NOTE 6--Regulation 1775/2005 replaced: European Parliament and EC Council Regulation 715/2009 (OJ L211, 14.8.2009, p 36).

NOTE 8--Directive 90/377 replaced: European Parliament and EC Council Directive 2008/92 (OJ L298, 7.11.2008, p 9).

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(4) OTHER INTERNATIONAL OBLIGATIONS

654. International treaties relating to energy and the environment; in general.

The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were signed in Lisbon in December 1994 and entered into legal force in April 1998. The United Kingdom is a party and the Treaty and Protocol have been approved by the European Community¹. The treaty makes provision with regard to commerce, including conditions for trade in energy materials, products and energy-related equipment and cross-border energy transit flows through pipelines, grids and other means of transportation², the promotion and protection of foreign investments³, the promotion of energy efficiency and attempts to minimise the environmental impact of energy production and use⁴ and the resolution of disputes⁵. State sovereignty and sovereign rights over energy resources are recognised and the Treaty reaffirms that these must be exercised in accordance with and subject to the rules of international law⁶. The parties undertake to facilitate access to energy resources by, among other things, allocating in a non-discriminatory manner on the basis of published criteria authorisations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources⁷. The provisions of the Treaty do not oblige any party to it to introduce mandatory third party access or prevent the use of pricing systems which, within a particular category of consumers, apply identical prices to customers in different locations⁸. The Energy Charter Conference, an inter-governmental organisation, is the governing and decision-making body for the Energy Charter process, and was established by the Energy Charter Treaty⁹. All states who have signed or acceded to the Treaty are members of the Conference, which meets on a regular basis, normally in Brussels. Regular meetings of the Conference's subsidiary groups on investment, trade, transit and energy efficiency are held in between Conference meetings¹⁰.

The United Nations Framework Convention on Climate Change, which entered into force on 21 March 1994, has been ratified by the vast majority of countries, including the United Kingdom, and approved by the European Community¹¹. The Kyoto Protocol to that Convention, which entered into force on 16 February 2005, commits parties to that Protocol to individual, legally-binding targets to limit or reduce their greenhouse gas emissions¹². The United Kingdom has ratified the Protocol and an overall target has been set for the United Kingdom and other member states to reduce their emissions; the distribution of that target between member states has been agreed by the Community¹³.

International treaties and agreements with particular application to nuclear energy and petroleum production are discussed in later parts of this title¹⁴.

1 See the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects (Lisbon, December 1994). The Charter and Protocol have over 50 signatories.

2 See the Energy Charter Treaty Pt II (arts 3-9).

3 See *ibid* Pt III (arts 10-17).

4 See *ibid* art 19.

5 See *ibid* arts 26-28.

6 See *ibid* art 18(1).

7 See *ibid* art 18(2).

8 Final Act of the European Energy Charter Conference--Statement submitted by the European Communities to the Secretariat of the Energy Charter pursuant to the Energy Charter Treaty art 26(3)(b)(ii) (OJ L380, 31.12.94, p 3), art IV Understandings (1)(b).

9 See the Energy Charter Treaty art 34.

10 This information is reproduced from the website of the Energy Charter Secretariat, accessible at the date at which this title states the law at www.encharter.org. It is reproduced in accordance with the terms of use as stated at that website address.

11 See the United Nations Framework Convention on Climate Change (Rio de Janeiro, 5 June 1992; Misc 5 (1993); Cm 2137); and EEC Council Decision 93/389 (OJ L167, 9.7.93, p 31) (amended by EC Council Decision 99/296 (OJ L117, 5.5.99, p 35)), which gives effect to obligations of the European Community under the United Nations Framework Convention on Climate Change.

12 See the Kyoto Protocol (Kyoto, 11 December 1997; TS 006 (2005) Cm 6485).

13 See EC Council Decision 2002/358 (OJ L130, 15.5.2002, p 1) concerning the approval on behalf of the European Community of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder; and EC Commission Decision 2006/944 (OJ L358, 16.12.2006, p 87) determining the respective emission levels allocated to the Community and each of its member states under the Kyoto Protocol pursuant to EC Council Decision 2002/358 (OJ L130, 15.5.2002, p 1).

14 See PARAS 1340 et seq, 1632 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(5) ENERGY EFFICIENCY OF BUILDINGS AND APPLIANCES/(i) Buildings/A. IN GENERAL/655. Energy performance of buildings generally.

(5) ENERGY EFFICIENCY OF BUILDINGS AND APPLIANCES

(i) Buildings

A. IN GENERAL

655. Energy performance of buildings generally.

The Secretary of State¹ must approve:

- 261 (1) a methodology of calculation of the energy performance of buildings², including methods for calculating asset ratings³ and operational ratings⁴ of buildings; and
- 262 (2) ways in which the energy performance of buildings, as calculated in accordance with the methodology, are to be expressed⁵.

He must approve minimum energy performance requirements for new buildings, in the form of target CO₂ emission rates, which must be based upon the methodology approved pursuant to heads (1) and (2) above⁶; and where a building is erected, it must not exceed the target CO₂ emission rate for the building that has been so approved⁷.

Where proposed building work⁸ to an existing building with a total useful floor area⁹ over 1,000 square metres consists of or includes an extension, the initial provision of any fixed building services¹⁰ or an increase to the installed capacity of any fixed building services, then such work, if any, must be carried out as is necessary to ensure that the building complies with the prescribed requirements¹¹ as to energy efficiency¹²; but this does not require work to be carried out if it is not technically, functionally and economically feasible¹³.

As from 6 April 2008¹⁴, but from 1 January 2008 in relation to dwellings¹⁵, where:

- 263 (a) a building is erected; or
- 264 (b) a building is modified so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation,

the person carrying out the work must give an energy performance certificate for the building to the owner of the building and must give to the local authority notice to that effect¹⁶. The energy performance certificate must be accompanied by a recommendation report containing recommendations for the improvement of the energy performance of the building, issued by the energy assessor¹⁷ who issued the energy performance certificate¹⁸. An energy performance certificate must:

- 265 (i) express the asset rating of the building in a way approved by the Secretary of State under heads (1) and (2) above;
- 266 (ii) include a reference value such as a current legal standard or benchmark;

- 267 (iii) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and
- 268 (iv) include the following information:
- 17
- 22. (A) the reference number under which the certificate has been registered¹⁹;
 - 23. (B) the address of the building;
 - 24. (C) an estimate of the total useful floor area of the building;
 - 25. (D) the name of the energy assessor who issued it;
 - 26. (E) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address;
 - 27. (F) the date on which it was issued; and
 - 28. (G) the name of the approved accreditation scheme of which the energy assessor is a member²⁰.
- 18

Certification for apartments or units designed or altered for separate use in blocks may be based either on a common certification of the whole building for blocks with a common heating system (except in the case of a dwelling) or on the assessment of another representative apartment or unit in the same block²¹. Where a block with a common heating system is divided into parts designed or altered for separate use, and one or more, but not all, of the parts are dwellings, certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings²².

An energy assessor must include in an energy performance certificate a declaration of any personal or business relationship, other than in relation to producing the certificate, that he has with the person who commissioned the certificate and with any person who he believes either has or may have a personal or business relationship with the person who commissioned the certificate, or has or may have an interest in the building²³. Energy assessors must carry out energy assessments with reasonable care and skill²⁴; and the duty so imposed is enforceable by the owner and by any prospective or actual buyer or tenant of the building during the period of validity of the certificate²⁵. Any cause of action arising in relation to the duty so imposed is deemed not to be an action founded on tort for the purposes of the Limitation Act 1980²⁶.

Any person may, for the purpose of complying with any duty imposed by the Building Regulations 2000²⁷ or the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007²⁸, copy or issue a copy of any document produced by an energy assessor²⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'building' means the building as a whole or parts of it that have been designed or altered to be used separately: Building Regulations 2000, SI 2000/2531, reg 17J(1) (regs 17F-17J added by SI 2007/991). 'Building' means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building: Building Regulations 2000, SI 2000/2531, reg 2(1).

3 'Asset rating' means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building: *ibid* reg 17A(2) (regs 17A-17E added by SI 2006/652; the Building Regulations 2000, SI 2000/2531, reg 17A substituted by SI 2007/991).

4 'Operational rating' means a numerical indicator of the amount of energy consumed during the occupation of a building over a period of time: Building Regulations 2000, SI 2000/2531, reg 17A(2) (as substituted: see note 3 *supra*).

5 *Ibid* reg 17A(1) (as substituted: see note 3 *supra*).

6 *Ibid* reg 17B (as added: see note 3 *supra*).

7 Ibid reg 17C (as added: see note 3 supra). Subject to reg 20D(4) (as added), where reg 17C (as added) applies, the person carrying out the work must give the local authority a notice which specifies (1) the target CO₂ emission rate for the building; and (2) the calculated CO₂ emission rate for the building as constructed: reg 20D(1) (added by SI 2006/652). The notice must be given to the local authority not later than the date on which the notice required by the Building Regulations 2000, SI 2000/2531, reg 20B (as added) (pressure test: see PARA 657 note 5 post) is required to be given: reg 20D(2) (as so added). A local authority is authorised to accept, as evidence that the requirements of reg 17C (as added) would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by a person who is registered by either FAERO Ltd or BRE Certification Ltd in respect of the calculation of CO₂ emission rates of buildings: reg 20D(3) (as so added). Where such a certificate is given to the local authority, reg 20D(1) (as added) does not apply, and the person carrying out the work must provide to the local authority not later than the date on which the notice required by reg 20B (as added) is required to be given a notice which (a) states whether the building has been constructed in accordance with the list of specifications which accompanied the certificate; and (b) if it has not, lists any changes to the specifications to which the building has been constructed: reg 20D(4) (as so added).

8 For the meaning of 'building work' see ibid reg 3(1); and BUILDING.

9 'Floor area' means the aggregate area of every floor in a building or extension, calculated by reference to the finished internal faces of the walls enclosing the area, or if at any point there is no such wall, by reference to the outermost edge of the floor: ibid reg 2(1).

10 'Fixed building services' means any part of, or any controls associated with: (1) fixed internal or external lighting systems, but does not include emergency escape lighting or specialist process lighting; or (2) fixed systems for heating, hot water service, air conditioning or mechanical ventilation: ibid reg 2(1) (definition added by SI 2006/652).

11 Ie the requirements of the Building Regulations 2000, SI 2000/2531, Sch 1 Pt L (as substituted): see PARA 657 post.

12 Ibid reg 17D(1), (2) (as added: see note 3 supra).

13 Ibid reg 17D(3) (as added: see note 3 supra).

14 See the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 1(4), Sch 1.

15 See ibid Sch 1 (amended by SI 2007/1669, reg 3(1), (6)(b)). 'Dwelling' includes a dwelling house and a flat; 'dwelling house' does not include a flat or a building containing a flat; and 'flat' means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally: Building Regulations 2000, SI 2000/2531, reg 2(1).

16 Ibid reg 17E(1), (2) (as added (see note 3 supra); substituted by SI 2007/991). The energy performance certificate must be given not later than (1) the date on which the notice required by the Building Regulations 2000, SI 2000/2531 reg 20B (as added) (pressure testing) is required to be given to the local authority, where reg 20B (as added) applies; or (2) in any other case, not later than five days after the work has been completed: reg 17E(3) (as so substituted).

17 For these purposes 'energy assessor' means an individual who is a member of an accreditation scheme approved by the Secretary of State in accordance with ibid reg 17F (as added): reg 17J(1) (as added: see note 2 supra). An energy assessor must be a member of an accreditation scheme approved by the Secretary of State: reg 17F(1) (as added: see note 2 supra). The terms of approval of any accreditation scheme may be limited in relation to the categories of building for which members may produce certificates: reg 17F(2) (as so added). Before approving an accreditation scheme the Secretary of State must be satisfied that the scheme contains adequate provision: (1) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner; (2) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments; (3) for requiring members of the scheme to prepare energy performance certificates and recommendation reports using a standard form for each type of document; (4) for ensuring the production and publication of a code as regards the conduct required of its members; (5) for indemnity arrangements in relation to owners and prospective or actual buyers or tenants; (6) for facilitating the resolution of complaints against members of the scheme; (7) for requiring energy performance certificates and recommendation reports produced by members of the scheme to be entered on the relevant register referred to in reg 17F(4) (as added); and (8) for the keeping of a register of the members of the scheme: reg 17F(3) (as so added). Where an energy assessor issues an energy performance certificate and recommendation report he must ensure they are entered onto the relevant register maintained by the Secretary of State in accordance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 31 (see PARA 656 post) before he gives them to the person who requested that he issue them: Building Regulations 2000, SI

2000/2531, reg 17F(4) (as so added). For these purposes, a reference to 'energy assessment' includes a reference to (a) the preparation and issuing of energy performance certificates; (b) the preparation and issuing of recommendation reports; and (c) the carrying out of any inspections undertaken for the purposes of preparing energy performance certificates or recommendation reports (reg 17J(2) (as added: see note 2 supra)); and 'recommendation report' means the report required by reg 17E(4) (as substituted) (see the text to this note and note 18 infra) (reg 17J(1) (as so added)).

18 Ibid reg 17E(4) (as substituted: see note 16 supra).

19 Ie in accordance with ibid reg 17F(4) (as added): see note 17 supra.

20 Ibid reg 17E(5) (as substituted: see note 16 supra).

21 Ibid reg 17E(6) (as substituted: see note 16 supra).

22 Ibid reg 17E(7) (as substituted: see note 16 supra).

23 Ibid reg 17G (as added: see note 2 supra).

24 Ibid reg 17H(1) (as added: see note 2 supra).

25 Ibid reg 17H(2) (as added: see note 2 supra).

26 Ibid reg 17H(3) (as added: see note 2 supra).

27 Ie the Building Regulations 2000, SI 2000/2531 (as amended): see the text and notes 1-26 supra; para 657 post; and BUILDING.

28 Ie the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991: see PARA 656 post.

29 Building Regulations 2000, SI 2000/2531, reg 17I (as added: see note 2 supra).

UPDATE

655 Energy performance of buildings generally

NOTE 7--SI 2000/2531 reg 20D amended: SI 2008/2363.

NOTE 10--Definition of 'fixed building services' in SI 2000/2531 reg 2(1) amended: SI 2009/1219.

TEXT AND NOTES 14-16--SI 2000/2531 reg 17E(2) amended, reg 17E(3) substituted: SI 2008/2363.

TEXT AND NOTES 14, 15--SI 2000/991 Sch 1 further amended: SI 2007/3302, SI 2008/647.

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656. Energy performance of buildings; certificates and inspections.

Where a building¹ is to be sold or rented out, the relevant person² must make available free of charge a valid energy performance certificate³ to any prospective buyer or tenant⁴ at the earliest opportunity and in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of:

- 269 (1) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or
- 270 (2) in the case of a person who makes a request to view the building, the time at which the person views the building⁵.

This does not, however, apply if the relevant person believes on reasonable grounds that the prospective buyer or tenant:

- 271 (a) is unlikely to have sufficient means to buy or rent the building;
- 272 (b) is not genuinely interested in buying or renting a building of a general description which applies to the building; or
- 273 (c) is not a person to whom the relevant person is likely to be prepared to sell or rent out the building⁶.

The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant⁷. An energy performance certificate must be given or made available to a prospective buyer or tenant at any time before the construction of the building has been completed⁸.

Where a building is to be sold or rented out in circumstances where there is a statutory duty to have a home information pack⁹, then if written particulars¹⁰ about the building are prepared for the purpose of providing information about the building to persons who may be interested in buying or renting the building and the written particulars are given to such a person by the relevant person, or by another person on his behalf, the person giving the particulars must ensure either that the particulars include the asset rating of the building expressed in the required way¹¹ or that a copy of an energy performance certificate for the building is attached to the particulars¹².

The above provisions do not apply in prescribed circumstances where the building is suitable for demolition and redevelopment¹³.

Subject to certain exceptions¹⁴, when a building to which building regulations do not apply is constructed, the relevant person must, no later than five days after the construction work has been completed, give to the owner of the building an energy performance certificate for the building¹⁵.

Where a relevant person is under a duty¹⁶ to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report, that is, a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate¹⁷.

It is sufficient to give or make available a copy of a valid energy performance certificate¹⁸ and if the recipient consents, this may be done electronically¹⁹. Information from an energy performance certificate, a recommendation report, or a copy of either of them, may only be disclosed in prescribed circumstances²⁰.

Provision is also made with regard to display energy certificates²¹ for larger buildings²² occupied by public authorities and by institutions providing public services to a large number of persons and which are frequented by such persons²³ and with regard to the inspection of air-conditioning systems²⁴.

The Secretary of State must maintain one or more registers of the following documents:

- 274 (i) energy performance certificates and recommendation reports;
- 275 (ii) display energy certificates; and
- 276 (iii) advisory reports²⁵.

Where an energy assessor issues any of those documents he must ensure that it, and the data which was used to calculate any asset rating or operational rating in it, is entered onto the relevant register before he gives it to the person who requested that he issue it²⁶. Each document entered onto the register must be registered under a unique reference number and must not be altered once registered²⁷. Any document or data entered onto the register must be kept on the register for a period of at least 20 years beginning on the date on which it is entered onto the register²⁸. Any document or data so entered may only be disclosed by the keeper of the register if he is authorised²⁹ to do so³⁰.

Where the relevant regulations³¹ impose a duty on a person to make available, give or display an energy performance certificate or a display energy certificate in relation to a building, or to ensure an air-conditioning system is inspected, it is the duty of every person with an interest in, or in occupation of, the building to allow such access to any energy assessor appointed by the above-mentioned person ('the responsible person') as is reasonably necessary to inspect the building for the purposes of:

- 277 (A) preparing an energy performance certificate and recommendation report;
- 278 (B) preparing a display energy certificate or advisory report; or
- 279 (C) inspecting an air-conditioning system;

and to co-operate with the responsible person so far as is reasonably necessary to enable him to comply with that duty³².

Enforcement of these provisions is dealt with elsewhere in this work³³.

1 'Building' means a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of a building which has been designed or altered to be used separately: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 2(1). Subject to reg 4, and notwithstanding the Building Act 1984 s 4 (as amended) (prospectively repealed), the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991 (as amended), other than reg 8, apply to all buildings including buildings which are exempt from building regulations by virtue of that provision: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 1(2). As to their application to the Crown see reg 49. Regulations 5-14 (as amended) do not, however, apply to (1) buildings which are used primarily or solely as places of worship; (2) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; (3) stand-alone buildings with a total useful floor area of less than 50 square metres which are not dwellings: reg 4(1). 'Dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling: reg 2(1).

2 'Relevant person' means (1) in relation to a building which is to be sold, the seller; (2) in relation to a building which is to be rented out, the prospective landlord; (3) in relation to a building in circumstances where

reg 9 (construction of Crown and statutory undertakers' buildings: see the text and notes 14-15 *infra*) applies, the person responsible for carrying out the construction work; and (4) in relation to an air-conditioning system, the person who has control of the operation of the system: *ibid* reg 2(1). 'Air-conditioning system' means a combination of all the components required to provide a form of air treatment in which the temperature is controlled or can be lowered, and includes systems which combine such air treatment with the control of ventilation, humidity and air cleanliness: reg 2(1).

3 'Energy performance certificate' means a certificate which complies with *ibid* reg 11(1) or with the Building Regulations 2000, SI 2000/2531, reg 17E (as substituted) (see PARA 655 *ante*): Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 2(1). An energy performance certificate must (1) express the asset rating of the building in a way approved by the Secretary of State under the Building Regulations 2000, SI 2000/2531, reg 17A (as substituted) (see PARA 655 *ante*); (2) include a reference value such as a current legal standard or benchmark; (3) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and (4) include the following information: (a) the reference number under which the certificate has been registered in accordance with reg 31 (see the text and notes 25-28 *infra*); (b) the address of the building; (c) an estimate of the total useful floor area of the building; (d) the name of the energy assessor who issued it; (e) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address; (f) the date on which it was issued; and (g) the name of the approved accreditation scheme of which the energy assessor is a member: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 11(1). A certificate which complies with the Building Regulations 2000, SI 2000/2531, reg 17E (as substituted) is also an energy performance certificate: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 11(2). Subject to reg 11(4), an energy performance certificate is only valid for the purposes of Pt 2 (regs 4-14) (as amended) if it was issued no more than ten years before the date on which it is made available and no other energy performance certificate for the building has since been obtained by or provided to the relevant person: reg 11(3). If a building is to be sold or rented out in circumstances where the Housing Act 2004 s 155(1) (duty to have a home information pack) or s 159(2) (estate agent's duty to have a home information pack) imposes a duty on any person in relation to that building, an energy performance certificate for the building is only valid for these purposes if it was issued no earlier than the date that falls 12 months before the first point of marketing of the building: see the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 11(4), (5) (respectively amended and substituted by substituted by SI 2007/1669). An energy performance certificate must not contain any information or data, (except for the address of the building, from which a living individual (other than the energy assessor or his employer) can be identified: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 11(6) (as so amended). Certification for apartments or units designed or altered for separate use in blocks may be based (i) except in the case of a dwelling, on a common certification of the whole building for blocks with a common heating system; or (ii) on the assessment of another representative apartment or unit in the same block: reg 11(7). Where a block with a common heating system is divided into parts designed or altered for separate use and one or more, but not all, of the parts are dwellings, certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings: reg 11(8). 'Asset rating' means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of a building, calculated according to the methodology approved by the Secretary of State pursuant to the Building Regulations 2000, SI 2000/2531, reg 17A (as substituted) (see PARA 655 *ante*): Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 2(1).

For these purposes, 'energy assessor' means an individual who is a member of an accreditation scheme; and 'accreditation scheme' means a scheme approved by the Secretary of State in accordance with either reg 25, or with the Building Regulations 2000, SI 2000/2531, reg 17F (as added) (see PARA 655 *ante*): Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 2(1). As to accreditation see reg 25; as an energy assessor's duty to disclose certain connections see reg 26; and as to the duty of care owed by energy assessors see reg 27. Any person may, for the purpose of complying with any duty imposed by the 2007 Regulations, copy or issue a copy of any document produced by an energy assessor: reg 28.

4 A person becomes a prospective buyer or tenant in relation to a building when he (1) requests any information about the building from the relevant person or his agent for the purpose of deciding whether to buy or rent the building; (2) makes a request to view the building for the purpose of deciding whether to buy or rent the building; or (3) makes an offer, whether oral or written, to buy or rent the building: *ibid* reg 3.

5 *Ibid* reg 5(1), (2).

6 *Ibid* reg 5(3). Nothing in reg 5(3) authorises the doing of anything which constitutes an unlawful act of discrimination: reg 5(4).

7 *Ibid* reg 5(5).

8 *Ibid* reg 4(2).

9 le where a duty under the Housing Act 2004 s 155(1) (duty to have a home information pack) or s 159(2) (estate agent's duty to have a home information pack) applies to any person in relation to that building.

10 For these purposes, 'written particulars' means any written description of the property which includes at least two of the following: (1) a photograph of the building or any room in the building; (2) a floor plan of the building; or (3) a description of the size of the rooms in the building; and a reference to giving particulars includes a reference to giving or making available particulars electronically: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 6(3).

11 le the way required by ibid reg 11(1)(a): see note 3 head (1) *supra*.

12 Ibid reg 6(1), (2).

13 See ibid reg 7.

14 Ibid reg 9(2) does not apply to (1) buildings which are exempt from building regulations by virtue of the Building Regulations 2000, SI 2000/2531, reg 9 (as amended) (exempt building and work: see BUILDING vol 4(2) (2002 Reissue) PARA 313); (2) buildings which are used primarily or solely as places of worship; (3) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; and (4) stand-alone buildings with a total useful floor area of less than 50 square metres which are not dwellings: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 9(1).

15 Ibid reg 9(2).

16 le under ibid reg 5(2), 5(5) or 9(2).

17 Ibid reg 10(1), (2).

18 See ibid reg 12.

19 See ibid reg 13.

20 See ibid reg 14.

21 'Display energy certificate' means a certificate which complies with ibid reg 17: reg 2(1). A display energy certificate must (1) subject to reg 18, express the operational rating and the asset rating of the building in ways approved by the Secretary of State under the Building Regulations 2000, SI 2000/2531, reg 17A (as substituted); (2) show the operational ratings for the building which were expressed in any certificates displayed by the occupier during the two years before the nominated date; (3) include a reference value such as a current legal standard or benchmark; (4) be issued by an energy assessor who is accredited to produce display energy certificates for that category of building; (5) include the following information; (a) the reference number under which the certificate has been registered in accordance with reg 31 (as amended) (see the text and notes 25-28 *infra*); (b) the address of the building; (c) an estimate of the total useful floor area of the building; (d) the name of the energy assessor who issued it; (e) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address; (f) the date on which it was issued; (g) the nominated date; and (h) the name of the approved accreditation scheme of which the energy assessor is a member: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 17. There are prescribed exemptions with regard to changes in occupier etc: see reg 18. 'Operational rating' means a numeric indicator of the amount of energy consumed during the occupation of the building over a period of 12 months (unless reg 18(4) applies) ending no earlier than three months before the nominated date, calculated according to the methodology approved by the Secretary of State for the purposes of the Building Regulations 2000, SI 2000/2531, reg 17A (as substituted); and 'nominated date', in relation to a display energy certificate, means a date no later than three months after the end of the period over which the operational rating is calculated, which is nominated by the energy assessor who issued the certificate: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 15.

22 le buildings with a total useful floor area over 1,000 square metres.

23 See the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 16(1). Except where reg 18(3) applies, on and after 6 April 2008 every occupier of any building to which reg 16 applies must (1) have in its possession or control at all times a valid advisory report; and (2) display at all times a valid display energy certificate in a prominent place clearly visible to the public: reg 16(2). A display energy certificate is valid for a period of 12 months beginning with the nominated date: reg 16(3). An advisory report is a report issued by an energy assessor after his assessment of the building, which

contains recommendations for improvement of the energy performance of the building: reg 19. It is valid for a period of seven years beginning with the date it is issued: reg 16(4).

24 See *ibid* Pt 4 (regs 20-24).

25 *Ibid* reg 31(1).

26 *Ibid* reg 31(2) (amended by SI 2007/1669). The keeper of the register may charge a fee of £1.15 for entering any document on the register: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 32. 'Keeper of the register' means the Secretary of State or the person keeping a register on the Secretary of State's behalf: reg 30.

27 *Ibid* reg 31(3).

28 *Ibid* reg 31(4).

29 Is authorised by *ibid* Pt 6 (regs 30-37) (as amended). As to authorised disclosure to (1) to a person making a request accompanied by a reference number see reg 34; (2) to an approved accreditation scheme operator see reg 35; (3) to enforcement authorities see reg 36; and (4) to the Secretary of State see reg 37.

30 See *ibid* reg 33.

31 Is the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991 (as amended): see the text and notes 1-30 *supra*.

32 *Ibid* reg 50(1), (2).

33 See *ibid* Pt 7 (regs 38-48); and BUILDING.

UPDATE

656 Energy performance of buildings; certificates and inspections

NOTES-- Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--SI 2000/2531 reg 2(2C) added: SI 2009/1219.

NOTE 3--SI 2007/991 reg 11(4) further amended: SI 2008/2363. See also Home Information Pack (No 2) Regulations 2007, SI 2007/1667 (amended by SI 2007/3301, SI 2008/572, SI 2008/898, SI 2008/1266, SI 2008/2363, SI 2008/3107, SI 2009/34).

NOTE 20--SI 2007/991 reg 14 amended: SI 2008/647, SI 2008/2363, SI 2009/1900.

NOTE 21--SI 2007/991 reg 17 amended: SI 2008/2363. SI 2007/991 reg 18 amended: SI 2007/3302.

NOTE 23--Reference to 6 April 2008 now to 1 October 2008: SI 2007/991 reg 16(2) (amended by SI 2007/3302).

TEXT AND NOTE 26--SI 2007/991 reg 31(2) substituted: SI 2008/2363.

NOTE 26--SI 2007/991 reg 32 substituted: SI 2008/647.

NOTE 29--SI 2007/991 reg 36 amended: SI 2008/647. SI 2007/991 reg 37 amended: SI 2009/1900. As to further provision concerning disclosure see SI 2007/991 regs 34A, 35A, 35B, 36A (all added by SI 2008/2363; reg 35B substituted by SI 2009/1900).

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657. Conservation of fuel and power in buildings.

Building work¹ must be carried out so that it complies with the following requirements². Reasonable provision must be made for the conservation of fuel and power in buildings³ by:

- 280 (1) limiting heat gains and losses:
19
 - 29. (a) through thermal elements⁴ and other parts of the building fabric; and
 - 30. (b) from pipes, ducts and vessels used for space heating, space cooling and hot water services⁵;
- 20
 - 281 (2) providing and commissioning energy efficient fixed building services⁶ with effective controls⁷; and
 - 282 (3) providing to the owner sufficient information about the building, the fixed building services and their maintenance requirements so that the building can be operated in such a manner as to use no more fuel and power than is reasonable in the circumstances⁸.

Where there is a change to a building's⁹ energy status¹⁰, such work, if any, must be carried out as is necessary to ensure that the building complies with the applicable requirements of heads (1) to (3) above¹¹.

Not later than six months after 21 August 2006¹², the Secretary of State was to lay before Parliament a report on what, if any, steps he had taken during the reporting period¹³, or which he proposed to take, with a view to securing a greater incidence of compliance with relevant provisions¹⁴ of building regulations¹⁵. He may from time to time lay further such reports before Parliament¹⁶.

The enforcement of, and exemptions from, building regulations are dealt with elsewhere in this work¹⁷.

1 For the meaning of 'building work' see the Building Regulations 2000, SI 2000/2531, reg 3 (as amended); and BUILDING.

2 See *ibid* reg 4(1), (1A) (respectively amended and added by SI 2006/652). See also the Building Regulations 2000, SI 2000/2531, reg 6(1) (amended for these purposes by SI 2006/652).

3 For the meaning of 'building' see PARA 655 note 2 *ante*.

4 'Thermal element' means a wall, floor or roof (but does not include windows, doors, roof windows or roof lights) which separates a thermally conditioned part of the building ('the conditioned space') from (1) the external environment (including the ground); or (2) in the case of floors and walls, another part of the building which is either (a) unconditioned; (b) an extension falling within the Building Regulations 2000, SI 2000/2531, Sch 2 Class VII; or (c) where this provision applies, conditioned to a different temperature: reg 2(2A) (reg 2(2A), (2B) added by SI 2006/652). Head (c) *supra* only applies to a building which is not a dwelling, where the other part of the building is used for a purpose which is not similar or identical to the purpose for which the conditioned space is used: Building Regulations 2000, SI 2000/2531, reg 2(2B) (as so added). 'Thermal element' includes all parts of the element between the surface bounding the conditioned space and the external environment or other part of the building as the case may be: reg 2(2A) (as so added). For the meaning of 'dwelling' see PARA 655 note 15 *ante*.

Where a person intends to renovate a thermal element, such work must be carried out as is necessary to ensure that the whole thermal element complies with the requirements of Sch 1 Pt L1(a)(i) (see head (1)(a) in the text); and where a thermal element is replaced, the new thermal element must comply with those requirements: reg 4A(1), (2) (added by SI 2006/652).

5 Building Regulations 2000, SI 2000/2531, Sch 1 Pt L1(a) (Sch 1 Pt L substituted by SI 2006/652). In the case of the erection of a building in relation to which the Building Regulations 2000, SI 2000/2531, Sch 1 Pt L1(a) (as substituted) imposes a requirement, the person carrying out the work must, for the purpose of ensuring compliance with reg 17C (as added) (see PARA 655 ante) and with Sch 1 Pt L1(a)(i) (as added) (see head (1)(a) in the text): (1) ensure that: (a) pressure testing is carried out in such circumstances as are approved by the Secretary of State; and (b) the testing is carried out in accordance with a procedure approved by the Secretary of State; and (2) subject to reg 20B(5) (as added), give notice of the results of the testing to the local authority: see reg 20B(1), (2) (reg 20B added by SI 2006/652). That notice must (i) record the results and the data upon which they are based in a manner approved by the Secretary of State; and (ii) be given to the local authority not later than seven days after the final test is carried out: Building Regulations 2000, SI 2000/2531, reg 20B(3) (as so added). A local authority is authorised to accept, as evidence that the requirements of head (1)(b) supra have been satisfied, a certificate to that effect by a person who is registered by the British Institute of Non-destructive Testing in respect of pressure testing for the air tightness of buildings: reg 20B(4) (as so added). Where such a certificate contains the information required by reg 20B(3)(a) (as added) (see head (i) supra), reg 20(2)(b) (as added) (see head (2) supra) does not apply: reg 20B(5) (as so added). As to the Secretary of State see PARA 601 note 1 ante.

6 For the meaning of 'fixed building services' see PARA 655 note 10 supra.

7 Building Regulations 2000, SI 2000/2531, Sch 1 Pt L1(b) (as substituted: see note 5 supra). In the case of building work in relation to which Sch 1 Pt L1(b) imposes a requirement, except where the work consists only of work described in Sch 2B (as added and amended), the person carrying out the work must, for the purpose of ensuring compliance with Sch 1 Pt L1(b) (as substituted), give to the local authority a notice confirming that the fixed building services have been commissioned in accordance with a procedure approved by the Secretary of State: reg 20C(1) (added by SI 2006/652). The notice must be given to the local authority (1) not later than the date on which the notice required by reg 15(4) (as amended) (completion notices) is required to be given; or (2) where reg 15(4) (as amended) does not apply, not more than 30 days after completion of the work: reg 20C(2) (as so added).

8 Ibid Sch 1 Pt L1(c) (as substituted: see note 5 supra).

9 For these purposes, 'building' means the building as a whole or parts of it that have been designed or altered to be used separately: ibid reg 4B(2) (reg 4B added by SI 2006/652).

10 'Change to a building's energy status' means any change which results in a building becoming a building to which the energy efficiency requirements of the Building Regulations 2000, SI 2000/2531 (as amended) apply, where previously it was not; and 'energy efficiency requirements' means the requirements of regs 4A, 17C-17E (as added and amended) (see note 4 supra; and PARA 655 ante) and Sch 1 Pt L (as substituted): reg 2(1) (definitions added by SI 2006/652; definition of 'energy efficiency requirements' amended by SI 2007/991, with effect from 1 January 2008 in relation to dwellings and 6 April 2008 for remaining purposes).

11 Ibid reg 4B(1) (as added: see note 9 supra).

12 In six months after the date on which the Climate Change and Sustainable Energy Act 2006 s 14 came into force: see s 28(1). The relevant report was published on 21 February 2007: see *Monitoring the Sustainability of Buildings* (Department for Communities and Local Government, 06 BD 04405). At the date at which this title states the law, that report was accessible at www.communities.gov.uk.

13 'Reporting period' means the period specified in the report as the period to which the report relates: Climate Change and Sustainable Energy Act 2006 s 14(3).

14 'Relevant provision', in relation to building regulations, means a provision of building regulations which is in force at any time during the reporting period and which, in the opinion of the Secretary of State, was made (1) for the purpose of furthering the conservation of fuel and power, or otherwise in connection with the use of fuel and power; or (2) for the purpose of reducing emissions of greenhouse gases: ibid s 14(3).

15 See ibid s 14(1)(a), (2). As to the relevant report see note 12 supra. At the date at which this title states the law, that report was accessible at www.communities.gov.uk.

16 Ibid s 14(1)(b).

17 See generally BUILDING.

UPDATE

657 Conservation of fuel and power in buildings

NOTE 2--SI 2000/2531 reg 6(1) further amended: SI 2009/1219.

NOTE 7--SI 2000/2531 reg 20C(1) amended: SI 2007/3384.

NOTE 10--Definition of 'energy efficiency requirements' further amended, having effect between 6 April 2008 and 1 October 2008 in relation to specified buildings: SI 2007/3302.

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B. RESIDENTIAL ACCOMMODATION

658. Energy efficiency and conservation.

The Secretary of State¹ must designate at least one energy efficiency aim² in relation to residential accommodation³, and may at any time after such designation designate a further energy efficiency aim or aims⁴. He must take reasonable steps to achieve any aim so designated⁵. In relation to England, he must take reasonable steps to ensure that by 2010 the general level of energy efficiency of residential accommodation in England has increased by at least 20 per cent compared with the general level of such energy efficiency in 2000⁶.

As part of the policy of encouraging households to reduce energy consumption at home, the Home Energy Conservation Act 1995 allows for the drawing up of local energy conservation reports in relation to residential accommodation⁷.

Under the Social Security Act 1990, grants may be payable for the improvement of energy conservation in certain dwellings⁸.

The relevant authority⁹ must have prepared and published a strategy setting out the authority's policies for ensuring, by means including the taking of measures to ensure the efficient use of energy, that as far as reasonably practicable persons do not live in fuel poverty¹⁰. Winter fuel payments are made out of the social fund to any person who, in the third week of September in any year, is aged 60 or over, is ordinarily resident in Great Britain and satisfies certain specified conditions and exclusions¹¹.

All these matters are dealt with in more detail elsewhere in this work¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'energy efficiency aim' see HOUSING vol 22 (2006 Reissue) PARA 673 note 1.

3 For the meaning of 'residential accommodation' see HOUSING vol 22 (2006 Reissue) PARA 673 note 2.

4 See the Sustainable Energy Act 2003 s 2; and HOUSING vol 22 (2006 Reissue) PARA 673.

5 See *ibid* s 2(4); and HOUSING vol 22 (2006 Reissue) PARA 673. For similar provision in relation to Wales see s 3.

6 See the Housing Act 2004 s 217; and HOUSING vol 22 (2006 Reissue) PARA 673.

7 See the Home Energy Conservation Act 1995 ss 1-9 (as amended); and HOUSING vol 22 (2006 Reissue) PARA 680 et seq. Energy conservation authorities in England which are 'excellent' authorities are not under a duty to submit reports under s 2 (as amended): see the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 4. As from a day to be appointed under the Sustainable Energy Act 2003 s 9, the Secretary of State (in relation to England) and the National Assembly for Wales or the Welsh Ministers (in relation to Wales) have power to give energy efficiency directions to energy conservation authorities (within the meaning of the Home Energy Conservation Act 1995 s 1 (ie local housing authorities: see s 1(1))); and with effect from the giving of such a direction, the 1995 Act will cease to apply in relation to each such authority: see the Sustainable Energy Act 2003 s 4. At the date at which this title states the law, s 4 was not in force. As to the Assembly and the Welsh Ministers see PARA 601 note 1 ante.

8 See the Social Security Act 1990 s 15 (as amended); the Home Energy Efficiency Scheme (England) Regulations 2005, SI 2005/1530 (as amended); the Home Energy Efficiency Schemes (Wales) Regulations 2007, SI 2007/375; and HOUSING vol 22 (2006 Reissue) PARAS 675-676.

9 See the Secretary of State in relation to England and the National Assembly for Wales or the Welsh Ministers in relation to Wales.

10 See the Warm Homes and Energy Conservation Act 2000 s 2 (prospectively amended by the Consumers, Estate Agents and Redress Act 2007 ss 63(1), 64, Sch 7 para 21, Sch 8, as from a day to be appointed under s 66(2)); and HOUSING vol 22 (2006 Reissue) 674.

11 See the Social Fund Winter Fuel Payment Regulations 2000, SI 2000/729, reg 2 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 231.

12 See HOUSING vol 22 (2006 Reissue) 673 et seq. See also SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 231.

UPDATE

658 Energy efficiency and conservation

NOTE 7--SI 2005/157 art 4 amended: SI 2009/714.

NOTE 10--Day appointed is 1 October 2008: SI 2008/2550.

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(ii) Appliances

659. Ecodesign of boilers, refrigerators and ballasts for fluorescent lighting.

The Ecodesign for Energy-Using Products Regulations 2007¹, which came into force on 11 August 2007², prohibit the placing on the market of a boiler or an appliance³, a refrigerator appliance⁴ or a ballast for fluorescent lighting⁵ (a 'listed product') unless it conforms to the prescribed product requirements⁶. A manufacturer of a listed product must assess that the product conforms to the product requirements; and provision is made for the conformity assessment procedures and for affixing the CE conformity marking⁷. Similar requirements are imposed on authorised representatives and on importers of listed products⁸. Where a listed product, or the packaging or documentation that accompanies that product, bears the CE conformity marking, the listed product is presumed to conform to the product requirements for that product⁹. Where a manufacturer, authorised representative or importer of a listed product becomes aware that he has put a listed product on the market which does not conform to the product requirements, he must either take steps to bring it into conformity as soon as possible, or, if this is not possible, he must withdraw it from the market¹⁰.

The affixing of markings on listed products that may mislead a person to believe that they conform to the product requirements is prohibited¹¹.

There are prescribed requirements as to the documentation that a manufacturer, authorised representative or importer of a listed product must keep¹².

The Secretary of State¹³ may approve persons as notified bodies for the purposes of determining, within the conformity assessment procedure or procedures applicable to a listed product, that the product conforms to the appropriate product requirements¹⁴.

Enforcement of the 2007 Regulations is the responsibility of local weights and measures authorities in England and Wales¹⁵.

Contravention of certain provisions of the regulations is an offence¹⁶. Where a person is convicted of such an offence, the court may make a remediation order in respect of him¹⁷.

1 I.e. the Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037: see the text and notes 2-17 *infra*. Those regulations implement European Parliament and EC Council Directive 2005/32 (OJ L191, 22.7.2005, p 29) establishing a framework for the setting of eco-design requirements for energy-using products. See further the Directives mentioned in note 9 *infra*.

2 Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, reg 1.

3 For these purposes, 'a boiler' means the combined boiler body-burner unit which (1) is designed to transmit to water the heat released from burning; (2) is fired by liquid or gaseous fuels; and (3) has a rated output of no less than 4kW and no more than 400kW; and 'an appliance' means (a) the boiler body designed to have a burner fitted; or (b) the burner designed to be fitted to a boiler body: *ibid* Sch 1 Pt 2 para 1. The following are not within that definition: (i) a boiler capable of being fired by fuels other than liquid or gaseous fuels, including solid fuels; (ii) equipment for the instantaneous preparation of hot water; (iii) a boiler designed to be fired by fuels the properties of which differ appreciably from liquid or gaseous fuels commonly marketed; (iv) a cooker or an appliance designed mainly to heat the premises in which it is installed and, as a subsidiary function, to supply hot water for central heating and sanitary hot water; (v) an appliance with a rated output of less than 6kW using gravity circulation and designed solely for the production of stored sanitary hot water; (vi) a boiler manufactured on a one-off basis; or (vii) cogeneration units as defined in European Parliament and EC

Council Directive 2004/8 (OJ L52, 21.2.2004, p 50) on the promotion of cogeneration based on a useful heat demand in the internal energy market: Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, reg 3(1), Sch 1 Pt 2 para 2.

4 For these purposes, 'a refrigerator appliance' means (1) a refrigerator; (2) a frozen food storage cabinet; (3) a food freezer; or (4) a combination of any of head (1), head (2) or head (3) supra, for household use supplied by mains electricity: *ibid* Sch 1 Pt 3 para 1. The following are not within that definition: (a) a refrigerator appliance manufactured on a one-off basis; (b) a refrigerator appliance capable of using energy sources apart from mains electricity, in particular accumulators; or (c) a refrigerator appliance working on the absorption principle: Sch 1 Pt 3 para 2.

5 For these purposes, 'a ballast for fluorescent lighting' means a ballast operated by mains electricity and used for fluorescent lighting, as defined in European Standard EN 50294 point 3.4 (ie the Standard issued with that designation by the European Committee for Electromechanical Standardisation): Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, reg 2(1), Sch 1 Pt 4 para 1. The following are not within that definition: (1) a ballast integrated within a lamp; (2) a ballast (a) designed specifically for a luminaire to be mounted in furniture; (b) which forms a non-replaceable part of the luminaire; and (c) which cannot be tested separately from the luminaire, according to European Standard 60920 point 2.1.3 (ie the Standard issued with that designation by the European Committee for Electromechanical Standardisation); or (3) a ballast to be exported from the Community either as a single component or incorporated in a luminaire: Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, reg 2(1), Sch 1 Pt 4 para 2.

6 *Ibid* reg 3(1), Sch 1 Pt 1. That restriction does not apply to certain displays of listed products: see reg 6. As to product requirements see reg 3(2), Sch 2.

7 See *ibid* reg 4, Schs 3-6.

8 See *ibid* reg 5.

9 See *ibid* reg 7(1). Unless the contrary is proved, where harmonised standards have been applied to a listed product, and the reference numbers of those standards have been published in the Official Journal, the listed product is presumed to comply with the requirements of the implementing measure to the extent that the harmonised standards relate to those requirements: reg 7(2). Unless the contrary is proved, where a listed product has been awarded a Community eco-label, the listed product is presumed to comply with the eco-design requirements for that product to the extent that the Community eco-label relates to those requirements; and for these purposes, 'Community eco-label' means (1) a label that meets the requirements of European Parliament and EC Council Regulation 1980/2000 (OJ L237, 21.9.2000, p 1) on a revised Community eco-label award scheme; or (2) a label which the Commission determines meets equivalent conditions for such a label: Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, reg 7(3), (4). 'Implementing measure' in relation to: (a) a boiler or an appliance, means EEC Council Directive 92/42 (OJ L167, 22.6.92, p 17) (as amended) on efficiency requirements for new hot water boilers fired with liquid or gaseous fuels; (b) a refrigerator appliance, means European Parliament and EC Council Directive 96/57 (OJ L236, 18.9.96, p 36) (as amended) on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof; (c) a ballast for fluorescent lighting, means European Parliament and EC Council Directive 2000/55 (OJ L279, 1.11.2000, p 33) on energy efficiency requirements for ballasts for fluorescent lighting: Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, Sch 1 Pt 1 para 2.

10 See *ibid* reg 8.

11 See *ibid* reg 9.

12 See *ibid* reg 10.

13 As to the Secretary of State see PARA 601 note 1 ante.

14 See the Ecodesign for Energy-Using Products Regulations 2007, SI 2007/2037, regs 11-17, Schs 7-8.

15 See *ibid* regs 2(1), 18-22, Sch 9.

16 See *ibid* regs 23-26.

17 See *ibid* reg 27.

UPDATE

659 Ecodesign of boilers, refrigerators and ballasts for fluorescent lighting

NOTES--SI 2007/2037 regs 21, 23, 25 substituted; regs 8, 16, 18, 20, 22, Schs 1-3, 5, 9 amended; regs 6A, 27A added: SI 2009/2560.

NOTE 1--Directive 2005/32 replaced: European Parliament and EC Council Directive 2009/125 (OJ L285, 31.10.2009, p 10).

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660. Energy consumption by household appliances.

A number of European Directives require that the consumption of energy and other resources by household appliances is to be indicated by labelling and standard product information¹. In the exercise of his powers under the European Communities Act 1972², the Secretary of State³ has made regulations implementing those Directives in respect of:

- 283 (1) combined washer-driers⁴;
- 284 (2) dishwashers⁵;
- 285 (3) household air conditioners⁶;
- 286 (4) household electric ovens⁷;
- 287 (5) household refrigerators and freezers⁸;
- 288 (6) lamps⁹;
- 289 (7) tumble driers¹⁰; and
- 290 (8) washing machines¹¹.

Those regulations do not, in general, apply to secondhand appliances¹²; but where certain secondhand appliances which are sold or displayed by a dealer have energy efficiency labels or are accompanied with energy information notices, the dealer is required to comply with any obligations imposed on him by the relevant regulations¹³.

Enforcement of the regulations is the responsibility of local weights and measures authorities¹⁴.

1 See the Directives cited in notes 4-11 infra.

2 See the European Communities Act 1972 s 2(2).

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Energy Information (Combined Washer-driers) Regulations 1997, SI 1997/1624 (amended by SI 2001/3142; SI 2003/1398), which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 96/60 (OJ L266, 18.10.96, p 1) implementing that parent Directive with regard to energy labelling of household combined washer-driers. Those regulations (1) require suppliers of mains electric household combined washer-driers to supply labels and tables of information (called information notices) with information about the energy consumption of those appliances (see the Energy Information (Combined Washer-driers) Regulations 1997, SI 1997/1624, regs 2-5, Schs 1, 2, 4); (2) provide that suppliers are deemed to consent to the information in labels and information notices being published (see reg 6); (3) make suppliers responsible for the accuracy of the information (see reg 7 (substituted by SI 2001/3142)); (4) require suppliers to establish technical documentation to enable the accuracy of the information to be assessed (see the Energy Information (Combined Washer-driers) Regulations 1997, SI 1997/1624, reg 8); (5) require dealers (as defined in reg 2) to attach the label to an appliance on display (see reg 9 (amended by SI 2001/3142)); (6) require similar information to be given where sales are by means of printed communications such as mail order catalogues (see the Energy Information (Combined Washer-driers) Regulations 1997, SI 1997/1624, reg 12 (as so amended), Schs 3, 4); (7) stop misleading information about energy consumption of the appliances being displayed (see reg 13); and (8) create criminal offences and contain other provisions on enforcement (see reg 14, Sch 5 (amended by SI 2001/3142; SI 2003/1398)).

5 See the Energy Information (Dishwashers) Regulations 1999, SI 1999/1676 (amended by SI 2001/3142; SI 2003/1398), which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 97/17 (OJ L118, 7.5.97, p 1) (as amended) implementing

that parent Directive with regard to energy labelling of household dishwashers. Those regulations (1) oblige suppliers (defined in the Energy Information (Dishwashers) Regulations 1999, SI 1999/1676, reg 2) to supply labels (which comply with Schs 1, 4) and information notices (which comply with Schs 2, 4) about the energy consumption of regulated dishwashers (as defined in reg 3) (see regs 4, 5); (2) provide that suppliers are deemed to consent to the publication of the information given on a label or in an information notice (see reg 6); (3) make suppliers responsible for the accuracy of the information (see reg 7) and require them to establish, before the dishwasher is placed on the Community market, technical documentation to enable the accuracy of the information to be assessed (see reg 8); (4) require dealers (as defined in reg 2), to attach a label to a regulated dishwasher displayed to end-users (see reg 9); (5) require dealers, where a regulated dishwasher is for sale by printed communication eg mail order or other long distance selling, to provide relevant information as determined in Schs 3, 4 (see reg 10 (amended by SI 2001/3142)); (6) prohibit the display of misleading information about energy consumption of regulated dishwashers (see the Energy Information (Dishwashers) Regulations 1999, SI 1999/1676, reg 11); and (7) contain provisions on offences, penalties and other matters of enforcement (see reg 12, Sch 5 (amended by SI 2001/3142; SI 2003/1398)).

6 See the Energy Information (Household Air Conditioners) (No 2) Regulations 2005, SI 2005/1726, which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 2002/31 (OJ L86, 3.4.2002, p 26) implementing that parent Directive with regard to energy labelling of household air-conditioners. Those regulations (1) apply to electric mains operated household air or water cooled air conditioners of specified types (see the Energy Information (Household Air Conditioners) (No 2) Regulations 2005, SI 2005/1726, reg 3), subject to certain exclusions (see reg 4); (2) require suppliers (defined in reg 2) to establish technical documentation before placing such air conditioners on the market (see regs 5, 6); (3) require suppliers to provide labels to dealers free of charge (see reg 7, Schs 1, 3); (4) require dealers (as defined in reg 2(2)) to attach such labels to regulated appliances (see reg 11); (5) require suppliers to provide free of charge an information sheet (see reg 8, Sch 2), which must be included in any product brochure where provided, or, in other cases, with any other information provided; (6) provide that suppliers are deemed to have consented to that information being published and that they have a duty to ensure the accuracy of such information (see regs 9, 10); (7) provide that certain information is to be provided in cases of distance selling (see reg 12); (8) make provision for translating certain terms into languages other than English (see reg 13); (9) prohibit the provision of misleading information relating to energy information (see reg 14) and (10) make provision with regard to enforcement (see reg 16, Sch 4). Unless there is evidence to the contrary, labels and information sheets are to be deemed to comply with the provisions of those regulations: reg 15.

7 See the Energy Information (Household Electric Ovens) Regulations 2003, SI 2003/751, which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 2002/40 (OJ L128, 15.5.2002, p 45) implementing that parent Directive with regard to energy labelling of household electric ovens. Those regulations (1) apply to mains operated household electric ovens including ovens which are part of larger appliances, but excluding microwave and certain other ovens (see the Energy Information (Household Electric Ovens) Regulations 2003, SI 2003/751, regs 3, 4); (2) require suppliers (as defined in reg 2) to supply labels (which comply with Schs 1 and 4) and information notices (which comply with Schs 2 and 4) about the energy consumption of those regulated household electric ovens (see regs 7, 8); (3) provide that suppliers are deemed to consent to the publication of the information given on a label or in an information notice (see reg 9); (4) make suppliers responsible for the accuracy of the information (see reg 10) and require them to establish, before the electric oven is placed on the Community market, technical documentation to enable the accuracy of the information to be assessed (see regs 5, 6); (5) require dealers (as defined in reg 2) to attach a label to a regulated household electric oven displayed to end-users (see reg 11); (6) require the dealer, where a regulated household electric oven is for sale by communication (as defined in reg 2), to provide relevant information as set out in Schs 3, 4 (see reg 12); (7) prohibit the display of misleading information about the energy consumption of regulated household electric ovens (see reg 14); (8) provide for the translation of certain terms into languages other than English (see reg 13, Sch 5); (9) provide for the presumption of compliance (reg 15); and (10) contain provisions on offences, penalties and other matters of enforcement (see reg 16, Sch 6).

8 See the Energy Information (Household Refrigerators and Freezers) Regulations 2004, SI 2004/1468, which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 94/2 (OJ L45, 17.2.94, p 1) (as amended) implementing that parent Directive with regard to energy labelling of household electric refrigerators, freezers and their combinations. Those regulations (1) apply to electric mains operated household electric refrigerators, freezers and their combinations, subject to certain exclusions (see the Energy Information (Household Refrigerators and Freezers) Regulations 2004, SI 2004/1468, regs 3, 4); (2) require suppliers (as defined in reg 2) to supply labels (which must comply with Schs 1, 4) free of charge to dealers and supply information sheets (which comply with Schs 2, 4, 5) giving information about the energy consumption of those appliances (see regs 7, 8); (3) make suppliers responsible for the accuracy of the information (see reg 9) and require them to establish, before the appliance is placed on the Community market, technical documentation to enable the accuracy of the information to be

assessed and to retain that information for a period of five years after the last appliance of a particular model is manufactured (see regs 5, 6); (4) provide that suppliers are deemed to consent to the publication of the information given on a label or in an information sheet (see reg 10); (5) require dealers (as defined in reg 2) to attach labels to displayed appliances displayed to end-users (see reg 11); (6) require a person offering an appliance for sale by way of a communication (as defined in reg 2(2)), to provide certain information to the potential purchaser as set out in Sch 3 (see reg 12); (7) prohibit the display of misleading information about the energy consumption of an appliance (see reg 13); (8) provide a presumption of compliance in respect of labels and information sheets (see reg 14); and (9) contain provisions on offences, penalties and other matters of enforcement. (see reg 15, Sch 6).

9 See the Energy Information (Lamps) Regulations 1999, SI 1999/1517 (amended by SI 2001/3142; SI 2003/1398), which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 98/11 (OJ L71, 10.3.98, p 1) implementing that parent Directive with regard to energy labelling of household lamps. Those regulations (1) apply to 'regulated lamps' as defined in the Energy Information (Lamps) Regulations 1999, SI 1999/1517, reg 2(1), subject to certain exclusions (see regs 2, 3); (2) require the suppliers of regulated lamps to print on the packaging of every regulated lamp a label in the form, and containing the information, indicated in Sch 1, except that where that is not possible because of the size of the packaging, the supplier may attach to the packaging of the lamp a label containing the relevant information (see reg 4); (3) require suppliers who provide product brochures to include in the brochures the information that would otherwise be displayed on the label; where a supplier does not provide a product brochure, he must supply with the lamp information equivalent to that which would have been provided on a label; and information supplied in either of these ways is referred to as an information notice (see reg 5); (4) provide that the supplier is deemed to consent to the publication of the information given in a label or information notice (see reg 6); (5) make the supplier solely responsible for the accuracy of the information given in labels and information notices, and for establishing technical documentation for the purpose of enabling the accuracy of that information to be assessed (see regs 7, 8); (6) require a dealer who displays a regulated lamp to ensure that the lamp or its packaging bears a label containing the appropriate Sch 1 information; but he is relieved of this duty if he provides the information as part of the display, eg on the shelf on which the lamps are displayed (see reg 9); (7) require a dealer who offers for sale a regulated lamp by mail order or in other circumstances in which potential purchasers cannot be expected to see the lamp to provide relevant information as determined in Schs 2, 3 (see reg 10); (8) prohibit the display of labels, marks, symbols and inscriptions relating to energy consumption which, although not complying with the regulations, would be taken to comply and would be likely to mislead or confuse (see reg 11); (9) provide for enforcement, offences, penalties (see reg 12, Sch 4 (as so amended)).

10 See the Energy Information (Tumble Driers) Regulations 1996, SI 1996/601 (amended by SI 2001/3142; SI 2003/1398), which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 95/13 (OJ L136, 21.6.95, p 28) (as amended) implementing that parent Directive with regard to energy labelling of household electric tumble driers. Those regulations (1) apply to household tumble driers which are electric mains operated and unable to use other energy sources, subject to certain exclusions (see the Energy Information (Tumble Driers) Regulations 1996, SI 1996/601, reg 3); (2) require suppliers to supply to dealers free of charge labels complying with Schs 1, 4 (see reg 4 (amended by SI 2001/3142)) and to supply information notices (see the Energy Information (Tumble Driers) Regulations 1996, SI 1996/601, reg 5, Schs 2, 4); (3) provide that suppliers are deemed to consent to the publication of the information given on a label or in an information notice (see reg 6); (4) make suppliers solely responsible for the accuracy of labels and information notices (see reg 7 (substituted by SI 2001/3142)); (5) require suppliers to establish technical documentation sufficient to enable the accuracy of the information contained in a label or information notice to be assessed (see the Energy Information (Tumble Driers) Regulations 1996, SI 1996/601, reg 8); (6) require dealers who display or offers for sale an appliance to attach a label to the outside front or top of the appliance so that the label remains clearly visible and not obscured whenever the appliance is displayed (see reg 9 (amended by SI 2001/3142)); (7) set out requirements in the case of distance selling (see the Energy Information (Tumble Driers) Regulations 1996, SI 1996/601, reg 12, Sch 3 (as so amended)); (8) prohibit the display of misleading information (see reg 13); and (9) make provision for enforcement and offences (see reg 13, Sch 5 (amended by SI 2001/3142; SI 2003/1398)).

11 See the Energy Information (Washing Machines) Regulations 1996, SI 1996/600 (amended by SI 1997/803; SI 2001/3142; SI 2003/1398), which implement EEC Council Directive 92/75 (OJ L297, 13.10.92, p 16) (as amended) on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and EC Commission Directive 95/12 (OJ L136, 21.6.95, p 1) (as amended) implementing that parent Directive with regard to energy labelling of household washing machines. Those regulations (1) apply to electric mains operated household washing machines unable to use other energy sources, subject to certain exclusions (see the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 3 (amended by SI 1997/803)); (2) require suppliers to supply to dealers free of charge labels complying with Schs 1, 4 (see reg 4 (amended by SI 2001/3142)) and to supply information notices (see the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 5, Schs 2, 4); (3) provide that suppliers are deemed to consent to the publication of the information given on a label or in an information

notice (see reg 6); (4) make suppliers solely responsible for the accuracy of labels and information notices (see reg 7 (substituted by SI 2001/3142)); (5) require suppliers to establish technical documentation sufficient to enable the accuracy of the information contained in a label or information notice to be assessed (see the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 8); (6) require dealers who display or offers for sale an appliance to attach a label to the outside front or top of the appliance so that the label remains clearly visible and not obscured whenever the appliance is displayed (see reg 9 (amended by SI 2001/3142)); (7) set out requirements in the case of distance selling (see the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 12, Sch 3 (as so amended)); (8) prohibit the display of misleading information (see reg 13); and (9) make provision for enforcement and offences (see reg 13, Sch 5 (amended by SI 2001/3142; SI 2003/1398)).

12 See eg the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 3(3)(a); the Energy Information (Lamps) Regulations 1999, SI 1999/1517, reg 3(2)(f); the Energy Information (Household Refrigerators and Freezers) Regulations 2004, SI 2004/1468, reg 4(1)(b).

13 See eg the Energy Information (Household Electric Ovens) Regulations 2003, SI 2003/751, reg 4(5); the Energy Information (Household Air Conditioners) (No 2) Regulations 2005, SI 2005/1726, reg 4(2).

14 See eg the Energy Information (Washing Machines) Regulations 1996, SI 1996/600, reg 2; the Energy Information (Lamps) Regulations 1999, SI 1999/1517, reg 2(1); the Energy Information (Household Refrigerators and Freezers) Regulations 2004, SI 2004/1468, reg 2(1).

UPDATE

660 Energy consumption by household appliances

TEXT AND NOTES--SI 1996/600, SI 1996/601, SI 1997/1624, SI 1999/1517, SI 1999/1676, SI 2003/751, SI 2004/1468 amended: SI 2008/1277, SI 2009/2559.

NOTE 6--SI 2005/1726 amended: SI 2009/2559.

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(6) TAXATION

(i) Climate Change Levy

A. INTRODUCTION

661. The charge to climate change levy.

A new tax known as 'climate change levy' was introduced by Schedule 6 to the Finance Act 2000¹ and is charged in accordance with that Schedule². The levy is under the care and management of the Commissioners for Revenue and Customs³ and is charged on taxable supplies⁴ of taxable commodities⁵. Any supply made before 1 April 2001 is, however, excluded from the levy⁶.

The following are⁷ taxable commodities for these purposes:

- 291 (1) electricity;
- 292 (2) any gas in a gaseous state that is of a kind supplied by a gas utility⁸;
- 293 (3) any petroleum gas, or other gaseous hydrocarbon, in a liquid state;
- 294 (4) coal and lignite;
- 295 (5) coke, and semi-coke, of coal or lignite;
- 296 (6) petroleum coke⁹.

The following are not taxable commodities:

- 297 (a) hydrocarbon oil or road fuel gas within the meaning of the Hydrocarbon Oil Duties Act 1979¹⁰;
- 298 (b) waste within the meaning of Part II¹¹ of the Environmental Protection Act 1990¹².

The Treasury may by regulations¹³ provide that a commodity of a description specified in the regulations is, or is not, a taxable commodity for these purposes¹⁴.

Levy is recoverable as a debt due to the Crown¹⁵. The Commissioners may by regulations make provision for securing continuity in the application of the relevant provisions of the Finance Act 2000 in cases where any business carried on by a person is transferred to another person as a going concern¹⁶.

1 See the Finance Act 2000 s 30(1).

2 Ibid s 30(1), Sch 6 para 1(1).

3 Ibid Sch 6 para 1(2) (Sch 6 amended throughout by virtue of the Commissioners for Revenue and Customs Act 2005 s 50).

4 Any supply of a taxable commodity is a taxable supply, subject to the provisions of the Finance Act 2000 Sch 6 Pt II (paras 4-24) (as amended) (see PARA 662 et seq post): Sch 6 para 2(2). References to a taxable supply include a supply that is deemed to be made under Sch 6 para 24 (as amended) (see PARA 670 post)

(subject to any exceptions provided for under Sch 6 para 21 (see PARA 668 post)) or under Sch 6 para 45A (as added) (see PARA 674 post): Sch 6 para 4(2)(b) (amended by the Finance Act 2007 s 23, Sch 2 paras 1, 2).

5 See the Finance Act 2000 Sch 6 para 2(1), (2).

6 Ibid Sch 6 para 10. Provision is made for the adjustment of contracts entered into before 1 April 2001: see Sch 6 para 142.

7 le subject to ibid Sch 6 para 3(2) and to regulations under Sch 6 para 3(3).

8 'Gas utility' means the holder of a licence under the Gas Act 1986 s 7A(1) (as substituted and amended) (supply licences: see PARA 807 post) or the corresponding Northern Ireland legislation, except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence (Finance Act 2000 Sch 6 paras 147, 150(3)); but this has effect subject to any direction under s 151(1) and any regulations under s 151(2) (Sch 6 para 150(4)). The Commissioners may by direction (a 'utility direction') make, in respect of a person (or persons) specified in the direction, provision authorised by Sch 6 para 151(3); and the Treasury may by regulations ('utility regulations') make, in respect of any person of a description specified in the regulations, provision so authorised; Sch 6 para 151(1), (2). The provision so authorised is provision for (1) a person who is an unregulated electricity supplier to be treated for levy purposes as being an electricity utility; (2) a person who is an unregulated gas supplier to be treated for levy purposes as being a gas utility; (3) a person who is an electricity utility to be treated for levy purposes as not being an electricity utility; (4) a person who is a gas utility to be treated for levy purposes as not being a gas utility: Sch 6 para 151(3). References in Sch 6 para 151(3) to provision for a person to be treated in a particular way for 'levy purposes' are to provision for him to be treated in that way for (a) the purposes of Sch 6 (as amended) (see PARA 662 et seq post); or (b) such of those purposes as are specified in the direction or regulations by which the provision is made: Sch 6 para 151(4). The power to make any provision by a utility direction or utility regulations may be exercised so that the provision applies in relation to a person only to an extent specified in, or determined under, the direction or regulations: Sch 6 para 151(5). A utility direction cannot take effect until it has been given by the Commissioners to each person in respect of whom it makes provision, and published by the Commissioners: Sch 6 para 151(6). Schedule 6 para 146(7)(b), (c) (see note 13 infra) applies to the power to make provision by a utility direction as to a power to make provision by regulations: Sch 6 para 151(7). For these purposes, 'unregulated electricity supplier' means a person who makes supplies of electricity and is not an electricity utility; and 'unregulated gas supplier' means a person who makes supplies of gas that is in a gaseous state and is of a kind supplied by a gas utility and is not a gas utility: Sch 6 para 151(8). 'Electricity utility' means the holder of a licence under the Electricity Act 1989 s 6(1)(d) (as substituted and amended) (supply licences: see PARA 1065 post) or under the corresponding Northern Ireland legislation, except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence (Finance Act 2000 Sch 6 paras 147, 150(1), (2)); but this has effect subject to any direction under Sch 6 para 151(1) and any regulations under Sch 6 para 151(2) (Sch 6 para 150(4)). As to the power to make regulations see further note 13 infra. Any such direction may be withdrawn or varied by a direction given in the same manner as the one withdrawn or varied: see Sch 6 para 145. Any direction required or authorised by or under Sch 6 (as amended) to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business: Sch 6 para 144(2).

An unregulated gas supplier (within the meaning of Sch 6 para 151(8)) is to be treated for all climate change levy purposes as being a gas utility (i) to the extent of any supplies he makes in relation to which he is in breach of a requirement to hold a gas supply licence; (ii) to the extent that any part of his supplies of gas fall within the exception provided for by the Gas Act 1986 Sch 2A para 5 (as added and amended; prospectively repealed) (exception to prohibition on unlicensed activities for supplies to very large consumers: see PARA 804 post): Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 7(1), (2). A holder of a gas supply licence (a) who receives supplies of gas in the course of acting otherwise than for purposes connected with the carrying on of activities authorised by that licence, is to be treated as being a gas utility for the purposes of the climate change levy treatment under the Finance Act 2000 Sch 6 para 6 (as amended) (see PARA 664 post) of the supplies of gas so received; (b) who is not an electricity utility, and who receives supplies of gas and uses that gas to produce electricity, is to be treated as being an electricity utility for the purposes of the climate change levy treatment under Sch 6 para 5 of any supplies he makes of the electricity so produced: Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 7(3), (4). For these purposes, 'unregulated gas supplier' includes the holder of a gas supply licence acting otherwise than for purposes connected with the carrying on of activities authorised by that licence: reg 7(5).

An unregulated electricity supplier (within the meaning of the Finance Act 2000 Sch 6 para 151(8)) is to be treated for all climate change levy purposes as being an electricity utility to the extent of any supplies he makes in relation to which he is in breach of a requirement to hold an electricity supply licence; and for these purposes, 'unregulated electricity supplier' includes the holder of an electricity supply licence acting otherwise than for the purposes connected with the carrying on of activities authorised by that licence: Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 3(1), (3). A holder of an electricity supply licence, who receives supplies of electricity in the course of acting otherwise than for purposes connected with the carrying on of activities authorised by that licence, is to be treated as being an electricity utility for the purposes of the climate change levy treatment under the Finance Act 2000 Sch 6 para 5 (as amended) (see

PARA 663 post) of the supplies of electricity so received: Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 3(2). See also reg 4, cited in PARA 663 note 1 post.

9 Finance Act 2000 Sch 6 para 3(1).

10 See CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 508 et seq.

11 le within the meaning of the Environmental Protection Act 1990 Pt II (ss 29-78) (as amended) (waste on land): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620 et seq.

12 Finance Act 2000 Sch 6 para 3(2).

13 Any power under *ibid* Sch 6 (as amended) to make regulations is exercisable by statutory instrument: Sch 6 para 146(1). A statutory instrument that contains regulations made under Sch 6 (as amended), and is not subject to a requirement that a draft of the instrument be laid before Parliament and approved by a resolution of the House of Commons, is subject to annulment in pursuance of a resolution of the House of Commons: Sch 6 para 146(2). A statutory instrument that contains (whether alone or with other provisions) regulations under Sch 6 para 3(3), Sch 6 para 14(2) (as amended), Sch 6 para 15(4)(a), Sch 6 para 16, Sch 6 para 18(2), Sch 6 para 18A (as added), Sch 6 para 52, Sch 6 para 113(1), Sch 6 para 148(4), Sch 6 para 149 (as amended) or Sch 6 para 151(2) (regulations made by the Treasury: see PARA 661 ante, PARAS 663, 667, 675, 695 post) may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of the House of Commons: Sch 6 para 146(3) (amended by the Finance Act 2003 s 188(2)(c)). Where regulations under the Finance Act 2000 Sch 6 (as amended) made by the Commissioners impose a relevant requirement on any person, they may provide that if the person fails to comply with the requirement he is to be liable, subject to Sch 6 para 146(5), to a penalty of £250: Sch 6 para 146(4). Where, however, by reason of any conduct a person is convicted of an offence (whether under the Finance Act 2000 or otherwise), or a person is assessed to a penalty under Sch 6 para 98 (see PARA 690 post), that person is not by reason of that conduct to be liable also to a penalty under any regulations under Sch 6 (as amended): Sch 6 para 146(5). 'Relevant requirement' means any requirement other than one the penalty for a contravention of which is specified in Sch 6 para 41(3), 114(3) or 125(6) (see PARAS 673, 681 note 8, 696 post): Sch 6 para 146(6). A power under Sch 6 (as amended) to make any provision by regulations (1) may be exercised so as to apply the provision only in such cases as may be described in the regulations; (2) may be exercised so as to make different provision for different cases or descriptions of case; and (3) includes power by the regulations to make such supplementary, incidental, consequential or transitional provision as the authority making the regulations may think fit: Sch 6 para 146(7).

14 *Ibid* Sch 6 para 3(3). As to the exercise of this power see the Climate Change Levy (Solid Fuel) Regulations 2001, SI 2001/1137, which came into force on 1 April 2001 (reg 1) and provide that solid fuel is not a taxable commodity for these purposes if (1) a supply of that solid fuel would otherwise be chargeable with climate change levy; but (2) at the time when that supply would be treated as taking place the solid fuel in question has an open market value not exceeding £15 per tonne (reg 2(1)). 'Solid fuel' refers only to (a) coal and lignite; (b) coke, and semi-coke, of coal or lignite; (c) petroleum coke; 'time when the supply would be treated as taking place' refers to the time of supply determined by or under the Finance Act 2000 Sch 6 paras 25-39 (as amended) (see PARA 671 post); and 'open market value' refers to the amount that would, by virtue of the Value Added Tax Act 1994 s 19(2), (5) and on the basis that no climate change levy is chargeable, fall to be taken as the value of a supply of that solid fuel for the purposes of value added tax if the supply were for such consideration in money as would be payable by a person standing in no such relationship with any person as would affect that consideration: Climate Change Levy (Solid Fuel) Regulations 2001, SI 2001/1137, reg 2(2).

15 Finance Act 2000 Sch 6 para 77. As to recovery and interest see PARA 681 et seq post.

16 *Ibid* Sch 6 para 119(1). As to the provision that may be made by such regulations see Sch 6 para 119(2), (3); and as to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 59 (amended by SI 2003/604).

UPDATE

661 The charge to climate change levy

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 13--Finance Act 2000 Sch 6 para 146(5) (amended by SI 2009/571) refers also to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

NOTE 14--SI 2001/1137 revoked: SI 2009/3338.

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B. TAXABLE SUPPLIES

(A) IN GENERAL

662. General principles.

A supply of a taxable commodity¹, or part of such a supply, is a taxable supply² for the purposes of the levy if levy is chargeable on the supply under the provisions relating to supplies of electricity³, supplies of gas⁴, or other supplies in the course or furtherance of business⁵, and the supply or part is not excluded⁶ or exempt⁷.

1 For the meaning of 'taxable commodity' see PARA 661 ante. References to a supply of a taxable commodity include a supply that is deemed to be made under the Finance Act 2000 Sch 6 para 23 (see PARA 669 post) subject to any exceptions provided for under Sch 6 para 21 (see PARA 668 post): Sch 6 para 4(2)(a).

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 Ie the Finance Act 2000 Sch 6 para 5 (as amended): see PARA 663 post.

4 Ie ibid Sch 6 para 6 (as amended): see PARA 664 post.

5 Ie ibid Sch 6 para 7: see PARA 665 post.

6 Ie under ibid Sch 6 paras 8-10 (as amended): see PARA 661 ante, PARA 666 post.

7 Ibid Sch 6 para 4(1). The exemptions referred to in the text are exemptions under Sch 6 paras 11-22 (as amended): see PARAS 667-668 post.

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663. Supplies of electricity.

Levy is chargeable on a supply of electricity if:

- 299 (1) the supply is made by an electricity utility¹; and
- 300 (2) the person to whom the supply is made is not an electricity utility, or is the utility² itself³.

Levy is also chargeable on a supply made from a combined heat and power station⁴ of electricity produced in the station if:

- 301 (a) the station is a partly exempt combined heat and power station⁵;
- 302 (b) the supply is not one that is deemed to be made⁶ as a self-supply by the producer; and
- 303 (c) the person to whom the supply is made is not an electricity utility⁷.

Levy is chargeable on a supply of electricity that is deemed to be made under specified⁸ statutory provisions⁹.

Except as provided above, levy is not chargeable on a supply of electricity¹⁰.

1 For the meaning of 'electricity utility' see PARA 661 note 8 ante. A person who is an electricity utility is to be treated for the purposes of the climate change levy chargeable under the Finance Act 2000 Sch 6 para 5(1) (see heads (1)-(2) in the text) as not being an electricity utility to the extent of any part of a supply he makes of electricity (1) produced in a fully exempt combined heat and power station; and (2) not supplied to him at any time by another person: Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 4(1). Where an electricity utility makes a supply of electricity on which levy would otherwise be chargeable under both the Finance Act 2000 Sch 6 para 5(1) and either Sch 6 para 5(2) or Sch 6 para 5(3) (as amended) (see the text and notes 4-9 infra), that electricity utility is to be treated, for the purposes of the levy chargeable under Sch 6 para 5(1), as not being an electricity utility to the extent of that supply, and levy is accordingly only chargeable on that supply under Sch 6 para 5(2) or Sch 6 para 5(3) (as amended): Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 4(2).

2 'Utility' means an electricity utility or a gas utility: Finance Act 2000 Sch 6 paras 147, 150(1). For the meaning of 'gas utility' see PARA 661 note 8 ante.

3 Ibid Sch 6 para 5(1).

4 'Combined heat and power station' means a station producing electricity or motive power that is (or may be) operated for purposes including the supply to any premises of (1) heat produced in association with electricity or motive power; or (2) steam produced from, or air or water heated by, such heat: ibid Sch 6 paras 147, 148(1).

5 'Partly exempt combined heat and power station' means a combined heat and power station in respect of which there is in force a certificate (a 'part-exemption certificate') (1) given by the Secretary of State; (2) stating that the station is a partly exempt combined heat and power station for the purposes of the levy; and (3) complying (so far as applicable) with any provision made by regulations under ibid Sch 6 para 148(10): Sch 6 paras 147, 148(3) (amended by the Finance Act 2003 s 189(1), (3)(a)). The Secretary of State must give a part-exemption certificate in respect of a combined heat and power station where an application is made for a certificate under the Finance Act 2000 Sch 6 para 148 (as amended) in respect of the station, and his decision on the application is to refuse to give a full-exemption certificate: Sch 6 para 148(5). The Secretary of State may by regulations make provision for or about (a) certificates under Sch 6 para 148 (as amended); (b)

applications for such certificates; (c) the information that is to accompany such applications: Sch 6 para 148(10). The provision that may be made by virtue of Sch 6 para 148(10)(a) (see head (a) *supra*) includes in particular provision in respect of the periods for which such certificates are to be in force and provision for the (non-retrospective) variation or revocation of such certificates: Sch 6 para 148(11). As to the Secretary of State see PARA 601 note 1 *ante*; and as to the power to make regulations generally see PARA 661 note 13 *ante*.

In the exercise of his powers under Sch 6 para 148(10), (11) the Secretary of State has made the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001, SI 2001/486, which came into force on 19 March 2001: reg 1. As to applications for, and the content of, full-exemption or part-exemption certificates see reg 3; and as to their variation and revocation see reg 4.

6 *Ie* under the Finance Act 2000 Sch 6 para 23(3): see PARA 669 *post*.

7 *Ibid* Sch 6 para 5(2).

8 *Ie* under *ibid* Sch 6 para 20(6)(a) (as substituted) (see PARA 667 *post*), Sch 6 para 20B(6)(a) (as added) (see PARA 667 *post*), Sch 6 para 23(3) (see PARA 669 *post*), Sch 6 para 24 (as amended) (see PARA 670 *post*) or Sch 6 para 45A (as added) (see PARA 674 *post*): see Sch 6 para 5(3) (amended by the Finance Act 2003 s 191(1), (2); the Finance Act 2007 s 23, Sch 2 paras 1, 3).

9 Finance Act 2000 Sch 6 para 5(3) (as amended: see note 8 *supra*).

10 *Ibid* Sch 6 para 5(4).

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664. Supplies of gas.

Levy is chargeable on a supply of any gas if:

- 304 (1) the supply is made by a gas utility¹; and
- 305 (2) the person to whom the supply is made is not a gas utility, or is the utility² itself³.

Levy is also chargeable on a supply of gas that is deemed to be made as a self-supply by the producer⁴ if the gas:

- 306 (a) is held in a gaseous state immediately prior to being released for burning; and
- 307 (b) is of a kind supplied by a gas utility⁵.

Levy is chargeable on a supply of gas that is deemed to be made under specified⁶ statutory provisions⁷.

Except as provided above, levy is not chargeable on a supply of any gas that is supplied in a gaseous state⁸.

1 For the meaning of 'gas utility' see PARA 661 note 8 ante.

2 For the meaning of 'utility' see PARA 663 note 2 ante.

3 Finance Act 2000 s 30(1), Sch 6 para 6(1).

4 Ie under ibid Sch 6 para 23(3): see PARA 669 post.

5 Ibid Sch 6 para 6(2).

6 Ie under ibid Sch 6 para 24 (as amended) (see PARA 670 post) or Sch 6 para 45A (as added) (see PARA 674 post).

7 Ibid Sch 6 para 6(2A) (added by the Finance Act 2003 s 191(1), (3)(a); amended by the Finance Act 2007 s 23, Sch 2 paras 1, 4).

8 Finance Act 2000 Sch 6 para 6(3) (amended by the Finance Act 2003 s 191(1), (3)(b)).

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665. Other supplies made in the course or furtherance of business.

Levy is chargeable on any supply of a taxable commodity¹ other than electricity, or gas in a gaseous state, if the supply is made in the course or furtherance of a business². Anything done in connection with the termination or intended termination of a business is to be treated, for the purposes of the provisions relating to climate change levy³, as being done in the course or furtherance of the business⁴; and where in a disposition of a business as a going concern, or of its assets (whether or not in connection with its reorganisation or winding up), there is a supply of a taxable commodity, that supply is to be taken to be made in the course or furtherance of the business⁵.

1 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 7.

3 *Ibid* Sch 6 (as amended): see PARA 661 et seq ante, PARA 666 et seq post.

4 *Ibid* Sch 6 para 155(1).

5 *Ibid* Sch 6 para 155(2).

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(B) EXCLUDED AND EXEMPT SUPPLIES

666. Supply for domestic or charity use.

A supply is excluded from the levy if it is for domestic use or for charity use¹; and a supply is for charity use if the commodity supplied is for use by a charity otherwise than in the course or furtherance of a business². The following supplies are always for domestic use:

- 308 (1) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;
- 309 (2) a supply to a person at any premises of any gas in a gaseous state that is provided through pipes and is of a kind supplied by a gas utility³, or petroleum gas in a gaseous state provided through pipes, where the gas or petroleum gas (together with any other gas or petroleum gas provided through pipes to him at the premises by the same supplier) was not provided at a rate exceeding 4,397 kilowatt hours a month;
- 310 (3) a supply of petroleum gas in a liquid state where the petroleum gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the petroleum gas is not intended for sale by the recipient;
- 311 (4) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such petroleum gas;
- 312 (5) a metered supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1,000 kilowatt hours a month;
- 313 (6) an unmetered supply of electricity to a person where the electricity (together with any other unmetered electricity provided to him by the same supplier) was not provided at a rate exceeding 1,000 kilowatt hours a month⁴.

Supplies not within heads (1) to (6) above are for domestic use if and only if the commodity supplied is for use in:

- 314 (a) a building, or part of a building, which consists of a dwelling or number of dwellings;
 - 315 (b) a building, or part of a building, used for a relevant residential purpose⁵;
 - 316 (c) self-catering holiday accommodation (including any accommodation advertised or held out as such);
 - 317 (d) a caravan;
 - 318 (e) a houseboat⁶; or
 - 319 (f) an appliance that:
- 21
- 31. (i) is not part of a combined heat and power station⁷;
 - 32. (ii) is located otherwise than in premises of a description mentioned in any of heads (a) to (e) above; and

33. (iii) is used to heat air or water that, when heated, is supplied to premises of, or each of, such a description⁸.
22

If a supply is partly for domestic or charity use and partly not, the part of the supply that is for domestic or charity use is excluded from the levy⁹. Where a supply of a commodity is partly for domestic or charity use and partly not:

- 320 (A) if at least 60 per cent of the commodity is supplied for domestic or charity use, the whole supply is treated as a supply for domestic or charity use; and
321 (B) in any other case, an apportionment must be made to determine the extent to which the supply is for domestic or charity use¹⁰.

1 Finance Act 2000 s 30(1), Sch 6 para 8(1).

2 Ibid Sch 6 para 8(2). For the meaning of 'in the course or furtherance of a business' see PARA 665 ante.

3 For the meaning of 'gas utility' see PARA 661 note 8 ante.

4 Finance Act 2000 Sch 6 para 9(1). The power to make provision under the Value Added Tax Act 1994 s 29A(3) (as added) varying Sch 7A (as added) (charge at reduced rate) includes power to make provision for any appropriate corresponding variation of the Finance Act 2000 Sch 6 para 9 (as amended): Sch 6 para 9(5) (added by the Finance Act 2001 s 99(6), Sch 31 Pt 2 para 7).

5 For these purposes, use for a relevant residential purpose means use as (1) a home or other institution providing residential accommodation for children; (2) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder; (3) a hospice; (4) residential accommodation for students or school pupils; (5) residential accommodation for members of any of the armed forces; (6) a monastery, nunnery or similar establishment; or (7) an institution which is the sole or main residence of at least 90% of its residents, except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment: Finance Act 2000 Sch 6 para 9(3).

6 I.e., a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion: see ibid Sch 6 para 9(2)(e).

7 For the meaning of 'combined heat and power station' see PARA 663 note 4 ante.

8 Finance Act 2000 Sch 6 para 9(2); and see note 4 supra. Any exclusion provided for by, under or by virtue of Sch 6 para 9(2)(f) (see head (f) in the text) is only to be given effect if and to the extent that, before the time of supply, the recipient has delivered to the supplier a certificate that accords with the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 34(2) (as amended): see reg 34(1)(a).

9 Finance Act 2000 Sch 6 para 8(3).

10 Ibid Sch 6 para 8(4).

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667. Categories of exempt supply.

There are statutory exemptions from climate change levy with regard to:

- 322 (1) supplies not for burning in the United Kingdom¹;
- 323 (2) Northern Ireland gas supplies²;
- 324 (3) supplies used in certain types of transport³;
- 325 (4) supplies to producers of certain energy-related commodities other than electricity⁴;
- 326 (5) supplies, other than self-supplies, to electricity producers⁵;
- 327 (6) supplies, other than self-supplies, to fully-exempt and partly-exempt combined heat and power stations⁶;
- 328 (7) supplies, other than self-supplies, of electricity from partly exempt combined heat and power stations⁷;
- 329 (8) self-supplies by electricity producers⁸;
- 330 (9) supplies not used as fuel⁹;
- 331 (10) supplies for use in recycling processes¹⁰;
- 332 (11) electricity from renewable sources¹¹; and
- 333 (12) certain supplies of electricity produced in combined heat and power stations¹².

Any exemption provided for under head (1), heads (3) to (6), head (9) or head (10) above is only to be given effect if and to the extent that the recipient delivers to the supplier a certificate that accords with prescribed¹³ requirements¹⁴.

1 See the Finance Act 2000 s 30(1), Sch 6 para 11 (amended by the Finance Act 2007 ss 23, 114, Sch 2 paras 1, 11, Sch 27 Pt 1(2)). For the purposes of Sch 6 (as amended), 'the United Kingdom' includes the territorial waters adjacent to any part of the United Kingdom: s 147. For the meaning of 'United Kingdom' generally see PARA 602 note 7 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

2 See the Finance Act 2000 Sch 6 para 11A (added by the Finance Act 2001 s 1051), (2)).

3 See the Finance Act 2000 Sch 6 para 12.

4 See *ibid* Sch 6 para 13 (amended by the Finance Act 2004 s 289(1)-(4)). The Commissioners may by regulations make provision amending the Finance Act 2000 Sch 6 para 13 for the purpose of extending the circumstances in which a supply of a taxable commodity is exempt from the levy or restricting the circumstances in which a supply of a taxable commodity is exempt from the levy: see the Finance Act 2006 Sch 6 para 13A (added by the Finance Act 2004 s 289(1), (5)). At the date at which this title states the law, no such regulations had been made. As to the power to make regulations generally see PARA 661 note 13 ante.

5 See the Finance Act 2000 Sch 6 para 14 (amended by the Finance Act 2001 ss 105, 110, Sch 33 Pt 3(3); the Finance Act 2003 s 188(2)(a)). See also the Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 5.

6 See the Finance Act 2000 Sch 6 paras 15, 149 (amended by the Finance Act 2001 ss 105, 110, Sch 33 Pt 3(3); the Finance Act 2003 ss 189, 216, Sch 43 Pts 2, 4(20)). See also the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005, SI 2005/1714, reg 3. For the meaning of 'combined heat and power station' see PARA 663 note 4 ante; and for the meaning of 'partly-exempt combined heat and power station' see PARA 663 note 5 ante. 'Fully-exempt combined heat and power station' means a combined heat and power

station in respect of which there is in force a certificate (a 'full-exemption certificate') given by the Secretary of State, stating that the station is a fully-exempt combined heat and power station for the purposes of the levy, and complying (so far as applicable) with any provision made by regulations under the Finance Act 2000 Sch 6 para 148(10) (see PARA 663 note 5 ante): Sch 6 para 148(2) (amended by the Finance Act 2003 s 189(1), (3)(a)). The Secretary of State must give a full-exemption certificate in respect of a combined heat and power station where an application is made for a certificate in respect of the station, and it appears to him that such conditions as may be prescribed by regulations made by the Treasury are satisfied in relation to the station: Sch 6 para 148(4). As to the conditions that may be prescribed see Sch 6 para 148(7)-(9). See also the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005, SI 2005/1714, reg 5.

7 See the Finance Act 2000 Sch 6 para 16. As to certification of electricity from such combined heat and power stations see Sch 6 para 149A (added by the Finance Act 2002 s 124). See also the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005, SI 2005/1714, reg 4.

8 See the Finance Act 2000 Sch 6 paras 17, 23(3), 152. See also the Climate Change Levy (Electricity and Gas) Regulations 2001, SI 2001/1136, reg 6.

9 See the Finance Act 2000 Sch 6 para 18. See also the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005, SI 2005/1715, reg 3, Sch 1.

10 See the Finance Act 2000 Sch 6 para 18A (added by the Finance Act 2003 s 188(1)). See also the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005, SI 2005/1715, reg 4, Sch 2.

11 See the Finance Act 2000 Sch 6 para 19 (amended by the Finance Act 2002 s 126(1)); the Finance Act 2000 Sch 6 para 20 (amended by the Finance Act 2002 ss 125(10)(c), 141, Sch 40 Pt 4(2); the Finance Act 2003 s 193(1), (2)). See also the Climate Change Levy (General) Regulations 2001, SI 2001/838, Pt IV (regs 46-51) (amended by SI 2003/604; SI 2007/2903). Subject to the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 47(3)-(15), 48 (as so amended), electricity is 'renewable source electricity' for these purposes to the extent that it has been generated from renewable sources provided that it is not electricity generated from a large hydro generating station: reg 47(1).

12 See the Finance Act 2000 Sch 6 paras 20A, 20B (added by the Finance Act 2002 s 123(1); amended by the Finance Act 2003 s 193(1), (3)). See also the Climate Change Levy (General) Regulations 2001, SI 2001/838, Pt IVA (regs 51A-51M) (added by SI 2003/604; amended by SI 2005/1716; SI 2007/2903).

13 See the requirements of the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 34(2) (amended by SI 2003/604).

14 See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 34(1) (amended by SI 2005/1716; SI 2007/2903).

UPDATE

667 Categories of exempt supply

NOTE 11--Finance Act 2000 Sch 6 para 19 further amended: Finance Act 2008 s 149.

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668. Regulations to avoid double charges to levy and for giving effect to exemptions.

The Commissioners for Revenue and Customs may by regulations¹ make provision for avoiding, counteracting or mitigating double charges to levy². There is a double charge to levy where:

- 334 (1) a supply of a taxable commodity³ ('the produced commodity') is a taxable supply⁴; and
- 335 (2) a taxable commodity used directly or indirectly in producing the produced commodity has been the subject of a taxable supply⁵.

Such regulations may, in particular, make provision for a supply of a taxable commodity to be wholly or to any extent either exempt from the levy, or deemed not a supply of the commodity⁶. These powers are in addition to the powers to make provision by tax credit regulations⁷ in relation to certain cases⁸.

The Commissioners may also by regulations make provision for giving effect to the statutory exclusions and exemptions⁹. Such regulations may, in particular, include provision for:

- 336 (a) determining the extent to which a supply of a taxable commodity is, or is to be treated as being, a taxable supply;
- 337 (b) authorising a person making supplies of a taxable commodity to another person to treat the supplies to that other person as being taxable supplies only to an extent certified by the Commissioners¹⁰.

In the exercise of these and their other powers in relation to climate change levy, the Commissioners have made the Climate Change Levy (General) Regulations 2001¹¹.

1 As to the power to make regulations see generally para 661 note 13 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 21(1).

3 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

4 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

5 Finance Act 2000 Sch 6 para 21(2).

6 Ibid Sch 6 para 21(3). The provision mentioned in Sch 6 para 21(3) includes provision for exceptions to any of Sch 6 para 23(1)-(3) or Sch 6 para 24(3) (as amended) (see PARA 670 post): Sch 6 para 21(4).

7 Ie in any such case as is mentioned in ibid Sch 6 para 62(1)(g): see PARA 684 post.

8 Ibid Sch 6 para 21(5).

9 Ibid Sch 6 para 22(1). The exclusions and exemptions referred to in the text are those provided for by Sch 6 paras 8-21 (as amended): see the text and notes 1-8 supra; and PARAS 661, 666-667 ante.

10 Ibid Sch 6 para 22(2).

11 I.e. the Climate Change Levy (General) Regulations 2001, SI 2001/838 (amended by SI 2003/604; SI 2003/2633; SI 2005/1716; SI 2006/954; SI 2007/2903). As to exemptions etc see the Climate Change Levy (General) Regulations 2001, SI 2001/838, Pt III (regs 34-45) (as amended).

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(C) DEEMED SUPPLIES

669. Use of commodities by utilities and producers.

Where an electricity utility¹ has electricity available to it, and as regards a quantity of the electricity, makes no supply of that quantity to another person but causes it to be consumed in the United Kingdom², the utility is deemed³ to make a supply to itself of that quantity of the electricity⁴. Similarly, where a gas utility⁵ holds gas in a gaseous state, and as regards a quantity of the gas, makes no supply of that quantity to another person but causes it to be burned in the United Kingdom, the utility is deemed⁶ to make a supply to itself of that quantity of the gas⁷. Where:

- 338 (1) a person has produced a taxable commodity⁸;
- 339 (2) the commodity is either a taxable commodity other than electricity, or electricity that has been produced from taxable commodities⁹; and
- 340 (3) as regards a quantity of the commodity, the person makes no supply of that quantity to another person but causes it to be burned (or, in the case of electricity, consumed) in the United Kingdom,

the person is deemed¹⁰ to make a supply to himself of that quantity of the commodity¹¹.

1 For the meaning of 'electricity utility' see PARA 661 note 8 ante.

2 For the meaning of 'United Kingdom' for these purposes see PARA 667 note 1 ante.

3 Ie for the purposes of the Finance Act 2000 Sch 6 s 30(1), Sch 6 (as amended): see PARA 661 et seq ante, PARA 670 et seq post.

4 Ibid Sch 6 para 23(1).

5 For the meaning of 'gas utility' see PARA 661 note 8 ante.

6 See note 3 supra.

7 Finance Act 2000 Sch 6 para 23(2).

8 For the meaning of 'taxable commodity' see PARA 661 ante.

9 The Commissioners for Revenue and Customs may by regulations make provision for electricity to be treated for the purposes of head (2) in the text (1) as produced from taxable commodities unless prescribed conditions are fulfilled; or (2) as produced otherwise than from taxable commodities only where prescribed conditions are fulfilled: Finance Act 2000 Sch 6 para 23(4). The conditions that may be so prescribed include, in particular, conditions in connection with the materials from which the electricity is produced: Sch 6 para 23(5). As to the power to make regulations see generally para 661 note 13 ante; and as to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 52.

10 See note 3 supra.

11 Finance Act 2000 Sch 6 para 23(3).

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670. Change of circumstances etc.

The following provisions apply:

- 341 (1) in a case where:
 23
 34. (a) a supply of a taxable commodity¹ has been made;
 35. (b) the supply was not a taxable supply²; and
 36. (c) there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply³;
 24
 342 (2) in a case where:
 25
 37. (a) a supply of a taxable commodity has been made;
 38. (b) the supply was made on the basis that it was not a taxable supply; and
 39. (c) it is later determined that the supply was (to any extent) a taxable supply⁴;
 26

but they do not apply where the reason that the supply was not a taxable supply, or the supply was made on the basis that it was not a taxable supply, is that it was, or was thought to be, exempt from the levy under the statutory exemptions⁵ for the supply of electricity produced from renewable sources or in combined heat and power stations⁶.

Where these provisions apply, the person to whom the supply was made is deemed⁷ to make a taxable supply of the commodity⁸ to himself⁹. Where, however, a supply of a taxable commodity was not a taxable supply by virtue of being supplied for use in premises of a specified description¹⁰, and those premises cease to be premises of any such description, that deeming provision only applies to so much, if any, of the commodity supplied as was not used in the premises before they ceased to be premises of any of those descriptions¹¹.

1 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 See the Finance Act 2000 Sch 6 para 24(1), (1A) (Sch 6 para 24(1), (2) substituted, Sch 6 para 24(1A), (1B), (3A) added, and Sch 6 para 24(3), (5) amended, by the Finance Act 2003 s 190). The Commissioners for Revenue and Customs may by regulations make provision specifying descriptions of occurrences and non-occurrences that are to be taken as being, or as not being, changes of circumstances or intentions for the purposes of the Finance Act 2000 Sch 6 para 24(1A)(c) (as added) (see head (1)(c) in the text): Sch 6 para 24(5) (as so amended). As to the power to make regulations see generally para 661 note 13 ante. At the date at which this title states the law, no such regulations had been made.

4 See *ibid* Sch 6 para 24(1), (1B) (as added: see note 3 *supra*).

5 *Ie* under *ibid* Sch 6 para 19 (as amended) or Sch 6 para 20A (as added): see PARA 667 ante at heads (11)-(12) in the text. See, however, Sch 6 para 20 (as amended) or Sch 6 para 20B (as added and amended).

6 *Ibid* Sch 6 para 24(2) (as substituted: see note 3 *supra*).

7 Ie for the purposes of *ibid* Sch 6 (as amended): see PARA 661 *et seq ante*, PARA 671 *et seq post*.

8 Where (1) had matters been as mentioned in *ibid* Sch 6 para 24(1A)(c) (as added) (see head (1)(c) in the text), only part of the supply would have been a taxable supply; or (2) the determination referred to in Sch 6 para 24(1B)(c) (as added) (see head (2)(c) in the text) is that only part of the supply was a taxable supply, the reference in the text to the commodity is to be read as a reference to a corresponding part of it: Sch 6 para 24(3A) (as added: see note 3 *supra*).

9 *Ibid* Sch 6 para 24(3) (as amended: see note 3 *supra*).

10 Ie of a description mentioned in any of *ibid* Sch 6 para 9(2)(a)-(f): see PARA 666 *ante*.

11 *Ibid* Sch 6 para 24(4).

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Time of supply; in general.

C. TIME OF SUPPLY

671. Time of supply; in general.

Provision is made to determine when a supply of a taxable commodity¹ is treated as taking place². Where taxable commodities were invoiced or paid before 1 April 2001, but had not to any extent been burned before the invoice was issued or payment was received, and the advance invoicing or payment was not acceptable normal practice, then a supply of those commodities not burned before that date was treated as taking place on that date³. Provision is also made with regard to supplies spanning any change in the rate of levy⁴.

Otherwise, unless it is covered by a special utility scheme prepared by the Commissioners for Revenue and Customs⁵, a supply of electricity, and a supply of gas supplied in a gaseous state and of a kind supplied by a gas utility⁶, is treated as taking place each time a climate change levy accounting document⁷ in respect of a supply is issued by the person making the supply⁸. Where an actual supply of electricity or gas is not followed by a climate change levy accounting document, then the supply is treated as taking place at the end of period by which that document would have been issued⁹.

With regard to other supplies, the general rules as to when such supplies are taken to be made are, in cases where the supply is made by a person resident in the United Kingdom¹⁰, as follows:

- 343 (1) if the commodity is to be removed, the supply takes place at the time of the removal;
- 344 (2) if the commodity is not to be removed, the supply takes place when the commodity is made available to the person to whom it is supplied;
- 345 (3) if the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place, the supply takes place when it becomes certain that the supply has taken place or, if sooner, 12 months after the removal¹¹.

These general rules are subject to the different rules¹² which apply when the invoice is issued earlier or later than the time applicable under them¹³. Different rules also apply in the case of certain deemed supplies¹⁴.

In the case of supplies of other commodities that are made by a person who is not resident in the United Kingdom, the supply is treated as taking place:

- 346 (a) when the commodity is delivered to the person to whom it is supplied; or
- 347 (b) if earlier, when it is made available in the United Kingdom to that person¹⁵.

If, however, within 14 days after the time so applicable, the person to whom the supply is made elects in writing for the supply to be treated as taking place at the time the election is made, the supply is treated as taking place at the time the election is made¹⁶. Different rules apply in the case of certain deemed supplies¹⁷.

With regard to supplies of other commodities, that is, supplies that are not of electricity or of gas in a gaseous state, the Commissioners may, at the request of the person liable to account

for any levy charged on those supplies, make a direction altering the time at which those supplies (or such of those supplies as may be specified in the direction) are to be treated as taking place¹⁸.

The Commissioners may also make provision by regulations¹⁹ as to the time at which a supply is to be treated as taking place:

- 348 (i) in cases where the supply is for a consideration and the whole or part of the consideration:
- 27
- 40. (A) is determined or payable periodically, or from time to time, or at the end of any period; or
- 41. (B) is determined at the time when the commodity is appropriated for any purpose;
- 28
- 349 (ii) in the case of a supply otherwise than for consideration;
- 350 (iii) in the case of any supply that is deemed²⁰ to be made²¹.

In any such case as is mentioned in heads (i) to (iii) above, the regulations may provide that a taxable commodity is to be treated as separately and successively supplied at prescribed times or intervals²². The main rules as to the time of supply²³ have effect subject to any such regulations²⁴.

1 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

2 See the Finance Act 2000 s 30(1), Sch 6 para 25.

3 See *ibid* Sch 6 para 36.

4 See *ibid* Sch 6 paras 37, 38 (amended by the Finance Act 2006 ss 172(8)-(10), 178, Sch 26 Pt 8(1)).

5 As to special utility schemes see the Finance Act 2000 Sch 6 para 29. See also the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 54.

6 For the meaning of 'gas utility' see PARA 661 note 8 ante.

7 As to climate change accounting documents see the Finance Act 2000 Sch 6 para 143. Where on any day (1) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person ('the consumer'); (2) the supply by which the electricity or gas is supplied is a taxable supply; and (3) the person liable to account for the levy on that supply is the person making the supply ('the supplier'), then a climate change levy accounting document covering the electricity or gas actually supplied on that day must be issued by the supplier no later than (a) the end of the period of 15 weeks beginning with that day, if on that day the consumer is a small-scale user of the commodity supplied; (b) the end of the period of six weeks beginning with that day, if on that day the consumer is not a small-scale user of the commodity supplied: Sch 6 para 27(1), (2). A climate change levy accounting document so issued that covers the electricity, or the gas of any kind, actually supplied on any day must also cover any electricity or (as the case may be) any gas of that kind that has been actually supplied by the supplier to the consumer on any earlier day and has not been covered by a previous climate change levy accounting document: Sch 6 para 27(3). As to the persons who are small-scale users see Sch 6 para 27(6); and the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 53. As to the duty to issue climate change levy accounting documents see further the Finance Act 2000 Sch 6 para 27(4)-(5), (7)-(10).

8 See *ibid* Sch 6 para 26.

9 See *ibid* Sch 6 para 28.

10 For the purposes of *ibid* Sch 6 (as amended), a person is resident in the United Kingdom at any time if, at that time, (1) that person has an established place of business in the United Kingdom; (2) that person has a usual place of residence in the United Kingdom; or (3) that person is a firm or unincorporated body which (without having a relevant connection with the United Kingdom by virtue of head (1) *supra*) has amongst its

partners or members at least one individual with a usual place of residence in the United Kingdom: Sch 6 paras 147, 156. For the meaning of 'United Kingdom' for these purposes see PARA 667 note 1 ante.

11 Ibid Sch 6 para 30(1), (2).

12 Ie ibid Sch 6 para 31 (earlier invoice); Sch 6 para 32 (later invoice).

13 Ibid Sch 6 para 30(3).

14 See ibid Sch 6 para 34 (amended by the Finance Act 2003 s 190(1), (7); the Finance Act 2007 s 23, Sch 2 paras 1, 5; the Finance Act 2006 ss 172(7), 178, Sch 26 Pt 8(1)).

15 Finance Act 2000 Sch 6 para 33(1), (2).

16 Ibid Sch 6 para 33(4).

17 See note 14 supra.

18 Finance Act 2000 Sch 6 para 35(1), (2). See further Sch 6 para 35(3), (4).

19 As to the power to make regulations see generally para 661 note 13 ante.

20 Ie under the Finance Act 2000 Sch 6 para 23, Sch 6 para 24 (as amended) or Sch 6 para 45A (as added): see PARAS 669-670 ante, PARA 674 post.

21 Ibid Sch 6 para 39(1) (amended by the Finance Act 2007 s 23, Sch 2 paras 1, 6).

22 Finance Act 2000 Sch 6 para 39(2).

23 Ie ibid Sch 6 paras 25-36 (as amended): see the text and notes 1-2, 5-18 supra.

24 Ibid Sch 6 para 39(3). The power to make such regulations includes power to provide for specified provisions of the regulations to be treated as special provisions for the purposes of Sch 6 para 38 (supplies spanning change of rate etc): Sch 6 para 39(4).

UPDATE

671 Time of supply; in general

NOTE 7--Finance Act 2000 Sch 6 para 143 amended: Finance Act 2008 s 150.

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D. PAYMENT AND RATE OF LEVY

672. Persons liable to account for levy.

The person liable to account for the levy charged on a taxable supply¹ is, except in a case such as is described below, the person making the supply². In the case of a taxable supply made by a person who is not resident in the United Kingdom³, and is not a utility⁴, the person liable to account for the levy charged on the supply is the person to whom the supply is made⁵.

1 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 40(1).

3 For the meaning of 'resident in the United Kingdom' see PARA 671 note 10 ante.

4 For the meaning of 'utility' see PARA 663 note 2 ante.

5 Finance Act 2000 s 30(1), Sch 6 para 40(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/D. PAYMENT AND RATE OF LEVY/673. Returns and payment of levy.

673. Returns and payment of levy.

The Commissioners for Revenue and Customs may by regulations¹ make provision:

- 351 (1) for persons liable to account for levy² to do so:
- 29 42. (a) by reference to such periods ('accounting periods') as may be determined by or under the regulations; or
- 43. (b) in such other way as may be so determined³;
- 30 352 (2) for persons who are or are required to be registered for the purposes of the levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and
- 353 (3) for persons who are required to account for levy to become liable to pay the amounts due from them at such times and in such manner as may be so determined⁴.

Without prejudice to the generality of the powers so conferred, such regulations may contain provision:

- 354 (i) for levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed⁵ circumstances, and for prescribed purposes, as levy due for a different period;
- 355 (ii) for the correction of errors made when accounting for levy by reference to any period;
- 356 (iii) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;
- 357 (iv) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;
- 358 (v) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of head (iv) above;
- 359 (vi) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest⁶ for such period as may be determined in accordance with the regulations⁷.

Subject to the following provisions, if any person ('the taxpayer') fails:

- 360 (A) to comply with so much of any regulations under these provisions as requires him, at or before a particular time, to make a return for any accounting period; or
- 361 (B) to comply with so much of any such regulations as requires him, at or before a particular time, to pay an amount of levy due from him,

he is liable to a penalty of £250⁸. Liability to such a penalty does not, however, arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal⁹, that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with the regulations and that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without a reasonable excuse to make it¹⁰.

Where, by reason of any failure falling within head (A) or head (B) above, a person is convicted of an offence¹¹, or a person is assessed to a penalty for evasion¹², that person is not, by reason of that failure, to be liable also to a penalty¹³ in respect of that failure¹⁴.

1 As to the power to make regulations see generally para 661 note 13 ante.

2 As to the persons liable to account for levy see PARA 672 ante.

3 The Finance Act 2000 s 30(1), Sch 6 para 91(5) provides for the application of Sch 6 Pt VII (paras 77-91) (as amended) (recovery and interest: see PARA 661 ante, PARAS 681-683 post) in relation to cases where, by virtue of regulations under Sch 6 para 41(1)(a)(ii) (as substituted) (see head (1)(a) in the text), a person is liable to account for levy otherwise than by reference to accounting periods: Sch 6 para 41(2A) (added by the Finance Act 2003 s 192(1), (2)(c)). Regulations under the Finance Act 2000 Sch 6 para 41 (as amended) may provide for the application of any provision of Sch 6 (as amended) in relation to such cases: Sch 6 para 41(2B) (as so added).

4 Ibid Sch 6 para 41(1) (amended by the Finance Act 2003 ss 192(1), (2)(a), (b), 216, Sch 43 Pt 4(2)). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, Pt II (regs 3-33) (as amended).

5 'Prescribed' (except in the Finance Act 2000 Sch 6 paras 14(2), 16(3), 18A (as added) and 148(4)) means prescribed by regulations made by the Commissioners under Sch 6 (as amended): Sch 6 para 147 (definition amended by the Finance Act 2003 s 188(2)(d)).

6 Ie at the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation).

7 Finance Act 2000 Sch 6 para 41(2).

8 Ibid Sch 6 para 41(3).

9 'Appeal tribunal' means a VAT and duties tribunal: ibid Sch 6 para 147. As to appeals see PARA 702 post; and as to VAT and duties tribunals see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1255 et seq; VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 343 et seq.

10 Finance Act 2000 Sch 6 para 41(4).

11 Ie whether under ibid Sch 6 (as amended) or otherwise.

12 Ie under ibid Sch 6 para 98: see PARA 690 post.

13 Ie under ibid Sch 6 para 41(3): see heads (A)-(B) in the text.

14 Ibid Sch 6 para 41(5).

UPDATE

673 Returns and payment of levy

TEXT AND NOTES 11-14--Finance Act 2000 Sch 6 para 41(5) (amended by SI 2009/571) refers also to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

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674. Amount payable by way of levy.

The amount payable by way of levy on a taxable supply¹ is as follows. If the supply is neither a half-rate supply made before 1 April 2006² nor a reduced-rate supply³, the amount payable is the rate specified⁴ in relation to the taxable commodity⁵ supplied⁶. If the supply is a half-rate supply made before that date, the amount payable is 50 per cent of the amount that would be payable if the supply were neither a half-rate supply nor a reduced-rate supply⁷; and if the supply is a reduced-rate supply, the amount payable is 20 per cent of the amount that would be payable if the supply were neither a half-rate supply made before that date nor a reduced-rate supply⁸.

The levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity⁹.

As from 1 November 2007¹⁰, where:

- 362 (1) a taxable supply has been made to any person ('the recipient');
- 363 (2) the supply was made on the basis that it was a reduced-rate supply; and
- 364 (3) it is later determined that the supply was not a reduced-rate supply,

the recipient is deemed¹¹ to make a taxable supply to itself of the taxable commodity, and the amount payable by way of levy on that deemed supply is 80 per cent of the amount that would be payable if the supply were not a reduced-rate supply¹². This applies, however, only in relation to a supply actually made on or after that day and on the basis that it is a reduced-rate supply¹³.

1 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

2 Half-rate supplies are abolished by the Finance Act 2006 with effect from 1 November 2007: see the Finance Act 2006 s 172(3)-(6); the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2. Half-rate supplies were taxable supplies to horticultural producers in respect of which certain conditions were satisfied: see the Finance Act 2000 s 30(1), Sch 6 para 44 (repealed with savings by the Finance Act 2006 ss 172(8), (12), 178, Sch 26 Pt 8(1)).

3 As to reduced-rate supplies see PARA 675 post.

4 Ie specified in the Finance Act 2000 Sch 6 para 42(1), Table (substituted with effect in relation to supplies treated as taking place on or after 1 April 2007 by the Finance Act 2006 s 171(1), (2); and with effect in relation to supplies treated as taking place on or after 1 April 2008 by the Finance Act 2007 s 13(1), (2)).

5 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

6 Finance Act 2000 Sch 6 para 42(1)(a) (amended by the Finance Act 2006 s 172(8), (11)(a); and by virtue of the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2).

7 Finance Act 2000 Sch 6 para 42(1)(b) (repealed by the Finance Act 2006 ss 172(8), (11)(b), 178, Sch 26 Pt 8(1); for transitional provisions see the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2).

8 Finance Act 2000 Sch 6 para 42(1)(c) (amended by the Finance Act 2006 s 172(8), (11)(c); for transitional provisions see the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2).

9 Finance Act 2000 Sch 6 para 42(2).

10 I.e. the day appointed by the Treasury by order made by statutory instrument under the Finance Act 2007 s 23, Sch 2 para 13(1): see the Finance Act 2007 (Climate Change Levy: Reduced-rate Supplies etc) (Appointed Day) Order 2007, SI 2007/2902, art 2(1).

11 I.e. for the purposes of the Finance Act 2000 Sch 6 (as amended): see PARA 661 et seq ante, PARA 675 et seq post.

12 Ibid Sch 6 para 45A (added by the Finance Act 2007 s 23, Sch 2 paras 1, 9).

13 Finance Act 2007 (Climate Change Levy: Reduced-rate Supplies etc) (Appointed Day) Order 2007, SI 2007/2902, art 2(3).

UPDATE

674 Amount payable by way of levy

NOTE 4--Finance Act 2000 Sch 6 para 42(1), Table substituted with effect in relation to supplies treated as taking place on or after 1 April 2009: Finance Act 2008 s 19.

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675. Reduced-rate supplies.

As from 1 November 2007¹, 'reduced-rate supply' is defined as follows. A taxable supply² is a reduced-rate supply if:

- 365 (1) the taxable commodity³ is supplied to a facility specified in a certificate given by the Secretary of State⁴ to the Commissioners for Revenue and Customs as a facility which is to be taken as being covered by a climate change agreement⁵ for a period specified in the certificate; and
- 366 (2) the supply is made at a time falling in that period⁶.

This definition has effect subject to the provision made⁷ for variation of certificates⁸; and the Commissioners may by regulations make provision for giving effect to it⁹. Such regulations may, in particular, include provision for determining whether any taxable commodity is supplied to a facility¹⁰; and the provision that may be so made includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility¹¹.

A reduced-rate supply made before 1 November 2007 is a taxable supply in respect of which the following conditions are satisfied:

- 367 (a) the first condition is that the taxable commodity supplied by the supply is supplied to a facility identified in a notice published by the Commissioners which must:
 - 31 44. (i) state the day on which it is published;
 - 45. (ii) identify the facility or facilities in respect of which it is published;
 - 46. (iii) for each facility set out the first and last days of the period specified for the facility in the Secretary of State's certificate stating that, for that period, the facility is to be taken as being covered by a climate change agreement, and indicate the effect of this definition¹²; and
 - 47. (iv) indicate that the notice may be varied by later notices;
 - 32
- 368 (b) the second condition is that the supply is made at a time falling in the period that begins with the later of the first day set out for the facility under head (a)(iii) above and the day on which the notice is published, and ends with the last day so set out for the facility¹³.

This definition has effect subject to the provision made¹⁴ for variation of notices¹⁵. The Commissioners may by regulations make provision for determining whether any taxable commodity is supplied to a facility¹⁶; and the provision that may be made by such regulations under includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility¹⁷.

1 le the day appointed by the Treasury by order made by statutory instrument under the Finance Act 2007 s 23, Sch 2 para 13(1): see the Finance Act 2007 (Climate Change Levy: Reduced-rate Supplies etc) (Appointed Day) Order 2007, SI 2007/2902, art 2(1).

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 As to climate change agreements see the Finance Act 2000 Sch 6 paras 46-49; and as to the facilities to which they can apply see Sch 6 paras 50-52 (amended by the Climate Change Agreements (Energy-intensive Installations) Regulations 2001, SI 2001/1139, reg 2; the Climate Change Agreements (Miscellaneous Amendments) Regulations 2006, SI 2006/1848, reg 2). See also the Climate Change Agreements (Eligible Facilities) Regulations 2001, SI 2001/662; the Climate Change Agreements (Energy-intensive Installations) Regulations 2006, SI 2006/59 (amended by SI 2006/1848); and the Climate Change Agreements (Eligible Facilities) Regulations 2006, SI 2006/60 (amended by SI 2006/1931).

6 Finance Act 2000 Sch 6 para 44(1) (Sch 6 para 44 substituted by the Finance Act 2007 s 23, Sch 2 paras 1, 7, but only in relation to a supply actually made on or after 1 November 2007: see the Finance Act 2007 (Climate Change Levy: Reduced-rate Supplies etc) (Appointed Day) Order 2007, SI 2007/2902, art 2(1), (2)).

7 le subject to the Finance Act 2000 Sch 6 para 45 (amended by the Finance Act 2007 s 23, Sch 2 paras 1, 8).

8 Finance Act 2000 Sch 6 para 44(2) (as substituted: see note 6 supra).

9 Ibid Sch 6 para 44(3) (as substituted: see note 6 supra).

10 Ibid Sch 6 para 44(4) (as substituted: see note 6 supra).

11 Ibid Sch 6 para 44(5) (as substituted: see note 6 supra).

12 le indicate the effect of ibid Sch 6 para 44(3) (as originally enacted).

13 See ibid Sch 6 para 44(1)-(3) (as originally enacted).

14 le subject to ibid Sch 6 para 45 (as originally enacted).

15 Ibid Sch 6 para 44(4) (as originally enacted).

16 Ibid Sch 6 para 44(5) (as originally enacted). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, Pt III (regs 34-45) (as amended).

17 Finance Act 2000 Sch 6 para 44(6) (as originally enacted).

UPDATE

675 Reduced-rate supplies

TEXT AND NOTES--The Secretary of State may (1) give a certificate that includes provision specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply; (2) vary a certificate so that it includes provision (or further provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply; or (3) vary a certificate so that it ceases to include such a provision: Finance Act 2000 Sch 6 para 44(2A), (2B) (Sch 6 para 44(2A)-(2D) added by Finance Act 2009 s 117(2)). A taxable supply of a taxable commodity to a facility is not a reduced-rate supply if, at the time of the supply, the commodity falls within a description that is specified in accordance with head (1) or (2) in the certificate relating to the facility: Finance Act 2000 Sch 6 para 44(2B). For these purposes, 'certificate' means such a certificate as is mentioned in head (1): Sch 6 para 44(2D). The Secretary of State may only include provision in such a certificate by virtue of head (1) or (2) if

the Treasury consents in writing to the specification before it is made; and if, and for as long as, the result is compatible with the common market by virtue of EC Commission Regulation 800/2008 (see **COMPETITION** vol 18 (2009) PARA 27 NOTE 7): Finance Act 2000 Sch 6 para 44(2C).

TEXT AND NOTES 1-8--Finance Act 2000 Sch 6 para 44(2), (2B) amended: Finance Act 2009 s 117(3).).

NOTE 5--Finance Act 2000 Sch 6 para 51 further amended: SI 2007/3538. SI 2006/60 further amended: SI 2009/2458.

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E. REGISTRATION; SECURITY FOR LEVY

676. Requirement to be registered.

A person is required to be registered¹ with the Commissioners for Revenue and Customs for the purposes of the levy if a taxable supply² is made in respect of which he is the person liable to account for the levy charged³. The Commissioners must⁴ establish and maintain a register of persons liable to account for levy⁵ and must keep such information in the register as they consider appropriate for the care and management of the levy⁶. Regulations⁷ made by the Commissioners may, however, provide that, in such cases or circumstances and subject to such conditions or requirements as may be prescribed in the regulations, the Commissioners may exempt a person from the requirement to be registered⁸.

A person who either intends to make, or have made to him, any taxable supply in respect of which (if made) he will be the person liable to account for the levy charged, or is required to be registered for the purposes of the levy, must (if he is not so registered) notify the Commissioners of that fact⁹. A person who fails to comply with this requirement is¹⁰ liable to a penalty¹¹ of either an amount equal to 5 per cent of the relevant levy¹² or, if it is greater or the circumstances are such that there is no relevant levy, £250¹³. A failure to comply does not, however, give rise to any liability to such a penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal¹⁴, that there is a reasonable excuse for the failure¹⁵. Where, by reason of any conduct amounting to such failure, a person is convicted of an offence¹⁶ or a person is assessed to a penalty for evasion¹⁷, that person is not by reason of that conduct to be liable also to a penalty under these provisions¹⁸.

Where a person who has become liable to give such a notification ceases (whether before or after being registered for the purposes of the levy) to intend to make, or to intend to have made to him, taxable supplies in respect of which, if made, he would be the person liable to account for the levy charged, he must notify the Commissioners of that fact¹⁹. A person who fails to comply with this requirement is liable to a penalty of £250²⁰.

1 'Registered' means registered in the register maintained under the Finance Act 2000 s 30(1), Sch 6 para 53(2) (see the text and notes 4-5 infra): Sch 6 para 147.

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 Finance Act 2000 Sch 6 para 53(1). As to the persons liable to account for levy see PARA 672 ante.

4 Ie for the purposes of ibid Sch 6 para 53(1) and in accordance with the provisions of Sch 6 Pt V (paras 53-61) (as amended): see PARA 676 et seq post.

5 Ibid Sch 6 para 53(2).

6 Ibid Sch 6 para 53(3).

7 As to the power to make regulations see generally para 661 note 13 ante.

8 Finance Act 2000 Sch 6 para 53(4) (added by the Finance Act 2003 s 192(1), (3)).

9 Finance Act 2000 Sch 6 para 55(1). For the purposes of any provision made by or under Sch 6 Pt V (paras 53-61) (as amended) for any matter to be notified to the Commissioners, regulations made by the

Commissioners may make provision: (1) as to the time within which the notification is to be given; (2) as to the form and manner in which the notification is to be given; and (3) as to the information and other particulars to be contained in or provided with any notification: Sch 6 para 60(1). For those purposes the Commissioners may also by regulations impose obligations requiring a person who has given a notification to notify the Commissioners if any information contained in or provided in connection with that notification is or becomes inaccurate: Sch 6 para 60(2). The power under Sch 6 para 60 to make regulations as to the time within which any notification is to be given include powers to authorise the Commissioners to extend the time for the giving of a notification: Sch 6 para 60(3). For the prescribed manner of notification see the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, reg 2, Schedule. Subsequent changes in relevant particulars must be notified: see reg 3.

10 Ie subject to the Finance Act 2000 Sch 6 para 55(5), (6): see the text and notes 14-18 infra.

11 Ibid Sch 6 para 55(2).

12 For these purposes, 'relevant levy' means the levy (if any) for which the person in question is liable to account in respect of taxable supplies made in the period which (1) begins with the date with effect from which he is required to be registered for the purposes of the levy; and (2) ends with the date on which the Commissioners received notification of, or otherwise first became aware of, the fact that he was required to be registered: ibid Sch 6 para 55(4).

13 Ibid Sch 6 para 55(3).

14 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante. As to appeals see PARA 702 post.

15 Finance Act 2000 Sch 6 para 55(5).

16 Ie whether under the Finance Act 2000 or otherwise.

17 Ie under ibid Sch 6 para 98: see PARA 690 post.

18 See ibid Sch 6 para 55(6).

19 Ibid Sch 6 para 57(1). For the prescribed manner of notification see the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, reg 4.

20 Finance Act 2000 Sch 6 para 57(2).

UPDATE

676 Requirement to be registered

TEXT AND NOTE 17--Finance Act 2000 Sch 6 para 55(6) (amended by SI 2009/571) refers also to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

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677. Form of registration.

The Commissioners for Revenue and Customs must register a person¹ if:

- 369 (1) they receive from him a notification of registrability²; or
- 370 (2) although they have not received from him such a notification, it appears to them that he is required to be registered³.

Where the Commissioners register a person who is required to be registered, they must register him with effect from the time when the requirement arose⁴.

Where any two or more bodies corporate are members of the same group they must be registered together as one person in the name of the representative member⁵. The registration of a body corporate carrying on a business in several divisions may, however, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions⁶.

The registration of any two or more persons carrying on a business in partnership, or of an unincorporated body, may be in the name of the firm or body concerned⁷.

1 For these purposes, references to registering a person are references to registering him in the register maintained under the Finance Act 2000 s 30(1), Sch 6 para 53(2) (see PARA 676 ante); and references to a person's registration are references to his registration in that register: Sch 6 para 54.

2 ie a notification given under ibid Sch 6 para 55: see PARA 676 ante.

3 Ibid Sch 6 para 56(1)(a), (b). For the meaning of 'registered' see PARA 676 note 1 ante.

4 Ibid Sch 6 para 56(1).

5 Ibid Sch 6 para 56(2). As to group treatment see further Sch 6 para 116; and the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, Pt III (regs 5-11). 'Member', and 'representative member', in relation to a group, are to be construed in accordance with those regulations: see the Finance Act 2000 Sch 6 para 147.

6 Finance Act 2000 Sch 6 para 56(3).

7 Ibid Sch 6 para 56(4). See further Sch 6 para 117; and the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, regs 12-13.

UPDATE

677 Form of registration

NOTE 5--SI 2001/7 reg 6 amended: SI 2009/1890.

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678. Security for levy.

Where it appears to the Commissioners for Revenue and Customs necessary to do so for the protection of the revenue they may require any person who is or is required to be registered¹ for the purposes of the levy to give security, or further security, for the payment of any levy which is or may become due from him². Their power to require any such security, or further security, is a power to require security, or further security, of such amount and in such manner as they may determine³.

A person who is liable to account for the levy⁴ on a taxable supply⁵ that he makes is guilty of an offence if, at the time the supply is made, he has been required to give such security and he has not complied with that requirement⁶; and a person who is liable to account for the levy on a taxable supply that another person makes to him is guilty of an offence if he makes any arrangements for the making of the supply at a time when he has been required to give such security and he has not complied with that requirement⁷. A person guilty of such an offence is liable on summary conviction to a penalty of level 5 on the standard scale⁸.

¹ For the meaning of 'registered' see PARA 676 note 1 ante; and as to the requirement of registration see PARA 678 ante.

² Finance Act 2000 s 30(1), Sch 6 para 139(1). Any notice, notification or requirement that is to be or may be served on, given to or imposed on any person for the purposes of any provision made by or under Sch 6 (as amended) may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or his representative at the latest or usual residence or place of business of that person or representative: Sch 6 para 144(1). For the meaning of 'tax representative' see PARA 681 note 8 post.

³ Ibid Sch 6 para 139(2).

⁴ As to the persons liable to account for levy see PARA 672 ante.

⁵ For the meaning of 'taxable supply' see PARA 661 note 4 ante.

⁶ Finance Act 2000 Sch 6 para 139(3).

⁷ Ibid Sch 6 para 139(4).

⁸ Ibid Sch 6 para 139(5). As to the standard scale see PARA 613 note 11 ante.

The Customs and Excise Management Act 1979 ss 145-155 (as amended) (proceedings for offences, mitigation of penalties and certain other matters: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1197 et seq) apply in relation to an offence under the Finance Act 2000 Sch 6 as they apply in relation to offences and penalties under the Customs and Excise Acts: Finance Act 2000 Sch 6 para 139(6).

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679. Cancellation of registration.

If the Commissioners for Revenue and Customs are satisfied that a registered¹ person:

- 371 (1) has ceased to make, or have made to him, taxable supplies² on which he is liable to account for the levy charged; and
- 372 (2) does not intend to make, or have made to him, any such supplies,

they may cancel his registration³ with effect from such time after he last made, or had made to him, taxable supplies as appears to them to be appropriate⁴. This applies whether or not the registered person has notified⁵ the Commissioners that he is no longer registrable⁶.

The Commissioners are under a duty to exercise the power so conferred with effect from any time if, where the power is exercisable, they are satisfied that the conditions specified in heads (a) to (d) below are satisfied and were or will be satisfied at that time⁷. Those conditions are:

- 373 (a) that the person in question has given a notification that he is no longer registrable⁸;
- 374 (b) that no levy due from that person, and no amount recoverable as if it were levy, remains unpaid;
- 375 (c) that no tax credit⁹ to which that person is entitled by virtue of any tax credit regulations¹⁰ is outstanding; and
- 376 (d) that that person is not subject to any outstanding liability to make a return for the purposes of the levy¹¹.

Where a registered person notifies the Commissioners that he is no longer registrable¹², and they are satisfied that, if he had not been registered, he would not have been required to be registered at any time since the time when he was registered, they must cancel his registration with effect from the date of his registration¹³.

1 For the meaning of 'registered' see PARA 676 note 1 ante; and as to registration see PARA 677 ante.

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 For the meaning of references to a person's registration see PARA 677 note 1 ante.

4 Finance Act 2000 s 30(1), Sch 6 para 58(1).

5 He notifies the Commissioners under *ibid* Sch 6 para 57: see PARA 676 ante.

6 *Ibid* Sch 6 para 58(2).

7 *Ibid* Sch 6 para 58(3).

8 He gives a notification under *ibid* Sch 6 para 57.

9 'Tax credit' means a tax credit for which provision is made by tax credit regulations; and 'tax credit regulations' means regulations under *ibid* Sch 6 para 62 (as amended) (see PARA 684 post): reg 147.

10 As to such regulations see PARA 684 post.

- 11 Finance Act 2000 Sch 6 para 58(4).
- 12 See note 5 *supra*.
- 13 Finance Act 2000 Sch 6 para 58(5).

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680. Correction of, and publication of information on, the register.

The Commissioners for Revenue and Customs may by regulations¹ make provision for and with respect to the correction of entries in the register². Such regulations may, to such extent as appears to the Commissioners appropriate for keeping the register up to date, make provision requiring registered³ persons, and persons who are required to be registered⁴, to notify the Commissioners of changes in circumstances relating to themselves, their businesses or any other matter with respect to which particulars are contained in the register (or would be, were the person registered)⁵.

The Commissioners may publish, by such means as they think fit, any information which is derived from the register and which falls within any of the following descriptions, namely:

- 377 (1) the names of registered persons;
- 378 (2) the fact, where it is the case, that the registered person is a body corporate which is a member of a group;
- 379 (3) the names of the other bodies corporate which are members of the group⁶.

Information may be published in accordance with this provision notwithstanding any obligation not to disclose the information that would otherwise apply⁷.

1 As to the power to make regulations see generally para 661 note 13 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 59(1). For the meaning of 'the register' see PARA 677 note 1 ante.

3 For the meaning of 'registered' see PARA 676 note 1 ante.

4 As to persons who are required to be registered see PARA 676 ante.

5 Finance Act 2000 Sch 6 para 59(2). As to the exercise of this power see the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, reg 3.

6 Finance Act 2000 Sch 6 para 61(1), (2).

7 Ibid Sch 6 para 61(3).

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F. RECOVERY AND INTEREST

681. Assessments of amounts of levy due.

Where it appears to the Commissioners for Revenue and Customs:

- 380 (1) that any period is an accounting period¹ by reference to which a person is liable to account for levy²;
- 381 (2) that any levy for which that person is liable to account by reference to that period has become due; and
- 382 (3) that there has been a default by that person that falls within heads (a) to (e) below,

they may assess the amount of levy due from that person for that period to the best of their judgment and notify that amount to that person³. Similarly, where it appears to the Commissioners that any levy for which a person is liable to account otherwise than by reference to an accounting period has become due, and that there has been a default by that person that falls within heads (a) to (e) below, they may assess the amount of that levy to the best of their judgment and notify it to him⁴. The defaults described above are:

- 383 (a) any failure to make a return required to be made by any provision made by or under the relevant statutory provisions⁵;
- 384 (b) any failure to keep any documents necessary to verify returns required to be made under any such provision;
- 385 (c) any failure to afford the facilities necessary to verify returns required to be made under any such provision;
- 386 (d) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return;
- 387 (e) any failure to comply with a requirement imposed⁶ with regard to registration⁷.

Where it appears to the Commissioners that such a default is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative⁸ of another person, heads (1) to (3) above apply as if the reference to the amount of levy due included a reference to any levy due from that other person⁹.

In a case where:

- 388 (i) the Commissioners have made an assessment for any accounting period as a result of any person's failure to make a return for that period;
- 389 (ii) the levy assessed has been paid but no proper return has been made for that period;
- 390 (iii) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it necessary to make another assessment under the above provisions in relation to the later period; and

391 (iv) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period,

they may, in the assessment in relation to the later period, specify an amount of levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period¹⁰.

Where an amount has been assessed and notified to any person under these provisions, it is recoverable on the basis that it is an amount of levy due from him¹¹; but this does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced¹².

If, where an assessment has been notified to any person¹³, it appears to the Commissioners that the amount which ought to have been assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly¹⁴. Where an amount has been so assessed and notified to any person, it is recoverable on the basis that it is an amount of levy due from him¹⁵; but this does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced¹⁶.

An assessment or supplementary assessment of an amount of levy due for any accounting period may not be made more than two years after the end of the accounting period unless it is made within the period of one year after evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge¹⁷. It may not in any event be made¹⁸ more than three years after the end of that accounting period¹⁹. Where, however, levy has been lost:

- 392 (A) as a result of any conduct for which a person has been convicted of an offence involving fraud;
- 393 (B) in circumstances giving rise to liability to a penalty for failure to notify of registrability etc²⁰; or
- 394 (C) as a result of evasion²¹,

that levy may be assessed²² as if the time limit set out above were 20 years instead of three years²³. Where, after a person's death, the Commissioners propose to assess an amount of levy as due by reason of some conduct of the deceased, the assessment may not be made more than three years after the death, and if the circumstances are as set out in heads (A) to (C) above, the 20-year time limit does not apply but any assessment which could, applying that time limit, have been made immediately after the death may be made at any time within three years after it²⁴.

1 'Accounting period' means a period which, in pursuance of any regulations under the Finance Act 2000 s 30(1), Sch 6 para 41 (as amended) (see PARA 673 ante), is an accounting period for the purposes of the levy: Sch 6 para 147. In the case of a registered person, the accounting periods to which he is subject are each three month period ending on the dates notified to him at any time by the Commissioners for this purpose: Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 3(1), (2). In the case of any other registrable person, the accounting periods to which he is subject are each three month period ending on 31 March, 30 June, 30 September or 31 December: reg 3(1), (3). The Commissioners may, however, in a particular case vary the start, end and length of any accounting period: reg 3(4). See further note 5 infra.

2 As to the persons liable to account for levy see PARA 672 ante.

3 Finance Act 2000 Sch 6 para 78(1). References in Sch 6 (as amended), in relation to any accounting period, to levy due from any person for that period are references (subject to any regulations made by virtue of Sch 6 para 41(2)(a): see PARA 673 ante) to the levy for which that person is required, in accordance with regulations under Sch 6 para 41 (as amended), to account by reference to that period: Sch 6 para 153.

4 Ibid Sch 6 para 78(1A) (added by the Finance Act 2003 s 192(1), (5)). In relation to cases where, by virtue of regulations under the Finance Act 2000 Sch 6 para 41(1)(a)(ii), a person is liable to account for levy

otherwise than by reference to accounting periods, Sch 6 Pt VII (paras 77-91) (as amended) has effect as if (1) references to levy due for 'an' or 'any' accounting period were references simply to levy due; (2) references to levy due for a specified accounting period were references to the levy in question; (3) references to an assessment for a specified accounting period were references to an assessment in respect of the levy in question; (4) any time limit framed by reference to the end of the accounting period for which levy is due were framed by reference to the date on which payment of the levy is due; (5) references to the making of a return for an accounting period were references to the payment of the levy in question; (6) references to the amount shown in such a return were references to the amount of levy paid; and (7) Sch 6 para 88(8), (9) was omitted: Sch 6 para 91(5) (added by the Finance Act 2003 s 192(1), (6)).

5 le under the Finance Act 2000 Sch 6 (as amended): see PARA 661 et seq ante, PARA 682 et seq post. A registrable person is obliged to make a return to the Commissioners covering each of his accounting periods (Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 4(1)); and is obliged to make that return no later than the last working day of the month immediately following the end of the period to which it relates (reg 4(2)). In the case of an accounting period that does not end on the last day of a month, the registrable person is obliged to make that return no later than the due day directed by the Commissioners: reg 4(3). The Commissioners may allow the registrable person extra time in which to make that return: reg 4(4). The registrable person must make that return in a form that is prescribed by the Commissioners in a published notice ('prescribed form') (reg 4(5)) and by securing that it is delivered either to the address prescribed by the Commissioners in a published notice or to any other address that they may direct or allow (reg 4(6)). As to the content of returns see reg 5 (amended by SI 2003/604; SI 2005/1716; SI 2007/2903).

A registrable person must pay to the Commissioners the amount of levy due from him for a given accounting period no later than the due date for the return for that period: Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 6(1). He must make that payment by securing that it is delivered either to the address or bank account prescribed for this purpose by the Commissioners in a published notice or to any other address or bank account that they may direct or allow: reg 6(2). The Commissioners may allow a registrable person who has made arrangements with them for the payment of any amount of levy due from him by means of direct debit an extra seven days in which the payment may be made (reg 6(3)); but they may only do so in accordance with conditions they must stipulate in a published notice (reg 6(4)). A registrable person is obliged to keep a record to be known as the 'climate change levy account' which is a periodic summary of levy due: reg 7(1).

The Commissioners may, however, authorise a registered person to pay and account for levy by reference to any transitional accounting period, and any subsequent current accounting year, at such times, and for such amounts, as may be determined in accordance with the scheme: see regs 6B-6G (added by SI 2002/1152; amended by SI 2003/604).

6 le by or under the Finance Act 2000 Sch 6 Pt V (as amended): see PARA 676 et seq ante.

7 Ibid Sch 6 para 78(2).

8 For the purposes of ibid Sch 6 Pt VII (paras 77-91) (as amended), 'representative', in relation to any person, means (1) any of that person's personal representatives; (2) that person's trustee in bankruptcy or liquidator; (3) any person holding office as a receiver in relation to that person or any of his property; (4) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person (Sch 6 para 91(3)); and any notification of an assessment under any provision of Sch 6 Pt VII (as amended) to a person's representative is to be treated for these purposes as notification to the person in relation to whom the representative acts (Sch 6 para 91(2)).

'Tax representative', in relation to any person, means the person who, in accordance with any regulations under Sch 6 para 114, is for the time being that person's tax representative for the purposes of the levy: Sch 6 para 147. The Commissioners may by regulations make provision for securing that every non-resident taxpayer has a person resident in the United Kingdom to act as his tax representative for the purposes of the levy: Sch 6 para 114(1). As to the provision that may be made in such regulations see Sch 6 para 114(2). A person who becomes subject, in accordance with any such regulations, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but who fails (with or without making the appointment) to make the request as required by the regulations, is liable to a penalty of £10,000 (Sch 6 para 114(3)); but such a failure does not give rise to liability to such a penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure (Sch 6 para 114(4)). As to the effect of the appointment of tax representatives see Sch 6 para 115. See further the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, regs 14-19 (amended by SI 2005/1716). 'Non-resident taxpayer' means a person who (a) is or is required to be registered for the purposes of the levy; and (b) is not resident in the United Kingdom: Finance Act 2000 Sch 6 para 147. For the meaning of 'resident in the United Kingdom' see PARA 671 note 10 ante; and as to the power to make regulations see generally para 661 note 13 ante.

The Commissioners may also by regulations make provision (i) for the purposes of the levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated (Sch 6 para 118(1)); (ii) for the application of Sch 6 (as amended) in cases in which an insolvency procedure is applied to a

person or to a deceased individual's estate (Sch 6 para 120(1)). As to the provision that may be made by such regulations see Sch 6 paras 118(2), 120(2)-(9) (amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 paras 31, 33). See further the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 55-58.

9 Finance Act 2000 Sch 6 para 78(3).

10 Ibid Sch 6 para 78(4).

11 Ibid Sch 6 para 78(5).

12 Ibid Sch 6 para 78(6).

13 Ie under ibid Sch 6 para 78 (as amended) (see the text and notes 1-12 supra) or under Sch 6 para 79 (see the text and notes 14-16 infra).

14 Ibid Sch 6 para 79(1).

15 Ibid Sch 6 para 79(2).

16 Ibid Sch 6 para 79(3).

17 Ibid Sch 6 para 80(1)(a), (2). Nothing in Sch 6 para 80 prejudices the powers of the Commissioners under Sch 6 para 78(4) (see the text and note 10 supra): Sch 6 para 80(5).

18 Ie subject to ibid Sch 6 para 80(3): see the text and notes 20-23 infra.

19 Ibid Sch 6 para 80(1)(b); and see note 17 supra.

20 Ie a penalty under ibid Sch 6 para 55: see PARA 676 ante.

21 Ie as a result of conduct falling within ibid Sch 6 para 98(1) (evasion): see PARA 690 post.

22 Ie under ibid Sch 6 para 78 (as amended) or Sch 6 para 79.

23 See ibid Sch 6 para 80(3); and see note 17 supra.

24 See ibid Sch 6 para 80(4); and see note 17 supra.

UPDATE

681 Assessments of amounts of levy due

TEXT AND NOTE 19--For 'three years' read 'four years': Finance Act 2000 Sch 6 para 80(1) (b) (amended by Finance Act 2009 Sch 51 para 35(2)).

TEXT AND NOTES 20-23--Replaced. An assessment of an amount due from a person in a case involving a loss of levy (1) brought about deliberately by the person (or by another person acting on that person's behalf), or (2) attributable to a failure by the person to comply with an obligation under the Finance Act 2000 Sch 6 para 53 (see PARA 676) or Sch 6 para 55 (see PARA 677), may be made at any time not more than 20 years after the end of the accounting period to which it relates (subject to Sch 6 para 80(4)); and in head (2) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person: Sch 6 para 80(3), (3A) (substituted by Finance Act 2009 Sch 51 para 35(3)).

TEXT AND NOTE 24--The assessment may not be made more than four years after the death, and words 'and if the circumstances ... after it' omitted: Finance Act 2000 Sch 6 para 80(4) (amended by Finance Act 2009 Sch 51 para 35(4)).

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682. Interest.

Where:

- 395 (1) the circumstances are such that an assessment or supplementary assessment¹ could have been made of an amount of levy due from any person, but before such an assessment was made and notified to that person that amount was paid (so that no such assessment was necessary), the whole of the amount paid carries interest² for the specified period³;
- 396 (2) a person makes a return⁴ and the return shows that an amount of levy is due from him for the accounting period for which the return is made, that amount is to carry penalty interest⁵ for the specified period⁶;
- 397 (3) the Commissioners for Revenue and Customs make an assessment or supplementary assessment of an amount of levy due from any person for any accounting period and notify it to him, and the assessment is made at a time after the time by which a return is required⁷ to be made by that person for that accounting period and before any such return has been made, that amount is to carry penalty interest for the specified period⁸; but where after the assessment is made the person makes a return for the accounting period in question, the assessed amount is not to carry such penalty interest to the extent that that amount is shown in the return as an amount of levy due from him for that accounting period and, accordingly, carries penalty interest under head (2) above⁹;
- 398 (4) the Commissioners make an assessment or supplementary assessment of an amount of levy due from any person for any accounting period and notify it to him, the assessment is made after a return¹⁰ has been made by that person for that accounting period, and the assessment is made on the basis that the amount ('the additional amount') is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period, the additional amount is to carry interest¹¹ for the specified period¹²;
- 399 (5) the Commissioners make an assessment or supplementary assessment of an amount of levy due from any person for any accounting period and notify it to him, they also specify a date for these purposes, and the amount assessed is paid on or before that date, the only interest carried by that amount under head (4) above is, however, to be interest¹³ for the period before the day on which the assessment is notified¹⁴;
- 400 (6) the Commissioners make an assessment¹⁵ of an amount of interest payable at the ordinary rate¹⁶, that amount is to carry penalty interest for the period which begins with the day on which the assessment is notified to the person on whom the assessment is made and ends with the day before the day on which the assessed interest is paid¹⁷;
- 401 (7) the Commissioners make an assessment of an amount of interest due from any person, they also specify a date for these purposes, and the amount of interest assessed is paid on or before that date, the amount paid before that date is not, however, to carry penalty interest under head (6) above¹⁸.

Interest under any of heads (1) to (7) above is to be paid without any deduction of income tax¹⁹. Where, however, an amount carries interest under any of those heads, or would do so apart from heads (a) and (b) below, and all or part of the amount turns out not to be due, then in such a case:

- 402 (a) the amount or part that turns out not to be due is not to carry interest under the applicable head and is to be treated as never having done so; and
- 403 (b) all such adjustments as are reasonable must be made, including²⁰ adjustments by way of repayment²¹.

Where a person is liable for interest under any of heads (1) to (7) above, the Commissioners may assess the amount due by way of interest and notify it to him accordingly²². If, where an assessment has been notified to any person²³, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and must notify that person accordingly²⁴. Where an amount has been assessed and notified to any person under these provisions, it is recoverable as if it were levy due from him²⁵; but this does not apply so as to require any interest to be payable on interest except in accordance with heads (6) and (7) above, or in so far as it falls²⁶ to be compounded²⁷. Nor does it have effect if, or to the extent that, the assessment in question has been withdrawn or reduced²⁸.

Where a person is assessed²⁹ to an amount due by way of any interest, and is also assessed to levy³⁰ for the accounting period which is the relevant accounting period in relation to that interest, the assessments may be combined and notified to him as one assessment³¹. A notice of a combined assessment must separately identify the interest being assessed³².

In a case where the amount of any interest falls to be calculated by reference to levy which was not paid at the time when it should have been, and that levy cannot be readily attributed to any one or more accounting periods, that levy is to be treated for the purposes of interest on any of that levy as levy due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable³³.

Where an assessment is made under the above provisions³⁴ to an amount of penalty interest under any of heads (1) to (7) above:

- 404 (i) the notice of assessment must specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
- 405 (ii) if the interest continues to accrue after that date, a further assessment or further assessments may be made in respect of the amounts so accruing³⁵.

Where, however, an assessment to penalty interest is made specifying a date for the purposes of head (i) above, and within such period as may for these purposes have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid, that amount is to be deemed for the purposes of any further liability to interest to have been paid on the specified date³⁶.

1 I.e. an assessment under the Finance Act 2000 s 30(1), Sch 6 para 78 (as amended) or Sch 6 para 79: see PARA 681 ante.

2 Such interest is payable at the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation): Finance Act 2000 Sch 6 para 81(3).

3 Ibid Sch 6 para 81(1). The specified period for these purposes is the period which (1) begins with the day after that on which the person is required in accordance with regulations under Sch 6 para 41 (as amended) to pay levy due from him for the accounting period to which the amount paid relates; and (2) ends with the day

before that on which the amount is paid: Sch 6 para 81(2). For the meaning of 'accounting period' see PARA 681 note 1 ante.

4 Ie for the purposes of any regulations made under Sch 6 para 41 (as amended), and whether or not at the time required by the regulations.

5 Penalty interest under any of ibid Sch 6 paras 82-85 (see the text and notes 6-18 *infra*) is to be compound interest calculated at the penalty rate, and with monthly rests: Sch 6 paras 86(1), 91(1). For this purpose the penalty rate is the rate found by taking the rate applicable under the Finance Act 1996 s 197 (as amended) for the purposes of the Finance Act 2000 Sch 6 para 81(3) and adding 10 percentage points to that rate: Sch 6 para 86(2). Where a person is liable under any of Sch 6 paras 82-85 to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think, or the tribunal thinks, proper: Sch 6 para 86(3). Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under Sch 6 para 86(3): Sch 6 para 86(4). In determining whether there is a reasonable excuse for these purposes, no account must, however, be taken of any of the following matters, namely: (1) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest; (2) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy; (3) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith: Sch 6 para 86(5). In the case of interest reduced by the Commissioners under Sch 6 para 86(3) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners: Sch 6 para 86(6). For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.

6 Ibid Sch 6 para 82(1). The specified period for these purposes is the period which (1) begins with the day after that on which the person is required in accordance with regulations under Sch 6 para 41 (as amended) to pay levy due from him for the accounting period in question; and (2) ends with the day before that on which the amount shown in the return is paid: Sch 6 para 82(2).

7 Ie by regulations under ibid Sch 6 para 41 (as amended).

8 Ibid Sch 6 para 83(1). The specified period for these purposes is the period which (1) begins with the day after that on which the person is required in accordance with regulations under Sch 6 para 41 (as amended) to pay levy due from him for the accounting period in question; and (2) ends with the day before that on which the assessed amount is paid: Sch 6 para 83(2).

9 Ibid Sch 6 para 83(3).

10 Ie a return for the purposes of any regulations under ibid Sch 6 para 41 (as amended).

11 Interest under ibid Sch 6 para 84 (see heads (4)-(5) in the text): (1) in respect of so much of the period specified in Sch 6 para 84(2) (see note 12 *infra*) as falls before the day on which the assessment is notified to the person in question, is to be payable at the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation) for the purposes of the Finance Act 2000 Sch 6 para 81(3); and (2) in respect of the remainder (if any) of that period, is to be penalty interest: Sch 6 para 84(3). See, however, head (5) in the text.

12 Ibid Sch 6 para 84(1). The specified period for these purposes is the period which (1) begins with the day after that on which the person is required in accordance with regulations under Sch 6 para 41 (as amended) to pay levy due from him for the accounting period in question; and (2) ends with the day before the day on which the additional amount is paid: Sch 6 para 84(2).

13 Ie at the rate given by ibid Sch 6 para 84(3)(a): see note 11 head (1) *supra*.

14 Ibid Sch 6 para 84(4).

15 Ie under ibid Sch 6 para 88: see the text and notes 22-33 *infra*.

16 Ie interest payable at the rate given by ibid Sch 6 para 81(3).

17 Ibid Sch 6 para 85(1).

18 Ibid Sch 6 para 85(2).

19 Ibid Sch 6 para 87(1).

20 Ie subject to ibid Sch 6 paras 64-76 (as amended): see PARAS 684-688 *post*.

21 Ibid Sch 6 para 87(2), (3).

22 Ibid Sch 6 para 88(1).

23 Ie under ibid Sch 6 para 88(1) (see the text and note 22 supra) or under Sch 6 para 88(2) (supplementary assessment: see the text and note 24 infra).

24 Ibid Sch 6 para 88(2).

25 Ibid Sch 6 para 88(3). It is thus recoverable as a debt due to the Crown: see Sch 6 para 77, cited in PARA 661 ante. Schedule 6 para 80 (see PARA 681 ante) applies in relation to assessments under Sch 6 para 88 as if any assessment to interest were an assessment under Sch 6 para 78 (as amended) to levy due for the period which is the relevant accounting period in relation to that interest: Sch 6 para 88(5). The relevant accounting period for these purposes is (1) in the case of interest on levy due for any accounting period, that accounting period; and (2) in the case of interest on interest (whether under Sch 6 para 85 or by virtue of any compounding under Sch 6 para 86), the period which is the relevant accounting period for the interest on which the interest is payable: Sch 6 para 88(8).

26 Ie in accordance with ibid Sch 6 para 86: see note 5 supra.

27 Ibid Sch 6 para 88(4)(a).

28 Ibid Sch 6 para 88(4)(b).

29 Ie under ibid Sch 6 para 88: see the text and notes 22-28 supra, 30-33 infra.

30 Ie under ibid Sch 6 para 78 (as amended) or Sch 6 para 79: see PARA 681 ante.

31 Ibid Sch 6 para 88(6).

32 Ibid Sch 6 para 88(7).

33 Ibid Sch 6 para 88(9).

34 Ie under ibid Sch 6 para 88: see the text and notes 22-33 supra.

35 Ibid Sch 6 para 89(1).

36 Ibid Sch 6 para 89(2).

UPDATE

682 Interest

TEXT AND NOTE 6--If (1) a person ('P') fails to pay climate change levy when it becomes due and payable: (2) P makes a request to an officer of Revenue and Customs that payment of the surcharge be deferred; and (3) such an officer agrees that payment of that amount may be deferred for a period ('the deferral period'), P is not liable to penalty interest under the Finance Act 2000 Sch 6 para 82 for failure to pay the amount concerned if P would otherwise become liable to such interest between the date on which he makes the request and the end of the deferral period: Finance Act 2009 s 108(1), (2), (5). However, if P breaks the agreement, and an officer of Revenue and Customs serves on P a notice specifying any interest to which P would become liable apart from the above provisions, P becomes liable, at the date of the notice, to that interest: s 108(3). P breaks an agreement for this purpose if he fails to pay the amount of tax in question when the deferral period ends, or the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period and P fails to comply with it: s 108(4).

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683. Walking possession agreements.

Where a distress is authorised¹ to be levied on the goods and chattels of a person ('the person in default') who has refused or neglected to pay an amount of levy due from him or an amount recoverable from him as if it were levy, and the person levying the distress and the person in default have entered into a walking possession agreement², then if the person in default is in breach of the undertaking contained in a walking possession agreement, he is liable to a penalty equal to one half of the levy or other amount recoverable from him as if it were levy³. The person in default is not, however, so liable to a penalty if he satisfies the Commissioners for Revenue and Customs or, on appeal, an appeal tribunal⁴ that there is a reasonable excuse for the breach in question⁵.

1 In accordance with regulations under the Finance Act 1997 s 51 (as amended) (enforcement by distress). See the Customs and Excise Duties and Other Indirect Taxes Regulations 1997, SI 1997/1431 (amended for these purposes by the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 61); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1140 et seq.

2 For these purposes, a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default (1) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and (2) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement: Finance Act 2000 s 30(1), Sch 6 para 90(2).

3 Ibid Sch 6 para 90(1), (3).

4 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.

5 Finance Act 2000 Sch 6 para 90(4).

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G. CREDITS AND REPAYMENTS

684. Tax credits.

The Commissioners for Revenue and Customs may, in accordance with the following provisions, by regulations¹ make provision in relation to cases where:

- 406 (1) after a taxable supply² has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would not have been a taxable supply;
- 407 (2) after a supply of a taxable commodity³ is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;
- 408 (3) after a taxable supply has been made on the basis that it was neither a half-rate supply (if made before 1 April 2006)⁴ nor a reduced-rate supply⁵, it is determined that the supply was (to any extent) a half-rate or reduced-rate supply;
- 409 (4) after a charge to levy has arisen on a supply of a taxable commodity ('the original commodity') to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity;
- 410 (5) after a person has become entitled to a debt as a result of making a taxable supply, the debt turns out to be bad (in whole or in part);
- 411 (6) the making of a taxable supply gives rise to a double charge⁶ to levy⁷.

The provision that may be made in relation to any such case as is mentioned above is provision:

- 412 (a) for such person as may be specified in the regulations to be entitled to a tax credit⁸ in respect of any levy charged on the supply or, in such a case as is mentioned in head (6) above, one of the supplies in question⁹;
- 413 (b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for such levy due from him as may be determined in accordance with the regulations¹⁰; and
- 414 (c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to levy, to a repayment of levy of an amount so determined¹¹.

Such regulations may contain any or all of the following provisions:

- 415 (i) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed¹²;
- 416 (ii) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such

- requirements, including the making of a claim, as may be determined in accordance with the regulations¹³;
- 417 (iii) provision requiring a claim for a tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined¹⁴;
- 418 (iv) provision requiring a person claiming any entitlement to a tax credit to keep, for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined¹⁵;
- 419 (v) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with¹⁶;
- 420 (vi) provision for interest¹⁷ to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit¹⁸;
- 421 (vii) provision for determining whether, and to what extent, a debt is to be taken as bad¹⁹;
- 422 (viii) provision for the withdrawal of a tax credit to which a person has become entitled in a case within head (5) above where any part of the debt that has been taken to be bad falls to be regarded as not having been bad²⁰;
- 423 (ix) provision for determining whether, and to what extent, any part of a debt that has been taken to be bad should be regarded as not having been bad²¹;
- 424 (x) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners²².

1 As to the power to make regulations see generally para 661 note 13 ante.

2 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

3 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

4 As to the abolition of half-rate supplies with effect from 1 April 2006 see PARA 674 note 2 ante.

5 As to reduced-rate supplies see PARA 675 ante.

6 I.e. within the meaning of the Finance Act 2000 s 30(1), Sch 6 para 21: see PARA 668 ante.

7 Ibid Sch 6 para 62(1) (amended by the Finance Act 2003 s 192(1), (4); the Finance Act 2006 ss 172(8), (13), 178, Sch 26 Pt 8(1) (for transitional provisions see the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2)). Regulations made under the Finance Act 2000 Sch 6 para 62 (as amended) have effect subject to the provisions of Sch 6 para 64 (see PARA 685 post): Sch 6 para 62(4).

8 For the meaning of 'tax credit' see PARA 679 note 9 ante.

9 Finance Act 2000 Sch 6 para 62(2)(a). As to entitlement to a tax credit see the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 10-12 (amended by SI 2003/604; SI 2007/2903).

10 Finance Act 2000 Sch 6 para 62(2)(b). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 14.

11 Finance Act 2000 Sch 6 para 62(2)(c). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 15. References in the Finance Act 2000 Sch 6 (as amended) to a repayment of levy or of an amount of levy are references to any repayment of an amount to any person by virtue of (1) any tax credit regulations; or (2) Sch 6 para 63 (see PARA 685 post), Sch 6 para 87(3) (see PARA 682 ante) or Sch 6 para 110(3) (see PARA 694 post): Sch 6 para 154. For the meaning of 'tax credit regulations' see PARA 679 note 9 ante.

12 Finance Act 2000 Sch 6 para 62(3)(a). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 13.

13 Finance Act 2000 Sch 6 para 62(3)(b). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 13-15.

14 Finance Act 2000 Sch 6 para 62(3)(c). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 7-8 (amended by SI 2003/604; SI 2007/2903).

15 Finance Act 2000 Sch 6 para 62(3)(d). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 9.

16 Finance Act 2000 Sch 6 para 62(3)(e). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 17.

17 le at the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation).

18 Finance Act 2000 Sch 6 para 62(3)(f). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 32.

19 Finance Act 2000 Sch 6 para 62(3)(g). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 16.

20 Finance Act 2000 Sch 6 para 62(3)(h). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 17.

21 Finance Act 2000 Sch 6 para 62(3)(i).

22 Ibid Sch 6 para 62(3)(j).

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685. Repayments of overpaid levy.

Where a person has paid an amount to the Commissioners for Revenue and Customs by way of levy which was not levy due to them, they are liable to repay the amount to him¹. They are not, however, so liable to repay an amount:

- 425 (1) if, or to the extent that, any person has become entitled to a tax credit² in respect of that amount by virtue of tax credit regulations³;
- 426 (2) except on the making of a claim for that purpose⁴.

Except as so provided, or as provided by tax credit regulations, the Commissioners are not, by virtue of the fact that it was not levy due to them, liable to repay any amount paid to them by way of levy⁵.

The Commissioners are not liable, on any claim for a repayment of levy, to repay any amount paid to them more than three years before the making of the claim⁶. Furthermore, it is a defence to any claim for a repayment of an amount of levy that the repayment of that amount would unjustly enrich the claimant⁷. Where:

- 427 (a) there is an amount paid by way of levy which would otherwise fall to be the subject of a repayment of levy to any person ('person A'); and
- 428 (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than person A,

then where, in such a case, loss or damage has been or may be incurred by person A as a result of mistaken assumptions made in his case about the operation of any provisions relating to levy⁸, that loss or damage is to be disregarded, except to the extent of the quantified amount⁹, in the making of any determination as to:

- 429 (i) whether or to what extent the repayment of an amount to person A would enrich him; or
- 430 (ii) whether or to what extent any enrichment of person A would be unjust¹⁰.

1 Finance Act 2000 s 30(1), Sch 6 para 63(1). Schedule 6 para 63(1)-(4) is subject to the provisions of Sch 6 para 64 (see the text and notes 6-10 infra): Sch 6 para 63(5).

2 For the meaning of 'tax credit' see PARA 679 note 9 ante.

3 Finance Act 2000 Sch 6 para 63(2); and see note 1 supra. For the meaning of 'tax credit regulations' see PARA 679 note 9 ante.

4 Ibid Sch 6 para 63(3); and see note 1 supra. Such a claim must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners: Sch 6 para 63(4). As to the power to make regulations see generally para 661 note 13 ante; and as to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 18.

5 Finance Act 2000 Sch 6 para 63(6).

6 Ibid Sch 6 para 64(1).

7 Ibid Sch 6 para 64(2). The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of Sch 6 para 64(2) except where the arrangements contain such provision as may be required by the regulations and are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners: Sch 6 para 65(1). For these purposes, 'reimbursement arrangements' means any arrangements for the purposes of a claim to a repayment of levy which (1) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and (2) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners: Sch 6 para 65(2). Without prejudice to the generality of Sch 6 para 65(1), the provision that may be required by regulations under Sch 6 para 65 to be contained in reimbursement arrangements includes: (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations; (b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements; (c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners; (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs: Sch 6 para 65(3). Such regulations may impose obligations on such persons as may be specified in them: (i) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of Sch 6 para 65(3)(b) or (c) (see heads (b)-(c) supra); (ii) to comply with any requirements contained in any such arrangements by virtue of Sch 6 para 65(3)(d) (see head (d) supra): Sch 6 para 65(4). Such regulations may also make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations: Sch 6 para 65(5). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 19-25.

8 The reference in the text to provisions relating to levy is a reference to any provisions of (1) any enactment or subordinate legislation (whether or not still in force) which relates to the levy or to any matter connected with it; or (2) any notice published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to the levy: *ibid* Sch 6 para 64(6).

9 For these purposes, 'the quantified amount' means the amount (if any) which is shown by person A to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions: *ibid* Sch 6 para 64(5).

10 *Ibid* Sch 6 para 64(3), (4).

UPDATE

685 Repayments of overpaid levy

TEXT AND NOTE 6--For 'three years' read 'four years': Finance Act 2000 Sch 6 para 64(1) (amended by Finance Act 2009 Sch 51 para 33).

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686. Interest payable by the Commissioners.

Where, due to an error on the part of the Commissioners for Revenue and Customs, a person:

- 431 (1) has paid to them by way of levy an amount which was not due and which they are in consequence liable to repay to him¹;
- 432 (2) has failed to claim a repayment of levy to which he was entitled, under any tax credit regulations², in respect of any tax credits³; or
- 433 (3) has suffered delay in receiving payment of an amount due to him from them in connection with levy⁴,

then, if and to the extent that they would not otherwise be liable to do so, they must, subject to the following provisions, pay interest⁵ to him on that amount for the applicable period⁶. The Commissioners are not, however, liable to pay interest under these provisions except on the making of a claim for that purpose⁷. Such a claim must be in writing and must be made not more than three years after the end of the applicable period to which it relates⁸.

1 The reference in head (1) in the text to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied: Finance Act 2000 s 30(1), Sch 6 para 66(2).

2 For the meaning of 'tax credit regulations' see PARA 679 note 9 ante.

3 For the meaning of 'tax credit' see PARA 679 note 9 ante; and as to such credits see PARA 684 ante.

4 The amounts referred to in head (3) in the text: (1) do not include any amount payable under the Finance Act 2000 Sch 6 para 66; (2) do not include the amount of any interest for which provision is made by virtue of Sch 6 para 62(3)(f) (see PARA 684 ante); but (3) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under Sch 6 para 87(3) (see PARA 682 ante) or Sch 6 para 110(3) (see PARA 694 post): Sch 6 para 66(3).

5 Interest is so payable at the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation): Finance Act 2000 Sch 6 para 66(12). References in Sch 6 para 66(1) to receiving payment of any amount from the Commissioners; or (2) to the authorisation by the Commissioners of the payment of any amount, include references to the discharge by way of set-off (whether in accordance with regulations under Sch 6 para 73 or Sch 6 para 74 (see PARA 688 post) or otherwise) of the Commissioners' liability to pay that amount: Sch 6 para 66(11).

6 Ibid Sch 6 para 66(1). The applicable period, in a case falling within Sch 6 para 66(1)(a) (see head (1) in the text) is the period (1) beginning with the date on which the payment is received by the Commissioners; and (2) ending with the date on which they authorise payment of the amount on which the interest is payable: Sch 6 para 66(4). The applicable period, in a case falling within Sch 6 para 66(1)(b) or (c) (see heads (2)-(3) in the text, is the period (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable; and (b) ending with the date on which they in fact authorise payment of that amount: Sch 6 para 66(5); and see note 5 supra. In determining the applicable period for these purposes there must be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control: Sch 6 para 66(6). The reference in Sch 6 para 66(6) to a period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control includes, in particular, any period which is referable to (i) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed; (ii) any failure by any person to provide the Commissioners (A) at or before the time of the making of a claim; or (B) subsequently in response to a request

for information by the Commissioners, with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and (iii) the making, as part of or in association with any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled: Sch 6 para 66(7). In determining for these purposes whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there must be taken to be so referable, except so far as may be provided for by regulations, any period which (aa) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and (bb) ends with the earliest date on which it would be reasonable for the Commissioners to conclude either that they have received a complete answer to their request for information, that they have received all that they need in answer to that request, or that it is unnecessary for them to be provided with any information in answer to that request: Sch 6 para 66(8).

7 Ibid Sch 6 para 66(9).

8 Ibid Sch 6 para 66(10).

UPDATE

686 Interest payable by the Commissioners

TEXT AND NOTE 8--For 'three years' read 'four years': Finance Act 2000 Sch 6 para 66(10) (amended by Finance Act 2009 Sch 51 para 34).

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687. Assessment for excessive repayment or for overpayment of interest.

Where:

- 434 (1) any amount has been paid at any time to any person by way of a repayment of levy, and the amount paid exceeded the amount which the Commissioners for Revenue and Customs were liable at that time to repay to that person, the Commissioners may, to the best of their judgment, assess the excess paid to that person and notify it to him¹;
- 435 (2) any amount has been paid to any person by way of repayment of levy, the repayment is in respect of a tax credit² the entitlement to which arose in a case relating to a bad debt³, the whole or any part of the credit is withdrawn on account of any part of the debt taken as bad falling to be regarded as not having been bad, and the amount paid exceeded the amount which the Commissioners would have been liable to repay to that person had that withdrawal been taken into account, the Commissioners may, to the best of their judgment, assess the excess paid to that person and notify it to him⁴;
- 436 (3) any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of any provisions contained in any reimbursement arrangements⁵, the Commissioners may, to the best of their judgment, assess the amount due from that person and notify it to him⁶.

Where an assessment is made on any person under heads (1) to (3) above in respect of a repayment of levy made in relation to any accounting period⁷, and the Commissioners have power⁸ to make an assessment on that person to an amount of levy due from that person for that period, the assessments may be combined and notified to him as one assessment⁹. Such a notice of a combined assessment must separately identify the amount being assessed in respect of repayments of levy¹⁰.

Where any amount has been paid to any person by way of interest¹¹ but that person was not entitled¹² to that amount, the Commissioners may, to the best of their judgment, assess the amount so paid to which that person was not entitled and notify it to him¹³.

An assessment under the above provisions¹⁴ may not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners¹⁵. Where an amount has been so assessed and notified to any person, it is recoverable as if it were levy due from him¹⁶; but this does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced¹⁷. Where such an assessment is made, the whole of the amount assessed carries interest, for the specified period¹⁸, as follows:

- 437 (a) with certain exceptions¹⁹, so much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it carries penalty interest²⁰;
- 438 (b) so much of that amount as does not carry penalty interest under head (a) above carries interest at the ordinary rate²¹.

Where a person is so liable to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal²² may reduce the amount payable to such amount, including nil, as they think, or as the tribunal thinks, proper²³. In the case of interest so reduced by the Commissioners an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners²⁴. Where any person is liable to interest on such an assessment, the Commissioners may assess the amount due by way of interest and notify it to him accordingly²⁵; and where an amount has been assessed and notified to any person under this provision it is recoverable as if it were levy due from him²⁶. This does not, however, have effect if, or to the extent that, the assessment in question has been withdrawn or reduced²⁷. Without prejudice to the power to make such assessments to an amount of interest for later periods, the interest to which such an assessment may relate is confined to interest for a period of no more than two years ending with the time when that assessment is made²⁸. Where an assessment is so made to an amount of interest:

- 439 (i) the notice of assessment must specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
- 440 (ii) if the interest continues to accrue after that date, a further assessment or further assessments may be made in respect of the amounts so accruing²⁹.

Where, however, an assessment to interest is made specifying a date for the purposes of head (i) above, and within such period as may have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid, that amount is to be deemed for the purposes of any further liability to interest to have been paid on the specified date³⁰.

If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any of the above provisions³¹ exceeds the amount which was so assessed, then the Commissioners may make a supplementary assessment under the same provision as that assessment was made, and on or before the last day on which that assessment could have been made, of the amount of the excess and must notify the person concerned accordingly³².

1 Finance Act 2000 s 30(1), Sch 6 para 67(1). Any notification of an assessment under any provision of Sch 6 Pt VI (paras 62-76) (as amended) to a person's representative is to be treated for those purposes as notification to the person in relation to whom the representative acts: Sch 6 para 76(1). 'Representative', in relation to any person, means (1) any of that person's personal representatives; (2) that person's trustee in bankruptcy or liquidator; (3) any person holding office as a receiver in relation to that person or any of his property; (4) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person: Sch 6 para 76(2). For the meaning of 'tax representative' see PARA 681 note 8 ante.

2 For the meaning of 'tax credit' see PARA 679 note 9 ante.

3 I.e. a case falling within the Finance Act 2000 Sch 6 para 62(1)(f) (tax credit where all or part of a debt is bad): see PARA 684 ante at head (5) in the text.

4 Ibid Sch 6 para 67(2); and see note 1 supra.

5 I.e. by virtue of ibid Sch 6 para 65(4)(a): see PARA 685 note 7 ante.

6 Ibid Sch 6 para 67(3); and see note 1 supra.

7 For the meaning of 'accounting period' see PARA 681 note 1 ante.

8 I.e. under the Finance Act 2000 Sch 6 Pt VII (paras 77-91) (as amended): see PARAS 661, 681-683 ante.

9 Ibid Sch 6 para 67(4).

10 Ibid Sch 6 para 67(5).

- 11 Ie under ibid Sch 6 para 66: see PARA 686 ante.
- 12 See note 11 supra.
- 13 Finance Act 2000 Sch 6 para 68.
- 14 Ie under ibid Sch 6 para 67 or Sch 6 para 68: see the text and notes 1-13 supra.
- 15 Ibid Sch 6 para 69(1).
- 16 Ibid Sch 6 para 69(2). It is thus recoverable as a debt due to the Crown: see Sch 6 para 77, cited in PARA 661 ante.
- 17 Ibid Sch 6 para 69(3).
- 18 That period is the period which (1) begins with the day after that on which the person is notified of the assessment; and (2) ends with the day before that on which payment is made of the amount assessed: ibid Sch 6 para 70(2).
- 19 Head (a) in the text does not apply to any amount assessed under ibid Sch 6 para 67(2): see Sch 6 para 70(1)(a).
- 20 Penalty interest under ibid Sch 6 para 70 is to be compound interest calculated at the penalty rate, and with monthly rests: Sch 6 para 70(4). For this purpose the penalty rate is the rate found by (1) taking the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation) for the purposes of head (b) in the text; and (2) adding 10 percentage points to that rate: Finance Act 2000 Sch 6 para 70(5).
- 21 See ibid Sch 6 para 70(1). The ordinary rate is the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation): see the Finance Act 2000 Sch 6 para 70(1)(b). Interest under Sch 6 para 70 must be paid without any deduction of income tax: Sch 6 para 70(3).
- 22 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.
- 23 Finance Act 2000 Sch 6 para 70(6). Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which, among other things, may be taken into account under Sch 6 para 70(6): Sch 6 para 70(7). In determining whether there is a reasonable excuse for these purposes, no account is to be taken of any of the following matters, that is to say: (1) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest; (2) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy; (3) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith: Sch 6 para 70(8).
- 24 Ibid Sch 6 para 70(9).
- 25 Ibid Sch 6 para 71(1); and see note 1 supra.
- 26 Ibid Sch 6 para 71(2).
- 27 Ibid Sch 6 para 71(3).
- 28 Ibid Sch 6 para 71(4).
- 29 Ibid Sch 6 para 71(5).
- 30 Ibid Sch 6 para 71(6).
- 31 Ie under ibid Sch 6 para 67, Sch 6 para 68 or Sch 6 para 71: see the text and notes 1-13, 25-30 supra.
- 32 Ibid Sch 6 para 72; and see note 1 supra.

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688. Set-off.

The Commissioners for Revenue and Customs may by regulations¹ make provision in relation to any case where:

- 441 (1) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of levy; and
- 442 (2) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of levy or any of the other taxes under their care and management².

Such regulations may:

- 443 (a) provide that if the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the latter is to be set off against the former³;
- 444 (b) provide that if the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the Commissioners may set off the latter in paying the former⁴;
- 445 (c) provide that if the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, no payment need be made in respect of the former or the latter⁵;
- 446 (d) provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in head (1) above⁶;
- 447 (e) include provision treating any duty to pay mentioned in heads (1) and (2) above as discharged accordingly⁷.

The Commissioners may also by regulations make provision in relation to any case where:

- 448 (i) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management other than levy; and
- 449 (ii) the Commissioners are under a duty, at the same time, to make any repayment of levy to that person or to make any other payment to him of any amount or amounts in respect of levy⁸.

Such regulations may:

- 450 (A) provide that if the total of the amount or amounts mentioned in head (i) above exceeds the total of the amount or amounts mentioned in head (ii) above, the latter is to be set off against the former⁹;

- 451 (B) provide that if the total of the amount or amounts mentioned in head (ii) above exceeds the total of the amount or amounts mentioned in head (i) above, the Commissioners may set off the latter in paying the former¹⁰;
- 452 (C) provide that if the total of the amount or amounts mentioned in head (i) above is the same as the total of the amount or amounts mentioned in head (ii) above, no payment need be made in respect of the former or the latter¹¹;
- 453 (D) provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in head (i) above¹²;
- 454 (E) include provision treating any duty to pay mentioned in heads (i) and (ii) above as discharged accordingly¹³.

Regulations made under any of the above provisions may not, however, require any such amount or amounts as are mentioned in heads (2) and (ii) above ('the credit') to be set against any such amount or amounts as are mentioned in heads (1) and (i) above ('the debit') in any case where an insolvency procedure has been applied to the person entitled to the credit¹⁴, the credit became due after that procedure was so applied and the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied¹⁵.

The powers conferred by the above provisions are without prejudice to any power of the Commissioners to provide by tax credit regulations¹⁶ for any amount to be set against another¹⁷.

1 As to the power to make regulations see generally para 661 note 13 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 73(1). References in Sch 6 para 73(1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax; and for these purposes 'tax' includes duty: Sch 6 para 73(7), (8). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 29, 32.

3 Finance Act 2000 Sch 6 para 73(2); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 29(2).

4 Finance Act 2000 Sch 6 para 73(3); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 29(3).

5 Finance Act 2000 Sch 6 para 73(4); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 29(4).

6 Finance Act 2000 Sch 6 para 73(5).

7 Ibid Sch 6 para 73(6); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 29(5).

8 Finance Act 2000 Sch 6 para 74(1). References in Sch 6 para 74(1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax; and for these purposes, 'tax' includes duty: Sch 6 para 74(7), (8). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 30, 32.

9 Finance Act 2000 Sch 6 para 74(2); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 30(2).

10 Finance Act 2000 Sch 6 para 74(3); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 30(3).

11 Finance Act 2000 Sch 6 para 74(4); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 30(4).

12 Finance Act 2000 Sch 6 para 74(5).

13 Finance Act 2000 Sch 6 para 74(6); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 30(5).

14 For these purposes, an insolvency procedure is applied to a person if (1) a bankruptcy order, winding-up order or administration order is made or an administrator is appointed in relation to that person or an award of sequestration is made on that person's estate; (2) that person is put into administrative receivership; (3) that person passes a resolution for voluntary winding up; (4) any voluntary arrangement approved in accordance with the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq) or Pt VIII (ss 252-263G) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 81 et seq) or the corresponding Northern Ireland legislation comes into force in relation to that person; (5) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq), or the corresponding Northern Ireland legislation, takes effect in relation to that person; (6) a person is appointed as the interim receiver of some or all of that person's property under the Insolvency Act 1986 s 286 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 223 et seq) or the corresponding Northern Ireland legislation; (7) a person is appointed as the provisional liquidator in relation to that person under s 135 (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 491 et seq) or the corresponding Northern Ireland legislation; (8) an interim order is made under Pt VIII (as amended) or the corresponding Northern Ireland legislation; or (9) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985): Finance Act 2000 Sch 6 para 75(2) (Sch 6 para 75(2), (3), (5) amended by the Enterprise Act 2002 (Insolvency) Order 2003, SI 2003/2096, art 4, Schedule Pt 1 paras 31, 32). References, in relation to any person, to the application of an insolvency procedure to that person do not include: (a) the making of a bankruptcy order, winding-up order or award of sequestration or the appointment of an administrator at a time when any such arrangement or deed as is mentioned in head (4), head (5) or head (9) supra is in force in relation to that person; (b) the making of a winding-up order at any of the following times, that is to say (i) immediately upon the appointment of an administrator in respect of the person ceasing to have effect; (ii) when that person is being wound up voluntarily; (iii) when that person is in administrative receivership; or (c) the making of an administration order in relation to that person at any time when that person is in administrative receivership: Finance Act 2000 Sch 6 para 75(3) (as so amended). For these purposes, a person is to be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person: Sch 6 para 75(4). 'Administration order' means an administration order under the Insolvency Act 1986 Sch B1 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 216 et seq), or the corresponding Northern Ireland legislation; and 'administrative receiver' means an administrative receiver within the meaning of s 251 or of that Northern Ireland legislation: Finance Act 2000 Sch 6 para 75(5) (as so amended).

15 Ibid Sch 6 para 75(1); and see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 31.

16 For the meaning of 'tax credit regulations' see PARA 679 note 9 ante.

17 Finance Act 2000 Sch 6 para 76(4).

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H. EVASIONS, MISDECLARATIONS AND NEGLECT

689. Criminal offences with regard to evasion and misstatements.

A person is guilty of an offence:

- 455 (1) if he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion by that person of any levy¹ with which he is charged, or the fraudulent evasion by any other person of any levy with which that other person is charged²;
- 456 (2) if, with the requisite intent³ and for purposes connected with the levy, he produces or provides, or causes to be produced or provided, any document which is false in a material particular, or he otherwise makes use of such a document⁴;
- 457 (3) if, in providing any information under any provision made by or under the relevant statutory provisions⁵, he makes a statement which he knows to be false in a material particular or he recklessly makes a statement which is false in a material particular⁶;
- 458 (4) if his conduct⁷ during any particular period must have involved the commission by him of one or more offences under heads (1) to (3) above⁸; and for the purposes of any proceedings for such an offence it is immaterial whether the particulars of the offence or offences that must have been committed are known⁹;
- 459 (5) if, where he becomes a party to any agreement¹⁰ under or by means of which a supply of a taxable commodity¹¹ is or is to be made, or makes arrangements for any other person to become a party to such an agreement, he does so in the belief that levy chargeable on the supply will be evaded¹².

The provisions of the Customs and Excise Management Act 1979 concerning proceedings for offences, mitigation of penalties and certain other matters¹³ apply in relation to offences and penalties under heads (1) to (5) above as they apply in relation to offences and penalties under the Customs and Excise Acts¹⁴.

1 The references in head (1) in the text to the evasion of levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of levy: Finance Act 2000 s 30(1), Sch 6 para 92(2). For the meaning of 'tax credit' see PARA 679 note 9 ante. References in Pt VIII (paras 92-102) (as amended) to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations (Sch 6 para 102(1)); and references to obtaining a repayment of levy are references to obtaining either (1) the payment or repayment of any amount; or (2) the acknowledgment of a right to receive any amount, on the basis that that amount is the amount of a repayment of levy to which there is an entitlement (Sch 6 para 102(2)). For the meaning of 'tax credit regulations' see PARA 679 note 9 ante.

2 Ibid Sch 6 para 92(1). A person guilty of such an offence is liable (subject to Sch 6 para 92(4)) on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both: Sch 6 para 92(3). In the case of any such offence, however, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction is to be the amount equal to three times that sum (instead of the statutory maximum): Sch 6 para 92(4). For these purposes, the amounts of levy that were

or were intended to be evaded are to be taken to include the amount of any tax credit, and the amount of any repayment of levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it: Sch 6 para 92(5). In determining for the purposes of Sch 6 para 92(4) how much levy (in addition to any amount falling within Sch 6 para 92(5)) was or was intended to be evaded, no account is to be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of levy to which he was, or would have been, entitled: Sch 6 para 92(6).

The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. As to the prescribed sum see PARA 613 note 20 ante.

3 For these purposes, 'the requisite intent' means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document: *ibid* Sch 6 para 93(1).

4 *Ibid* Sch 6 para 93(1). A person guilty of an offence under Sch 6 para 93 (as amended) is liable (subject to Sch 6 para 93(4) (as amended)) on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both: Sch 6 para 93(3). In the case of any such offence, where (1) the document referred to in Sch 6 para 93(1) (see head (2) in the text) is a return or other notification required under any provision made by or under Sch 6 (as amended) (see PARA 661 *et seq* ante, PARA 690 *et seq* post); or (2) the information referred to in Sch 6 para 93(2) (see head (3) in the text) is contained in or otherwise relevant to such a return or notification, the amount of the penalty on summary conviction is to be whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts (if any) by which the return or notification understates any person's liability to levy: Sch 6 para 93(4) (amended by the Finance Act 2003 s 192(1), (7)(a)). The reference in the Finance Act 2000 Sch 6 para 93(4) (as amended) to the amount by which any person's liability to levy is understated is to be taken to be equal to the sum of (a) the amount (if any) by which his gross liability was understated; and (b) the amount (if any) by which any entitlements of his to tax credits and repayments of levy were overstated (Sch 6 para 93(5)); and 'gross liability' means liability to levy before any deduction is made in respect of any entitlement to any tax credit or repayments of levy (Sch 6 para 93(6)).

5 *le* by or under *ibid* Sch 6 (as amended).

6 *Ibid* Sch 6 para 93(2). For the penalty on conviction see note 4 *supra*; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

7 'Conduct' includes acts and omissions: *ibid* Sch 6 para 147.

8 *Ibid* Sch 6 para 94(1).

9 *Ibid* Sch 6 para 94(2). A person guilty of such an offence is liable (subject to Sch 6 para 94(4)), on summary conviction to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both: Sch 6 para 94(3). In the case of any such offence, however, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction is to be the amount equal to three times that sum (instead of the statutory maximum): Sch 6 para 94(4). For these purposes, the amounts of levy that were or were intended to be evaded by any conduct are to be taken to include the amount of any tax credit, and the amount of any repayment of levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it: Sch 6 para 94(5). In determining for the purposes of Sch 6 para 94(4) how much levy (in addition to any amount falling within Sch 6 para 94(5)) was or was intended to be evaded, no account is to be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled: Sch 6 para 94(6).

10 'Agreement' includes any arrangement or understanding (whether or not legally enforceable), and cognate expressions are to be construed accordingly: *ibid* Sch 6 para 147.

11 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

12 Finance Act 2000 Sch 6 para 95(1). Subject to Sch 6 para 95(3), a person guilty of such an offence is liable, on summary conviction, to a penalty of level 5 on the standard scale: Sch 6 para 95(2). As to the standard scale see PARA 613 note 11 ante. In the case of any such offence, however, where level 5 on the standard scale is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded in respect of the supply in question, the penalty is to be the amount equal

to three times that sum (instead of level 5 on the standard scale): Sch 6 para 95(3). For these purposes, the amounts of levy that were or were intended to be evaded are to be taken to include the amount of any tax credit, and the amount of any repayment of levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it: Sch 6 para 95(4). In determining for the purposes of Sch 6 para 95(3) how much levy (in addition to any amount falling within Sch 6 para 95(4)) was or was intended to be evaded, no account is to be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled: Sch 6 para 95(5).

13 In the Customs and Excise Management Act 1979 ss 145-155 (as amended): see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1197 et seq.

14 Finance Act 2000 Sch 6 para 96. As to the power of arrest for such offences see Sch 6 para 97 (prospectively repealed by the Finance Act 2007 ss 84(4), 114, Sch 22 Pt 2 paras 3, 11(a), Sch 27 Pt 5(1), as from a day to be appointed under ss 84(5), 114, Sch 27 Pt 5(1); at the date at which this title states the law, no such day had been appointed).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/H. EVASIONS, MISDECLARATIONS AND NEGLECT/690. Civil penalties for evasion, misdeclaration or neglect etc.

690. Civil penalties for evasion, misdeclaration or neglect etc.

Where any person engages in any conduct¹ for the purpose of evading levy², and that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability), that person is liable³ to a penalty⁴. The amount of the penalty is to be:

- 460 (1) equal to the amount of levy evaded, or (as the case may be) intended to be evaded, by the person's conduct⁵ if at the time of engaging in that conduct he was or was required to be registered⁶ for the purposes of the levy;
- 461 (2) equal to twice that amount if at that time the person neither was nor was required to be registered for those purposes⁷.

Where, however, by reason of any such conduct, a person is convicted of an offence⁸, that person is not by reason of that conduct to be liable also to a such penalty⁹.

Where it appears to the Commissioners for Revenue and Customs that a body corporate is liable to a penalty under the above provisions, and that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director¹⁰ or managing officer¹¹ of the body corporate (a 'named officer'), the Commissioners may serve a notice¹² on the body corporate and on the named officer, stating the amount of the penalty referred to above ('the basic penalty'), and that the Commissioners propose to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice¹³. Where such a notice is served:

- 462 (a) the portion of the basic penalty specified in the notice is to be recoverable from the named officer as if he were personally liable¹⁴ to a penalty which corresponds to that portion¹⁵;
- 463 (b) the amount which may be assessed¹⁶ as the amount due by way of penalty from the body corporate is to be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer¹⁷; and
- 464 (c) the body corporate is to be treated as discharged from liability for so much of the basic penalty as is so assessed and notified¹⁸.

Subject to exceptions with regard to the liability of the body corporate to a penalty when it is assessed as mentioned in head (b) above, and with regard to the amount of the basic penalty specified in the assessment¹⁹, the giving of such a notice is not, as such, a decision which may be reviewed²⁰ by the Commissioners²¹.

Where:

- 465 (i) a return or other notification is made which understates a person's liability to levy or overstates his entitlement to any tax credit or repayment of levy²²; or
- 466 (ii) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,

the person concerned is liable²³ to a penalty equal to 5 per cent of the amount of the understatement of liability or (as the case may be) overstatement of entitlement²⁴. Conduct falling within head (i) or head (ii) above does not, however, give rise to liability to such a penalty if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned at a time when he has no reason to believe that inquiries are being made by the Commissioners into his affairs, so far as they relate to the levy, and in such form and manner as may be prescribed by regulations²⁵ made by the Commissioners or specified by them in accordance with any such regulations²⁶. Nor does such conduct give rise to liability to such a penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal²⁷ that there is a reasonable excuse for his conduct²⁸. Where, by reason of such conduct, a person is convicted of an offence²⁹, or is assessed to a penalty on the basis that he has engaged in dishonest conduct for the purpose of evading levy³⁰, that person is not by reason of that conduct to be liable also to a penalty under this provision³¹.

Where a person gives, in relation to any supply or supplies of a taxable commodity³² or taxable commodities being made to him, a certificate to the supplier that the supply or supplies is or are to any extent:

- 467 (A) for domestic or charity use³³;
- 468 (B) exempt under any of the specified provisions³⁴;
- 469 (C) a half-rate supply or half-rate supplies made before 1 April 2006³⁵; or
- 470 (D) a reduced-rate supply or reduced-rate supplies³⁶,

and the certificate is or becomes incorrect, the person is liable to a penalty³⁷. The amount of the penalty to which a person is so liable is to be equal to 105 per cent of the difference between the amount of levy (which may be nil) that would have been chargeable on the supply or supplies if the certificate had been correct, and the amount of levy actually chargeable³⁸. The giving of a certificate, or not revoking or varying it, does not, however, give rise to such a penalty if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that the person has a reasonable excuse³⁹. Where by reason of giving a certificate, or not revoking or varying it, a person is convicted of an offence⁴⁰, or is assessed to a penalty on the basis that he has engaged in dishonest conduct for the purpose of evading levy⁴¹, that person is not by reason of that to be liable also to a penalty under this provision⁴².

1 For the meaning of 'conduct' see PARA 689 note 7 ante.

2 The references in the text to evading levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of levy: Finance Act 2000 s 30(1), Sch 6 para 98(3). For the meaning of references to obtaining a tax credit or repayment of levy see Sch 6 para 102, cited in PARA 689 note 1 ante; and for the meaning of 'tax credit' see PARA 679 note 9 ante.

3 le subject to *ibid* Sch 6 para 98(6): see the text and notes 8-9 *infra*. The statutory wording is 'subject to sub-paragraph (5)' but it is apprehended that this is a drafting error and that the intended reference is to Sch 6 para 98(6).

4 *Ibid* Sch 6 para 98(1).

5 For these purposes, the amount of levy that was or was intended to be evaded by any conduct is to be taken to include the amount of any tax credit, and the amount of any repayment of levy, which was, or was intended to be, obtained in circumstances where there was no entitlement to it: Sch 6 para 98(4). In determining for these purposes how much levy (in addition to any amount falling within Sch 6 para 98(4)) was or was intended to be evaded, no account is to be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled: Sch 6 para 98(5).

6 For the meaning of 'registered' see PARA 676 note 1 ante.

7 Finance Act 2000 Sch 6 para 98(2).

8 Ie whether under the Finance Act 2000 or otherwise: Sch 6 para 98(6).

9 Ibid Sch 6 para 98(6).

10 Where the affairs of a body corporate are managed by its members, ibid Sch 6 para 99 applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate: Sch 6 para 99(9).

11 For these purposes, a 'managing officer', in relation to a body corporate, means any manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity or as a director: ibid Sch 6 para 99(8).

12 As to the service of notice see PARA 678 note 2 ante.

13 Finance Act 2000 Sch 6 para 99(1), (2).

14 Ie under ibid Sch 6 para 98: see the text and notes 1-9 supra.

15 Ibid Sch 6 para 99(3).

16 Ie under ibid Pt IX (paras 103-113): see PARAS 692-695 post.

17 Ibid Sch 6 para 99(4)(a).

18 Ibid Sch 6 para 99(4)(b).

19 See ibid Sch 6 para 99(6), (7). Where a body corporate is assessed as mentioned in Sch 6 para 99(4)(a) (see head (b) in the text), the decisions of the Commissioners that may be reviewed in accordance with Sch 6 para 121 (see PARA 701 post) include their decision (1) as to the liability of the body corporate to a penalty; and (2) as to the amount of the basic penalty that is specified in the assessment; and Sch 6 paras 122, 123 (appeals: see PARA 702 post) apply accordingly: Sch 6 para 99(6). Where an assessment is made on a named officer by virtue of Sch 6 para 99, the decisions which may be reviewed under Sch 6 para 121 at the request of the named officer include (a) the Commissioners' decisions in the case of the body corporate as to the matters mentioned in heads (1)-(2) supra; and (b) their decision that the conduct of the body corporate referred to in Sch 6 para 99(1)(b) (see the text to notes 10-11 supra) is, in whole or in part, attributable to the dishonesty of the named officer; and (c) their decision as to the portion of the penalty which the Commissioners propose to recover from him; and Sch 6 paras 122, 123 apply accordingly: Sch 6 para 99(7).

20 Ie under ibid Sch 6 para 121: see PARA 701 post.

21 Ibid Sch 6 para 99(5).

22 Where (1) a return for an accounting period either overstates or understates to any extent a person's liability to levy, or understates or overstates to any extent his entitlement to any tax credits or repayments of levy; and (2) that return is corrected in such circumstances as may be prescribed, and in accordance with such conditions as may be prescribed, by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period, it is to be assumed for these purposes that the statement made by each such return is a correct statement for the accounting period to which the return relates: ibid Sch 6 para 100(2). For the meaning of 'accounting period' see PARA 681 note 1 ante; and for the meaning of 'prescribed' see PARA 673 note 5 ante.

23 Ie subject to ibid Sch 6 paras 100(3)-(5): see the text and notes 25-26, 29-31 infra.

24 Ibid Sch 6 para 100(1) (amended by the Finance Act 2003 ss 192(1), (8), 216, Sch 43 Pt 2(4)).

25 As to the power to make regulations see generally para 661 note 13 ante.

26 Finance Act 2000 Sch 6 para 100(3). See the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 26-28 (amended by SI 2003/604).

27 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.

28 Finance Act 2000 Sch 6 para 100(4).

29 Ie whether under the Finance Act 2000 or otherwise: Sch 6 para 100(5).

- 30 le he is assessed to a penalty under *ibid* Sch 6 para 98: see the text and notes 1-9 *supra*.
- 31 See *ibid* Sch 6 para 100(5).
- 32 For the meaning of 'taxable commodity' see PARA 661 *ante*; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 *ante*.
- 33 As to supplies for domestic or charity use see PARA 666 *ante*.
- 34 le exempt under the Finance Act 2000 Sch 6 para 11 (as amended), Sch 6 para 12, Sch 6 para 13 (as amended), Sch 6 para 14 (as amended), Sch 6 para 15 (as amended), Sch 6 para 18, Sch 6 para 18A (as added) or Sch 6 para 21: see PARAS 667-668 *ante*.
- 35 As to the abolition of half-rate supplies with effect from 1 April 2006 see PARA 674 note 2 *ante*.
- 36 As to reduced-rate supplies see PARA 675 *ante*.
- 37 Finance Act 2000 Sch 6 para 101(2) (amended by the Finance Act 2002 s 127(1); the Finance Act 2003 s 188(2); the Finance Act 2006 ss 172(8), (14), 178, Sch 6 Pt 8(1) (for transitional provisions see the Finance Act 2006 (Climate Change Levy: Amendments and Transitional Savings in Consequence of Abolition of Half-rate Supplies) (Appointed Day) Order 2007, SI 2007/2901, art 2); the Finance Act 2007 s 23, Sch 2 paras 1, 12(1), (3)).
- 38 Finance Act 2000 Sch 6 para 101(3) (amended by the Finance Act 2007 ss 23, 114, Sch 2 paras 1, 12(1), (4), Sch 27 Pt 1(2)).
- 39 Finance Act 2000 Sch 6 para 101(4) (amended by the Finance Act 2007 s 23, Sch 2 paras 1, 12(1), (5)).
- 40 See note 29 *supra*.
- 41 See note 30 *supra*.
- 42 Finance Act 2000 Sch 6 para 101(5) (amended by the Finance Act 2007 s 23, Sch 2 paras 1, 12(1), (6)).

UPDATE

690 Civil penalties for evasion, misdeclaration or neglect etc

TEXT AND NOTES 1-31--Finance Act 2000 Sch 6 paras 98-100 repealed: Finance Act 2008 Sch 40 para 21(h). See now Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

NOTE 26--SI 2001/838 further amended: SI 2008/2693.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/H. EVASIONS, MISDECLARATIONS AND NEGLECT/691. Civil penalty for invoices incorrectly showing levy due.

691. Civil penalty for invoices incorrectly showing levy due.

Where a person issues an invoice¹ showing an amount as levy chargeable on a supply, and no levy is chargeable on the supply, or the amount chargeable is less than the amount shown, then he is liable to a penalty unless he satisfies the Commissioners for Revenue and Customs or, on appeal, an appeal tribunal² that there is a reasonable excuse for the inclusion in the invoice of the false information³. The amount of the penalty is £50 or, if more, the following amount:

- 471 (1) where no levy is chargeable, the amount shown as chargeable;
- 472 (2) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable⁴.

It is irrelevant for these purposes whether or not the supply shown on the invoice actually takes place or has taken place⁵.

1 For these purposes, a reference to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document): Finance Act 2000 Sch 6 para 141A(5) (Sch 6 para 141A added by the Finance Act 2002 s 128(1)). A 'climate change levy accounting document' for a taxable supply is an invoice (1) stating that it is a climate change levy accounting document (for which purpose the inclusion of the phrase 'climate change levy accounting document' or the phrase 'CCL accounting document', whether as shown here or with any of the letters shown here as small letters appearing as capitals, is sufficient); (2) stating the date on which it is issued; and (3) containing the required statements, namely (a) in the case of a climate change levy accounting document issued under the Finance Act 2000 Sch 6 para 27 (see PARA 671 ante), the statements required by Sch 6 para 27(5); (b) in the case of a climate change levy accounting document whose provision is required by regulations, statements of prescribed particulars of or relating to the supply, the persons by and to whom the supply is made, and the levy chargeable: Sch 6 paras 134(2), (3), 147.

2 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.

3 Finance Act 2000 Sch 6 para 141A(1), (2) (as added: see note 1 supra). As to what is not a reasonable excuse see PARA 693 post.

4 Ibid Sch 6 para 141A(3) (as added: see note 1 supra).

5 Ibid Sch 6 para 141A(4) (as added: see note 1 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/I. CIVIL PENALTIES/692. Reduction of penalties.

I. CIVIL PENALTIES

692. Reduction of penalties.

Where a person is liable to a civil penalty¹:

- 473 (1) the Commissioners for Revenue and Customs or, on appeal, an appeal tribunal² may reduce the penalty to such amount (including nil) as they think, or as the tribunal thinks, proper; but
- 474 (2) on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners' reduction³.

In determining whether a civil penalty should be, or should have been, so reduced, no account is to be taken of any of the following matters, that is to say:

- 475 (a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the penalty;
- 476 (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;
- 477 (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith⁴.

1 For the purposes of the Finance Act 2000 s 30(1), Sch 6 Pt IX (paras 103-113) (see the text and notes 2-4 *infra*; and PARA 693 *et seq post*) 'civil penalty' means any penalty liability to which is imposed by or under Sch 6 (as amended) (see PARA 661 *et seq ante*, PARA 693 *et seq post*), and arises otherwise than in consequence of a person's conviction for a criminal offence: Sch 6 para 103(1). References to a person's being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of Sch 6 para 99 (see PARA 690 *ante*); and references, in relation to a person from whom the whole or any part of a civil penalty is so recoverable, to the penalty to which he is liable are references to so much of the penalty as is recoverable from him: Sch 6 para 103(2). As to civil penalties under regulations made under Sch 6 (as amended) see the Climate Change Levy (General) Regulations 2001, SI 2001/838, reg 60 (amended by SI 2003/604); the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001, SI 2001/7, reg 20.

2 For the meaning of 'appeal tribunal' see PARA 673 note 9 *ante*.

3 Finance Act 2000 Sch 6 para 104(1).

4 *Ibid* Sch 6 para 104(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/l. CIVIL PENALTIES/693. Matters not amounting to reasonable excuse.

693. Matters not amounting to reasonable excuse.

For the purposes of any provision¹ under which liability to a civil penalty² does not arise in respect of conduct³ for which there is shown to be a reasonable excuse:

- 478 (1) an insufficiency of funds available for paying any amount is not a reasonable excuse; and
- 479 (2) where reliance has been placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse⁴.

1 le any provision made by or under the Finance Act 2000 s 30(1), Sch 6 (as amended): see PARA 661 et seq ante, PARA 694 et seq post.

2 For the meaning of 'civil penalty' see PARA 692 note 1 ante.

3 For the meaning of 'conduct' see PARA 689 note 7 ante.

4 Finance Act 2000 Sch 6 para 105.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/I. CIVIL PENALTIES/694. Assessments to penalties and interest on penalties etc.

694. Assessments to penalties and interest on penalties etc.

Where a person is liable to a civil penalty¹, the Commissioners for Revenue and Customs may assess the amount due by way of penalty and notify it to him accordingly². If, where an assessment has been notified to any person³, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and must notify that person accordingly⁴. The fact that any conduct⁵ giving rise to a civil penalty may have ceased before an assessment is made under these provisions does not affect the power of the Commissioners to make such an assessment⁶. Where an amount has been so assessed and notified to any person, it is recoverable as if it were levy due from him⁷; but this does not apply so as to require any interest to be payable on a penalty otherwise than in accordance with the following provisions⁸. Nor does it have effect if, or to the extent that, the assessment in question has been withdrawn or reduced⁹. Where a person is so assessed to an amount due by way of a penalty, and is also assessed¹⁰ for an accounting period¹¹ to which the conduct attracting the penalty is referable, the assessments may be combined and notified to him as one assessment¹². Such a notice of a combined assessment must separately identify the penalty being assessed¹³.

Where an assessment is so made to an amount of a civil penalty to which any person is liable by reason of failure to provide information¹⁴ or failure to produce a document¹⁵, the notice of assessment must specify a time, not later than the end of the day of the giving of the notice of assessment, to which the amount of any daily penalty¹⁶ is calculated¹⁷. If further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made¹⁸ in respect of the amounts so accruing¹⁹. Where an assessment to a civil penalty is made specifying a date for the above purposes²⁰, and the failure in question is remedied within such period as may for these purposes have been notified by the Commissioners to the person liable for the penalty, the failure is to be deemed for the purposes of any further liability to civil penalties to have been remedied on the specified date²¹.

Where the Commissioners make an assessment²²:

- 480 (1) of any civil penalty to which a person is liable, the amount of that penalty is to carry penalty interest²³ for the period which begins with the day on which the assessment is notified to the person on whom the assessment is made and ends with the day before the day on which the assessed penalty is paid²⁴;
- 481 (2) of an amount of any civil penalty to which any person is liable, they also specify a date for these purposes, and the amount of the penalty assessed is paid on or before that date, then the amount paid before that date does not carry penalty interest²⁵.

Where a person is so liable to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal²⁶ may reduce the amount payable to such amount (including nil) as they think, or as the tribunal thinks, proper²⁷. In the case of interest so reduced by the Commissioners, an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners²⁸.

Interest under the above provisions is to be paid without any deduction of income tax²⁹. Where an amount carries such interest, or would otherwise do so, and all or part of the amount turns out not to be due, then in such a case the amount or part that turns out not to be due does not carry such interest and is to be treated as never having done so, and all such adjustments as are reasonable must be made, including³⁰ adjustments by way of repayment³¹.

Where a person is liable for interest on an unpaid penalty³², the Commissioners may assess the amount due by way of interest and notify it to him accordingly³³. If, where an assessment has been notified to any person³⁴, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly³⁵. Where an amount has been so assessed and notified to any person, it is recoverable as if it were levy due from him³⁶; but this does not apply so as to require any interest to be payable on interest, except in so far as it falls³⁷ to be compounded³⁸. Nor does it have effect if, or to the extent that, the assessment in question has been withdrawn or reduced³⁹. Where a person is so assessed to an amount due by way of any interest on a penalty, and is also assessed⁴⁰ for the accounting period to which the conduct attracting the penalty is referable, the assessments may be combined and notified to him as one assessment⁴¹. A notice of a combined assessment must separately identify the interest being assessed⁴². Where an assessment is made to an amount of penalty interest⁴³, the notice of assessment must specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated, and if the interest continues to accrue after that date, a further assessment or further assessments may be so made in respect of the amounts so accruing⁴⁴. Where, however, an assessment to penalty interest is made specifying a date for the above purposes, and within such period as may for these purposes have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid, that amount is to be deemed for the purposes of any further liability to interest to have been paid on the specified date⁴⁵.

1 For the meanings of 'civil penalty', and references to a person's being liable to a civil penalty, see PARA 692 note 1 ante.

2 Finance Act 2000 s 30(1), Sch 6 para 106(1). The power to make an assessment under Sch 6 para 106 is subject to Sch 6 para 99(4) (see PARA 690 ante): Sch 6 para 106(8). Any notification of an assessment under any provision of Sch 6 Pt IX (paras 103-113) to a person's representative is to be treated for those purposes as notification to the person in relation to whom the representative acts: Sch 6 para 103(3). 'Representative', in relation to any person, means any of that person's personal representatives, that person's trustee in bankruptcy or liquidator, any person holding office as a receiver in relation to that person or any of his property or that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person: Sch 6 para 103(4). For the meaning of 'tax representative' see PARA 681 note 8 ante.

Subject to Sch 6 para 108(2), (3), an assessment under Sch 6 para 106 to a penalty may not be made more than three years after the conduct to which the penalty relates: Sch 6 para 108(1). Subject to Sch 6 para 108(3), if levy has been lost (1) as a result of any conduct for which a person has been convicted of an offence involving fraud; (2) in circumstances giving rise to liability to a penalty under Sch 6 para 55 (failure to notify of registrability etc: see PARA 676 ante); or (3) as a result of conduct falling within Sch 6 para 98(1) (evasion: see PARA 690 ante), an assessment may be made for any civil penalty relating to that conduct as if, in Sch 6 para 108(1), for 'three years' there were substituted '20 years': Sch 6 para 108(2). Where, after a person's death, the Commissioners propose to assess an amount of a civil penalty due by reason of some conduct of the deceased, the assessment may not be made more than three years after the death, and if the circumstances are as set out in Sch 6 para 108(2), the modification of Sch 6 para 108(1) contained in Sch 6 para 108(2) does not apply, but any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it: Sch 6 para 108(3).

3 I.e. under *ibid* Sch 6 para 106(1) (see the text and notes 1-2 *supra*) or Sch 6 para 106(2) (see the text and note 4 *infra*).

4 *Ibid* Sch 6 para 106(2); and see note 2 *supra*.

5 For the meaning of 'conduct' see PARA 689 note 7 ante.

6 Finance Act 2000 Sch 6 para 106(3).

7 Ibid Sch 6 para 106(4). It is thus recoverable as a debt due to the Crown: see Sch 6 para 77, cited in PARA 661 ante.

8 Ibid Sch 6 para 106(5)(a).

9 Ibid Sch 6 para 106(5)(b).

10 Ie under any one or more provisions of ibid Sch 6 Pt VII (paras 77-91) (as amended): see PARAS 661, 681-683 ante.

11 For the meaning of 'accounting period' see PARA 681 note 1 ante.

12 Finance Act 2000 Sch 6 para 106(6).

13 Ibid Sch 6 para 106(7).

14 Ie under ibid Sch 6 para 124(3): see PARA 696 post.

15 Ie under ibid Sch 6 para 127(4): see PARA 697 post.

16 For these purposes, 'daily penalty' means a penalty imposed by virtue of Sch 6 para 124(3)(b) or Sch 6 para 127(4)(b), as the case may be: see Sch 6 para 107(3).

17 Ibid Sch 6 para 107(1), (2).

18 Ie under ibid Sch 6 para 106: see the text and notes 1-13 supra.

19 Ibid Sch 6 para 107(4).

20 Ie for the purposes of ibid Sch 6 para 107(2).

21 Ibid Sch 6 para 107(5).

22 See note 18 supra.

23 Penalty interest for these purposes is to be compound interest calculated at the penalty rate, and with monthly rests: Finance Act 2000 Sch 6 para 109(3). The penalty rate is the rate found by (1) taking the rate applicable under the Finance Act 1996 s 197 (as amended) (setting of rates of interest for indirect taxation) for the purposes of the Finance Act 2000 Sch 6 para 81(3) (see PARA 682 ante); and (2) adding 10 percentage points to that rate: Sch 6 para 109(4).

24 Ibid Sch 6 para 109(1). This is subject to Sch 6 para 109(2) (see head (2) in the text): Sch 6 para 109(1).

25 Ibid Sch 6 para 109(2).

26 For the meaning of 'appeal tribunal' see PARA 673 note 9 ante.

27 Finance Act 2000 Sch 6 para 109(5). Subject to Sch 6 para 109(7), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under Sch 6 para 109(5): Sch 6 para 109(6). In determining whether there is a reasonable excuse for these purposes, no account is to be taken of any of the following matters, that is to say: (1) the insufficiency of the funds available to any person for paying any levy or penalty due or for paying the amount of the interest; (2) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy; (3) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith: Sch 6 para 109(7).

28 Ibid Sch 6 para 109(8).

29 Ibid Sch 6 para 110(1).

30 Ie subject to ibid Sch 6 paras 64-76 (as amended): see PARAS 685-688 ante.

31 Ibid Sch 6 para 110(2), (3).

32 Ie under ibid Sch 6 para 109: see the text and notes 22-28 supra.

33 Ibid Sch 6 para 111(1). Schedule 6 para 108 (see note 2 supra) applies in relation to assessments under Sch 6 para 111 as if any assessment to interest on a penalty were an assessment under Sch 6 para 106 to the penalty in question: Sch 6 para 111(5).

34 Ie under ibid Sch 6 para 111(1) (see the text and notes 32-33 supra) or Sch 6 para 111(2) (see the text and note 35 infra).

35 Ibid Sch 6 para 111(2); and see note 33 supra.

36 Ibid Sch 6 para 111(3); and see note 7 supra.

37 Ie in accordance with ibid Sch 6 para 109(3): see note 23 supra.

38 Ibid Sch 6 para 111(4)(a).

39 Ibid Sch 6 para 111(4)(b).

40 Ie under any one or more provisions of ibid Pt VII (paras 77-91) (as amended): see PARAS 661, 681-683 ante.

41 Ibid Sch 6 para 111(6).

42 Ibid Sch 6 para 111(7).

43 Ie an assessment is made under ibid Sch 6 para 111 to an amount of penalty interest under Sch 6 para 109: Sch 6 para 112(1).

44 Ibid Sch 6 para 112(1).

45 Ibid Sch 6 para 112(2).

UPDATE

694 Assessments to penalties and interest on penalties etc

NOTE 2--The references to three years are to four years: Finance Act 2000 Sch 6 para 108(1), (3) (amended by Finance Act 2009 Sch 51 para 34(2), (4)). Finance Act 2000 Sch 6 para 108(2) now Sch 6 para 108(2), (2A) (substituted by Finance Act 2009 Sch 51 para 34(3)). Words 'and if the circumstances ... after it' omitted: Finance Act 2000 Sch 6 para 108(3) (amended by Finance Act 2009 Sch 51 para 34(4)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/l. CIVIL PENALTIES/695.

Uprating of amounts of penalties.

695. Uprating of amounts of penalties.

If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty¹ provided for² was fixed³, the Treasury may by regulations⁴ substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to it to be justified by the change⁵. Regulations so made are not to apply to the penalty for any conduct⁶ before the coming into force of the regulations⁷.

1 For the meaning of 'civil penalty' see PARA 692 note 1 ante.

2 Ie provided for by the Finance Act 2000 s 30(1), Sch 6 (as amended): see PARA 661 et seq ante, PARA 696 et seq post.

3 The reference in the text to the time when the amount of a civil penalty was fixed is a reference (1) in the case of a penalty which has not previously been modified under *ibid* Sch 6 para 113, to the time of the passing of the Finance Act 2000 (ie 28 July 2000); and (2) in any other case, to the time of the making of the regulations under Sch 6 para 113(1) that that made the most recent modification of the amount of that penalty: Sch 6 para 113(2).

4 As to the power to make regulations see generally para 661 note 13 ante.

5 Finance Act 2000 Sch 6 para 113(1).

6 For the meaning of 'conduct' see PARA 689 note 7 ante.

7 Finance Act 2000 Sch 6 para 113(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/J. INFORMATION AND EVIDENCE/696. Information and records.

J. INFORMATION AND EVIDENCE

696. Information and records.

Every person involved, in whatever capacity, in making or receiving supplies of taxable commodities¹, or in any connected activities, must provide the Commissioners for Revenue and Customs with such information relating to the matters in which he is or has been involved as the Commissioners may reasonably require². Information so required must be provided to the Commissioners within such period after being required, and in such form, as the Commissioners may reasonably require³. If a person fails to provide information which he is so required to provide, he is liable⁴ to a penalty of £250, and to a further penalty of £20 for every day after the last relevant date⁵ and before the day after that on which the required information is provided⁶. Liability to such a penalty does not, however, arise if the person required to provide the information satisfies the Commissioners or, on appeal, an appeal tribunal⁷ of the specified matters⁸. Where, by reason of any failure by any person to provide information so required, that person is convicted of an offence⁹, or is assessed to a penalty for evasion¹⁰, that person is not by reason of that failure to be liable also to a penalty under these provisions¹¹.

The Commissioners may by regulations¹² impose obligations to keep records on persons who are registered¹³, are required to be registered, or are exempted¹⁴ from the requirement to be registered¹⁵. Such regulations may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice¹⁶. They may:

- 482 (1) require any records kept in pursuance of the regulations to be preserved for such period, not exceeding six years, as may be specified in the regulations;
- 483 (2) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations;
- 484 (3) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate¹⁷.

Any duty under such regulations to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve¹⁸. The Commissioners may, as a condition of so approving any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved¹⁹. A person who fails to preserve any record in compliance with any such regulations, or any notice, direction or requirement given or imposed under such regulations, is liable²⁰ to a penalty of £250²¹; but such a failure does not give rise to any such penalty if the person required to preserve the record satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure²². Where, by reason of any such failure by any person, that person is convicted of an offence²³ or is assessed to a penalty for evasion²⁴, that person is not by reason of that failure to be liable also to a penalty under this provision²⁵.

- 1 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.
- 2 Finance Act 2000 Sch 6 s 30(1), Sch 6 para 124(1).
- 3 Ibid Sch 6 para 124(2).
- 4 Ie subject to ibid Sch 6 para 124(4), (5) (see the text and notes 7-11 infra) and to Sch 6 para 107(5) (which relates to supplementary assessments of daily penalties: see PARA 694 ante).
- 5 For these purposes, 'the last relevant date' means the last day of the period within which the person in question was required to provide the information: ibid Sch 6 para 124(6).
- 6 Ibid Sch 6 para 124(3).
- 7 For the meaning of 'appeal tribunal' see PARA 689 note 7 ante.
- 8 See the Finance Act 2000 Sch 6 para 124(4). The specified matters are: (1) in the case of the penalty under Sch 6 para 124(3)(a) (the initial failure), that there is a reasonable excuse (a) for the initial failure to provide the required information on or before the last relevant date; and (b) for every subsequent failure to provide it; and (2) in the case of any penalty under Sch 6 para 124(3)(b) (further failure) for any day, that there is a reasonable excuse for the failure to provide the information on or before that day: Sch 6 para 124(4). As to what is not a reasonable excuse see PARA 693 ante.
- 9 Ie whether under the Finance Act 2000 or otherwise: Sch 6 para 124(5)(a).
- 10 Ie under ibid Sch 6 para 98: see PARA 690 ante.
- 11 Ibid Sch 6 para 124(5).
- 12 As to the power to make regulations see generally para 661 note 13 ante.
- 13 For the meaning of 'registered' see PARA 676 note 1 ante.
- 14 Ie exempted by regulations under the Finance Act 2000 Sch 6 para 53(4) (as added): see PARA 676 ante.
- 15 Ibid Sch 6 para 125(1) (amended by the Finance Act 2003 s 192(1), (9)). As to the exercise of this power see the Climate Change Levy (General) Regulations 2001, SI 2001/838, regs 7-9 (amended by SI 2003/604; SI 2007/2903).
- 16 Finance Act 2000 Sch 6 para 125(2).
- 17 Ibid Sch 6 para 125(3).
- 18 Ibid Sch 6 para 125(4). The Commissioners may if they think fit at any time modify or withdraw any approval given for these purposes: Sch 6 para 125(9). Where any obligation to preserve records is discharged in accordance with Sch 6 para 125(4), a copy of any document forming part of the records is admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves: Sch 6 para 126(1).
- 19 Ibid Sch 6 para 125(5). The Commissioners may if they think fit at any time modify or withdraw any requirement imposed for these purposes: Sch 6 para 125(9).
- 20 Ie subject to ibid Sch 6 para 125(7), (8): see the text and notes 22-25 infra.
- 21 Ibid Sch 6 para 125(6).
- 22 Ibid Sch 6 para 125(7). As to what is not a reasonable excuse see PARA 693 ante.
- 23 See note 9 supra.
- 24 See note 10 supra.
- 25 Finance Act 2000 Sch 6 para 125(8).

UPDATE

696 Information and records

TEXT AND NOTES 10, 24--Finance Act 2000 Sch 6 paras 124(5), 125(8) (amended by SI 2009/571) also refer to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

TEXT AND NOTES 18, 19--Finance Act 2000 Sch 6 para 125(4), (5) now Sch 6 para 125(4) (substituted by Finance Act 2009 Sch 50 para 19).

NOTE 18--Finance Act 2000 Sch 6 para 126 repealed: Finance Act 2009 Sch 50 para 20.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/J. INFORMATION AND EVIDENCE/697. Production of documents.

697. Production of documents.

Every person involved, in whatever capacity, in making or receiving supplies of taxable commodities¹, or in any connected activities, must upon demand made by an authorised person² produce or cause to be produced for inspection by that person any documents relating to the matters in which he is or has been involved³. Where an authorised person has such power to require the production of any documents from any person:

- 485 (1) he has the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; and
- 486 (2) the production of any document by that other person in pursuance of such a requirement is without prejudice to any lien claimed by that other person on that document⁴.

The documents mentioned above must be produced at such time and place as the authorised person may reasonably require⁵. If a person fails to produce any document which he is so required to produce, he is liable⁶ to a penalty of £250⁷ and to a further penalty of £20 for every day after the last relevant date⁸ and before the day after that on which the document is produced⁹. Liability to such a penalty does not, however, arise if the person required to produce the document in question satisfies the Commissioners or, on appeal, an appeal tribunal¹⁰ of the specified matters¹¹. Where, by reason of any failure by any person to provide information so required, that person is convicted of an offence¹² or assessed to a penalty for evasion¹³, that person is not by reason of that failure to be liable also to a penalty under this provision¹⁴.

An authorised person may take copies of, or make extracts from, any document produced under the above provisions¹⁵. If it appears to him to be necessary to do so, an authorised person may also, at a reasonable time and for a reasonable period, remove any document so produced¹⁶; but if he so removes any document he must, if requested to do so, provide a receipt for the document so removed¹⁷. Where a lien is claimed on a document produced under heads (1) and (2) above, the removal of the document under the above powers is not to be regarded as breaking the lien¹⁸. Where a document so removed by an authorised person is reasonably required for any purpose he must, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced¹⁹. Where any documents removed under the powers conferred by these provisions are lost or damaged, the Commissioners for Revenue and Customs are liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents²⁰.

For the purpose of exercising any powers under these provisions, an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business²¹.

1 For the meaning of 'taxable commodity' see PARA 661 ante; and for the meaning of references to a supply of a taxable commodity see PARA 662 note 1 ante.

2 For these purposes, 'authorised person' means any person acting under the authority of the Commissioners for Revenue and Customs: Finance Act 2000 s 30(1), Sch 6 para 138.

3 Ibid Sch 6 para 127(1).

4 Ibid Sch 6 para 127(2).

5 Ibid Sch 6 para 127(3).

6 Ie subject to ibid Sch 6 para 127(5), (6) (see the text and notes 10-14 infra) and to Sch 6 para 107(5) (which relates to supplementary assessments of daily penalties: see PARA 694 ante).

7 Ibid Sch 6 para 127(4)(a).

8 For these purposes, 'the last relevant date' means the last day of the period within which the person in question was required to produce the document: ibid Sch 6 para 127(7).

9 Ibid Sch 6 para 127(4)(b).

10 For the meaning of 'appeal tribunal' see PARA 689 note 7 ante.

11 Finance Act 2000 Sch 6 para 127(5). The specified matters are: (1) in the case of the penalty under Sch 6 para 127(4)(a), that there is a reasonable excuse for the initial failure to produce the document at the required time and for every subsequent failure to produce it; and (2) in the case of any penalty under Sch 6 para 127(4) (b) for any day, that there is a reasonable excuse for the failure to produce the document on or before that day: Sch 6 para 127(5). As to what is not a reasonable excuse see PARA 694 ante.

12 Ie whether under the Finance Act 2000 or otherwise: Sch 6 para 127(6).

13 Ie under ibid Sch 6 para 98: see PARA 690 ante.

14 Ibid Sch 6 para 127(6).

15 Ibid Sch 6 para 128(1).

16 Ibid Sch 6 para 128(2).

17 Ibid Sch 6 para 128(3).

18 Ibid Sch 6 para 128(4).

19 Ibid Sch 6 para 128(5).

20 Ibid Sch 6 para 128(6).

21 Ibid Sch 6 para 129. As to powers of entry under warrant see Sch 6 para 130 (prospectively repealed by the Finance Act 2007 ss 84(4), 114, Sch 22 Pt 2 paras 3, 11(b), Sch 27 Pt 5(1), as from a day to be appointed under s 84(5); at the date at which this title states the law, no such day had been appointed); and as to the requirement to keep a record of anything removed under those powers of entry see the Finance Act 2000 Sch 6 para 132; and PARA 698 post.

UPDATE

697 Production of documents

TEXT AND NOTE 13--Finance Act 2000 Sch 6 para Sch 6 para 127(6) (amended by SI 2009/571) also refers to a penalty under the Finance Act 2007 Sch 24 (see INCOME TAXATION vol 23(2) (Reissue) PARA 1712A).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/1. INTRODUCTION/(6) TAXATION/(i) Climate Change Levy/J. INFORMATION AND EVIDENCE/698. Order for access to recorded information etc.

698. Order for access to recorded information etc.

Where, on an application by an authorised person¹, a justice of the peace is satisfied that there are reasonable grounds for believing:

- 487 (1) that an offence in connection with levy is being, has been or is about to be committed; and
- 488 (2) that any recorded information, including any document of any nature at all, which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,

he may make an order that the person who appears to the justice to be in possession of the recorded information to which the application relates is to give an authorised person access to it², and permit an authorised person to remove and take away any of it which he reasonably considers necessary, not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify³. Where the recorded information consists of information stored in any electronic form, such an order has effect as an order to produce the information:

- 489 (a) in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form; and
- 490 (b) if the authorised person wishes to remove it, in a form in which it can be removed⁴.

An authorised person who removes anything in the exercise of a power so conferred⁵ must, if so requested by a person showing himself to be the occupier of premises from which it was removed, or to have had custody or control of it immediately before the removal, provide that person with a record of what he removed⁶. The authorised person must provide the record within a reasonable time from the making of the request for it⁷.

If a request for permission to be allowed access to anything which has been removed by an authorised person, and is retained by the Commissioners for Revenue and Customs for the purposes of investigating an offence, is made to the officer in overall charge of the investigation⁸ by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must⁹ allow the person who made the request access to it under the supervision of an authorised person¹⁰. If a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer must¹¹:

- 491 (i) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it; or
- 492 (ii) photograph or copy it, or cause it to be photographed or copied¹²;

and where anything is photographed or copied under head (ii) above, the officer must¹³ supply the photograph or copy, or cause it to be supplied, to the person who made the request¹⁴,

within a reasonable time from the making of the request¹⁵. There is, however, no duty under these provisions to allow access to anything, or to supply a photograph or copy of anything, if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice:

- 493 (A) that investigation;
- 494 (B) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
- 495 (C) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in head (B) above¹⁶.

Where, on an application made by the specified person¹⁷, the appropriate judicial authority¹⁸ is satisfied that a person has failed to comply with a requirement to comply with a request for access to anything that has been removed¹⁹, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order²⁰.

1 For the meaning of 'authorised person' see PARA 697 note 2 ante.

2 The reference in the text to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it: Finance Act 2000 s 30(1), Sch 6 para 131(3).

3 Ibid Sch 6 para 131(1), (2). Schedule 6 para 131 (as amended) is without prejudice to Sch 6 paras 124-130 (as amended) (see PARAS 696-697 ante): Sch 6 para 131(5). For the purpose of exercising any powers under these provisions, an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business: Sch 6 para 129.

4 Ibid Sch 6 para 131(4) (amended by the Criminal Justice and Police Act 2001 s 70, Sch 2 Pt 2 para 13(1), (2)).

5 I.e. a power conferred by or under Sch 6 para 131 (as amended) (see the text and notes 1-4 supra) or under Sch 6 para 130 (prospectively repealed: see PARA 697 note 21 ante) (powers of entry under warrant).

6 Ibid Sch 6 para 132(1).

7 Ibid Sch 6 para 132(2).

8 Any reference in ibid Sch 6 para 132 to the officer in overall charge of the investigation is a reference to the person whose name and address are indorsed on the warrant concerned as being the officer so in charge: Sch 6 para 132(8).

9 I.e. subject to ibid Sch 6 para 132(7): see the text and note 16 infra.

10 Ibid Sch 6 para 132(3).

11 See note 9 supra.

12 Finance Act 2000 Sch 6 para 132(4).

13 See note 9 supra.

14 Finance Act 2000 Sch 6 para 132(5).

15 Ibid Sch 6 para 132(6).

16 Ibid Sch 6 para 132(7).

17 An application under ibid Sch 6 para 133(1) may not be made except (1) in the case of a failure to comply with any of the requirements imposed by Sch 6 para 132(1), (2) (see the text and notes 5-7 supra), either by the occupier of the premises from which the thing in question was removed, or by the person who had custody or control of it immediately before it was so removed; (2) in any other case, by the person who had such

custody or control: Sch 6 para 133(2). In England and Wales and Northern Ireland, an application for an order under Sch 6 para 133 must be made by way of complaint: see Sch 6 para 133(4).

18 For these purposes, 'the appropriate judicial authority' means, in England and Wales, a magistrates' court; and in Northern Ireland, a court of summary jurisdiction: see *ibid* Sch 6 para 133(3)(a), (c).

19 Ie a requirement imposed by *ibid* Sch 6 para 132: see the text and notes 5-16 *supra*.

20 *Ibid* Sch 6 para 133(1).

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699. Samples and evidence.

An authorised person¹ may, if it appears to him necessary for the protection of the revenue against mistake or fraud, at any time:

- 496 (1) take, from material which he has reasonable cause to believe is either a taxable commodity² which is intended to be, is being or has been the subject of a taxable supply³, or a product of the burning of a taxable commodity (other than electricity) which is being or has been the subject of a taxable supply, such samples as he may require with a view to determining how the material ought to be treated, or to have been treated, for the purposes of the levy⁴;
- 497 (2) examine any meter which he has reasonable cause to believe is intended to be, is being or has been used for ascertaining the quantity of any taxable commodity supplied by a taxable supply⁵.

In any proceedings a certificate of the Commissioners for Revenue and Customs:

- 498 (a) that a person was or was not at any time registered⁶ for the purposes of the levy;
- 499 (b) that any return required by regulations⁷ has not been made or had not been made at any time;
- 500 (c) that any levy shown as due in a return or other notification made in pursuance of regulations⁸ has not been paid; or
- 501 (d) that any amount shown as due in any assessment⁹ has not been paid,

is evidence of that fact¹⁰. A photograph of any document provided to the Commissioners for the statutory purposes¹¹ and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself¹². In any proceedings any document purporting to be a certificate under the above provisions¹³ is to be taken to be such a certificate unless the contrary is shown¹⁴.

Statements made or documents produced or provided by or on behalf of a person are not be inadmissible in any:

- 502 (i) criminal proceedings against a person in respect of an offence in connection with or in relation to levy; and
- 503 (ii) proceedings against a person for the recovery of any sum due from him in connection with or in relation to levy,

by reason only that a specified matter¹⁵ has been drawn to that person's attention and he was or may have been induced, as a result, to make the statements or to produce or provide the documents¹⁶. The specified matters are:

- 504 (A) that, in relation to levy, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings¹⁷;

- 505 (b) that it is the practice of the Commissioners, without giving any undertaking as to whether they will make such an assessment in any case, to be influenced by whether a person has made a full confession of any dishonest conduct to which he has been a party and has otherwise co-operated to the full with any investigation¹⁸;
- 506 (c) the fact that the Commissioners have or, on appeal, an appeal tribunal¹⁹ has, power²⁰ to reduce a penalty²¹.

1 For the meaning of 'authorised person' see PARA 697 note 2 ante.

2 For the meaning of 'taxable commodity' see PARA 661 ante.

3 For the meaning of 'taxable supply' see PARA 661 note 4 ante.

4 Finance Act 2000 s 30(1), Sch 6 para 134(1). Any sample so taken must be disposed of in such manner as the Commissioners for Revenue and Customs may direct: Sch 6 para 134(3).

5 Ibid Sch 6 para 134(2).

6 For the meaning of 'registered' see PARA 676 note 1 ante.

7 Ie regulations made under the Finance Act 2000 Sch 6 para 41 (as amended): see PARA 673 ante.

8 See note 7 supra.

9 Ie any assessment made under the Finance Act 2000 Sch 6 (as amended): see PARA 661 et seq ante, PARA 700 et seq post. As to assessments to levy and interest on unpaid levy see PARAS 681-682 ante, and as to assessments to penalties and interest on unpaid penalties see PARA 694 ante.

10 Finance Act 2000 Sch 6 para 135(1) (amended by the Finance Act 2003 s 192(1), (10)).

11 Ie for the purposes of the Finance Act 2000 Sch 6 (as amended).

12 Ibid Sch 6 para 135(2).

13 Ie under ibid Sch 6 para 135(1) (as amended) or Sch 6 para 135(2): see the text and notes 6-12 supra.

14 Ibid Sch 6 para 135(3).

15 Ie a matter falling within ibid Sch 6 para 136(3) or (4): see heads (A)-(C) in the text.

16 Ibid Sch 6 para 136(1), (2).

17 Ibid Sch 6 para 136(3)(a).

18 Ibid Sch 6 para 136(3)(b).

19 For the meaning of 'appeal tribunal' see PARA 689 note 7 ante.

20 Ie under any provision of the Finance Act 2000 Sch 6 (as amended): see PARA 661 et seq ante, PARA 700 et seq post.

21 Ibid Sch 6 para 136(4).

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699 Samples and evidence

TEXT AND NOTES 8-10--Heads (c), (d) omitted: Finance Act 2000 Sch 6 para 135(1) (amended by Finance Act 2008 Sch 44 para 8).

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700. Disclosure of information.

Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners for Revenue and Customs may¹ disclose any information obtained or held by them in or in connection with the carrying out of their functions in relation to the levy to any of the following:

- 507 (1) any Minister of the Crown;
- 508 (2) the Scottish Ministers;
- 509 (3) any minister, within the meaning of the Northern Ireland Act 1998, or any Northern Ireland department;
- 510 (4) the National Assembly for Wales or the Welsh Ministers²;
- 511 (5) the Environment Agency³;
- 512 (6) the Scottish Environment Protection Agency;
- 513 (7) the Gas and Electricity Markets Authority⁴;
- 514 (8) the Director General of Electricity Supply for Northern Ireland;
- 515 (9) the Director General of Gas for Northern Ireland;
- 516 (10) an authorised officer⁵ of any person mentioned in heads (1) to (9) above⁶;

but information must not be so disclosed except for the purpose of assisting a person falling within heads (1) to (10) above in the performance of his duties⁷.

Notwithstanding any obligation not to disclose information that would otherwise apply, any person mentioned in heads (1) to (10) above may disclose information to the Commissioners, or to an authorised officer of the Commissioners, for the purpose of assisting the Commissioners in the performance of duties in relation to the levy⁸.

Information that has been disclosed to a person by virtue of the above provisions must not be disclosed by him except:

- 517 (a) to another person to whom (instead of him) disclosure could have been made by virtue of those provisions; or
- 518 (b) for the purpose of any proceedings connected with the operation of any provision made by or under any enactment⁹ relating to the environment or to levy¹⁰.

No charge may be made for any disclosure made by virtue of these provisions¹¹.

1 le subject to the Finance Act 2000 s 30(1), Sch 6 para 137(2): see the text and note 7 infra.

2 As to the Assembly and the Welsh Ministers see PARA 601 note 1 ante.

3 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq post.

5 For these purposes, references to an authorised officer of any person ('the principal') are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of the Finance Act 2000 Sch 6 para 137: Sch 6 para 137(5). Where the principal is a person falling within any of

Sch 6 para 137(1)(a)-(c) (see heads (1)-(3) in the text), the principal must notify the Commissioners in writing of the name of any person designated by the principal for these purposes: Sch 6 para 137(6).

6 Ibid Sch 6 para 137(1).

7 Ibid Sch 6 para 137(2).

8 Ibid Sch 6 para 137(3).

9 For these purposes, 'enactment' includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation: ibid Sch 6 para 137(8).

10 Ibid Sch 6 para 137(4).

11 Ibid Sch 6 para 137(7).

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K. REVIEW AND APPEAL

701. Review of Commissioners' decisions.

Any person who is or will be affected by any decision of the Commissioners for Revenue and Customs with respect to any of the following matters:

- 519 (1) whether or not a person is charged in any case with an amount of levy;
- 520 (2) the amount of levy charged in any case and the time when the charge is to be taken as having arisen;
- 521 (3) the registration¹ of any person for the purposes of the levy or the cancellation of any registration;
- 522 (4) the person liable to pay the levy charged in any case, the amount of a person's liability to levy and the time by which he is required to pay an amount of levy;
- 523 (5) whether to prepare a special utility scheme² for a utility³;
- 524 (6) the imposition of a requirement on any person to give security, or further security⁴, and the amount and manner of providing any security required;
- 525 (7) whether or not liability to a penalty or to interest on any amount arises in any person's case⁵ and the amount of any such liability;
- 526 (8) any matter the decision as to which is reviewable in accordance with certain provisions relating to the liability of a body corporate to a penalty⁶;
- 527 (9) the extent of any person's entitlement to any tax credit⁷ or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners⁸ to pay interest on any amount;
- 528 (10) whether or not any person is required⁹ to have a tax representative¹⁰;
- 529 (11) the giving, withdrawal or variation¹¹ of any approval or direction with respect to the person who is to act as another's tax representative;
- 530 (12) the giving, withdrawal or variation of a utility direction¹²;
- 531 (13) whether a body corporate is to be treated, or is to cease to be treated, as a member¹³ of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;
- 532 (14) any matter not falling within heads (1) to (13) above the decision with respect to which is contained in certain assessments¹⁴,

may by notice in writing¹⁵ to the Commissioners require them to review the decision¹⁶.

The Commissioners are not required to review any decision under these provisions unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of an assessment containing or giving effect to the decision, was first given to the person requiring the review¹⁷; and for these purposes it is the duty of the Commissioners to give written notification of any decision to which heads (1) to (14) above apply to any person who:

- 533 (a) requests such a notification;
- 534 (b) has not previously been given written notification of that decision; and

535 (c) if given such a notification, will be entitled to require a review of the decision¹⁸.

A person is entitled to give a notice under these provisions requiring a decision to be reviewed for a second or subsequent time only if:

- 536 (i) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- 537 (ii) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate¹⁹.

Where the Commissioners are required by a notice under these provisions to review any decision, it is their duty to do so²⁰. On such a review the Commissioners may²¹ withdraw, vary or confirm the decision reviewed²². Where it is their duty so to review any decision, and they do not, within the period of 45 days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review, they are deemed to have confirmed the decision²³. Where they decide, on such a review, that a liability to a penalty or to an amount of interest arises, there are statutory restrictions on their ability to modify the amount payable in respect of that liability²⁴.

1 As to registration see PARAS 676-680 ante.

2 As to special utility schemes see the Finance Act 2000 s 30(1), Sch 6 para 29; and PARA 671 ante.

3 For the meaning of 'utility' see PARA 663 note 2 ante.

4 Ie under the Finance Act 2000 Sch 6 para 139: see PARA 678 ante.

5 Ie under any provision made by or under ibid Sch 6 (as amended): see PARA 661 et seq ante.

6 Ie in accordance with ibid Sch 6 para 99(6) or (7): see PARA 690 ante.

7 For the meaning of 'tax credit' see PARA 679 note 9 ante.

8 Ie under the Finance Act 2000 Sch 6 (as amended): see PARA 661 et seq ante.

9 Ie by virtue of any regulations under ibid Sch 6 para 114: see PARA 681 note 8 ante.

10 For the meaning of 'tax representative' see PARA 681 note 8 ante.

11 Ie for the purposes of any such regulations as are mentioned in note 9 supra.

12 Ie under the Finance Act 2000 Sch 6 para 151(1): see PARA 661 note 8 ante.

13 For the meaning of 'member' see PARA 677 note 5 ante.

14 Ie the decision to which is contained in (1) an assessment under the Finance Act 2000 Sch 6 para 78 or Sch 6 para 79 (see PARA 681 ante) in respect of an accounting period in relation to which any return required to be made by virtue of regulations under Sch 6 para 41 (as amended) (see PARA 673 ante) has been made; or (2) an assessment under any provision of Sch 6 (as amended) other than Sch 6 para 78 or Sch 6 para 79: see Sch 6 para 121(1)(n).

15 As to service of notice see PARA 678 note 2 ante.

16 Finance Act 2000 Sch 6 para 121(1), (2). Schedule 6 para 121 has effect subject to Sch 6 para 99(5) (see PARA 690 ante): Sch 6 para 121(10).

17 Ibid Sch 6 para 121(3).

18 Ibid Sch 6 para 121(4).

19 Ibid Sch 6 para 121(5).

20 Ibid Sch 6 para 121(6).

21 Ie subject to ibid Sch 6 para 121(9): see the text and note 24 infra.

22 Ibid Sch 6 para 121(7).

23 Ibid Sch 6 para 121(8).

24 See ibid Sch 6 para 121(9). The Commissioners are not entitled to modify the amount payable in respect of that liability except (1) in exercise of a power conferred by Sch 6 para 104(1) (penalties: see PARA 692 ante) or Sch 6 para 70(6) (see PARA 687 ante), Sch 6 para 86(3) (see PARA 682 ante) or Sch 6 para 109(5) (see PARA 694 ante) (penalty interest); or (2) for the purpose of making the amount payable conform to the amount of the liability imposed by Sch 6 (as amended): Sch 6 para 121(9).

UPDATE

701 Review of Commissioners' decisions

TEXT AND NOTES 1-16--Subject to the Finance Act 2000 Sch 6 para 122 (see PARA 702) an appeal lies to an appeal tribunal from any person who is or will be affected by any decision of HM Revenue and Customs with respect to any of the matters set out in heads (1)-(14): Sch 6 para 121(1) (amended by SI 2009/56). Finance Act 2000 Sch 6 para 121(2)-(9) are repealed.

Provisions similar to those applying more generally for customs and excise purposes (see CUSTOMS AND EXCISE) is made with regard to the review by HM Revenue and Customs of decisions relating to climate change levy: Finance Act 2000 Sch 6 paras 121A-121F (Sch 6 paras 121A-121G added by SI 2009/56). An appeal under the Finance Act 2000 Sch 6 para 121 must be made to the appeal tribunal before the end of the period of 30 days beginning with (a) (i) in a case where the appellant is the person (P) to whom notice of the decision has been given, the date of the document in which he was so notified; and (ii) in any other case, the date when the person concerned become aware of the decision; or (b) if later, the end of the relevant period (ie the period of 30 days from the acceptance of HM Revenue and Customs' offer of a review or from the appellant's request for a review): Sch 6 para 121G(1). In a case where HM Revenue and Customs is required to undertake a review under Sch 6 para 121C, an appeal may not be made until the conclusion date; and must then be made within the period of 30 days beginning with that date; and where a review is requested under Sch 6 para 121E, an appeal may not be made unless HM Revenue and Customs has decided not to undertake a review or, if a review is undertaken, until the conclusion date, and must then be made within the period of 30 days beginning with the date on which the decision was made or, as the case may be, with the conclusion date: Sch 6 para 121G(2)-(4). Where no notice is given of the conclusions of a review by HM Revenue and Customs, it is treated as having confirmed the decision and HM Revenue and Customs are then required to give notice of the conclusion which is treated as having been so reached: Sch 6 paras 121F(8), 121G(5). In such a case, an appeal may be made at any time from the end of the period of 45 days (or such longer period as HM Revenue and Customs may allow) beginning with the date on which the offer of review was accepted, the request for review was made, or the decision not to review was taken, to the date 30 days after the conclusion date. In each case, the appeal tribunal may extend the period: Sch 6 para 121G(5), (6). 'Conclusion date' means the date of the document notifying the conclusion of the review: Sch 6 para 121G(7).

TEXT AND NOTE 6--In head (8), for 'reviewable' read 'appealable': Finance Act 2000 Sch 6 para 121(1)(h) (amended by SI 2009/56).

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702. Appeals against reviewed decisions.

Subject to the following provisions, an appeal lies to an appeal tribunal¹ with respect to any of the following decisions:

- 538 (1) any decision by the Commissioners for Revenue and Customs on a review under the provisions set out in the previous paragraph², including a deemed confirmation³;
- 539 (2) any decision by the Commissioners on any such review of a decision⁴ as the Commissioners have agreed to undertake in consequence of a request made after the end of the specified⁵ period⁶.

Where such an appeal relates to a decision, whether or not contained in an assessment, that an amount of levy is due from any person, that appeal may not be entertained unless:

- 540 (a) the amount which the Commissioners have determined to be due has been paid or deposited with them; or
- 541 (b) on being satisfied that the appellant would otherwise suffer hardship, either the Commissioners agree, or the appeal tribunal decides, that it should be entertained notwithstanding that that amount has not been so paid or deposited⁷.

On such an appeal relating to a penalty for evasion⁸, the burden of proof as to the specified matters⁹ lies upon the Commissioners¹⁰.

Where, on such an appeal:

- 542 (i) it is found that an assessment of the appellant made, confirmed or treated as confirmed by the Commissioners on a review¹¹ ('the original assessment') is an assessment for an amount that is less than it ought to have been, and the appeal tribunal gives a direction specifying the correct amount, the assessment has effect as an assessment of the amount specified in the direction and (without prejudice to any power¹² to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment¹³;
- 543 (ii) the appeal tribunal finds that a liability to a penalty or to an amount of interest arises, there are statutory restrictions on the tribunal's power to give a direction for the modification of the amount payable in respect of that liability¹⁴;
- 544 (iii) it is found that the whole or part of any amount paid or deposited in pursuance of head (a) above is not due, so much of that amount as is found not to be due must be repaid with interest at such rate as the appeal tribunal may determine¹⁵;
- 545 (iv) it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit¹⁶ has not been paid, so much of that amount as is found not to have been paid must be paid with interest at such rate as the appeal tribunal may determine¹⁷.

Where such an appeal has been entertained notwithstanding that an amount determined by the Commissioners to be payable as levy has not been paid or deposited, and it is found on the appeal that that amount is due, the appeal tribunal may, if it thinks fit, direct that that amount is to be paid with interest at such rate as may be specified in the direction¹⁸.

On such an appeal, the powers of the appeal tribunal in relation to any decision of the Commissioners include a power, where the tribunal allows an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either:

- 546 (A) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct; or
- 547 (B) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision¹⁹.

Provision is made for the settling of appeals by agreement and for the enforcement of certain decisions of the appeal tribunal²⁰.

1 For the meaning of 'appeal tribunal' see PARA 699 note 9 ante.

2 Ie a review under the Finance Act 2000 s 30(1), Sch 6 para 121: see PARA 701 ante.

3 Ie under ibid Sch 6 para 121(8): see PARA 701 ante.

4 Ie a decision referred to in ibid Sch 6 para 121(1): see PARA 701 ante at heads (1)-(14) in the text.

5 Ie the period mentioned in ibid Sch 6 para 121(3): see PARA 701 ante.

6 Ibid Sch 6 para 122(1).

7 Ibid Sch 6 para 122(2).

8 Ie a penalty under ibid Sch 6 para 98: see PARA 690 ante.

9 Ie the matters specified in ibid Sch 6 para 98(1)(a), (b): see PARA 690 ante.

10 Ibid Sch 6 para 122(3).

11 Ie a review under ibid Sch 6 para 121: see PARA 701 ante.

12 Ie under ibid Sch 6 (as amended): see PARA 661 et seq ante.

13 Ibid Sch 6 para 123(1).

14 See ibid Sch 6 para 123(3). The tribunal may not give any direction for the modification of the amount payable in respect of that liability except (1) in exercise of a power conferred on the tribunal by Sch 6 para 104(1) (see PARA 692 ante) (penalties) or Sch 6 para 70(6) or (9) (see PARA 687 ante), Sch 6 para 86(3) or (6) (see PARA 682 ante) or Sch 6 para 109(5) or (8) (see PARA 694 ante) (penalty interest); or (2) for the purpose of making the amount payable conform to the amount of the liability imposed by Sch 6 (as amended): Sch 6 para 123(3).

15 Ibid Sch 6 para 123(4).

16 For the meaning of 'tax credit' see PARA 679 note 9 ante.

17 Finance Act 2000 Sch 6 para 123(5).

18 Ibid Sch 6 para 123(6).

19 Ibid Sch 6 para 123(2).

20 The Value Added Tax Act 1994 ss 85, 87 (settling of appeals by agreement and enforcement of certain decisions of the tribunal: see VALUE ADDED TAX vol 49(1) (2005 Reissue paras 348, 369) have effect as if (1) the

references to s 83 (as amended) included references to the Finance Act 2000 Sch 6 para 122; and (2) the references to VAT included references to levy: Sch 6 para 123(7).

UPDATE

702 Appeals against reviewed decisions

TEXT AND NOTES--Finance Act 2000 Sch 6 para 122(1) repealed: SI 2009/56. Where an appeal relates to a decision (whether or not contained in an assessment) that an amount of levy is due from any person, it must not be entertained unless the amount which HM Revenue and Customs has determined to be due has been paid or deposited with it: Finance Act 2000 Sch 6 para 122(2), (2A), (2B) (Sch 6 para 122(2) substituted, Sch 6 para 122(2A), (2B) added, by SI 2009/56). However, in a case where no payment or deposit has been made, an appeal may still be entertained if HM Revenue and Customs is satisfied (on application by the appellant) or if (HM Revenue and Customs not being so satisfied) the appeal tribunal decides (again on application by the appellant) that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship: Finance Act 2000 Sch 6 para 122(2A). Notwithstanding the provisions of the Tribunals, Courts and Enforcement Act 2007 ss 11 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.7) and 13 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A.8), the decision of the appeal tribunal on the issue of hardship is final: Finance Act 2000 Sch 6 para 122(2B). 'Appeal tribunal' means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal: Finance Act 2000 Sch 6 para 147 (amended by SI 2009/56).

Interest within the Finance Act 2000 Sch 6 para 123(4), (5) (see heads (iii) and (iv)) and Sch 6 para 123(6) is now payable at the rate applicable under the Finance Act 1996 s 197; and interest under the Finance Act 2000 Sch 6 para 123(6) is payable without any deduction of income tax: Sch 6 para 123(4)-(6A) (Sch 6 para 123(4)-(6) amended, Sch 6 para 123(6A) added, by SI 2009/56). The Value Added Tax Act 1994 ss 85, 85B (see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 368A) have effect as if the references to s 83 included references to the Finance Act 2000 Sch 6 para 121 and the references to value added tax included references to climate change levy: Sch 6 para 123(7) (substituted by SI 2009/56).

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(ii) Other Relevant Tax Provisions

703. Reliefs for energy-saving homes and for domestic microgeneration.

Certain deductions from income tax and corporation tax are allowed for expenditure by persons carrying on property businesses who acquire and install energy-saving items in dwelling houses¹. The Finance Act 2007 has introduced relief from stamp duty land tax for new zero-carbon homes² and an exemption from income tax in respect of income arising to an individual from the sale of electricity generated by a domestic microgeneration system³ or in respect of the receipt by an individual of a renewables obligation certificate for domestic microgeneration⁴. Furthermore, a gain accruing to an individual on a disposal of such a renewables obligation certificate is not to be a chargeable gain for the purposes of capital gains tax⁵.

These matters are discussed elsewhere in this work⁶.

1 See the Income and Corporation Taxes Act 1988 ss 31ZA-31ZC (added by the Finance Act 2007 s 17(1)); the Income Tax (Trading and Other Income) Act 2005 ss 312-314 (amended by the Finance Act 2007 s 18).

2 See the Finance Act 2003 ss 58B-58C (added by the Finance Act 2007 s 19(1))

3 See the Income Tax (Trading and Other Income) Act 2005 s 782A (added by the Finance Act 2007 s 20(1)).

4 See the Income Tax (Trading and Other Income) Act 2005 s 782B (added by the Finance Act 2007 s 21(1)).

5 See the Taxation of Chargeable Gains Act 1992 s 263AZA (added by the Finance Act 2007 s 21(2)).

6 See CAPITAL GAINS TAXATION; INCOME TAXATION; STAMP DUTIES AND STAMP DUTY RESERVE TAX.

UPDATE

703 Reliefs for energy-saving homes and for domestic microgeneration

NOTE 1--Income and Corporation Taxes Act 1988 ss 31ZA-31ZC now Corporation Tax Act 2009 ss 251-253.

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704. Value added tax.

The supply of any form of power, heat, refrigeration or ventilation is treated as a supply of goods for the purposes of VAT¹. Supplies of domestic fuel and power are charged to VAT at a reduced rate², as are the supply of heating equipment and the connection or reconnection of a mains gas supply to persons in receipt of certain social security benefits³.

The removal to another member state of gas through the natural gas distribution network, or of electricity, is not a taxable supply for the purposes of VAT, provided that certain conditions are satisfied⁴. A reverse charge arises in the case of the supply of electricity, and the supply of gas through the natural gas distribution network, by a person who is outside the United Kingdom⁵ to a person registered for VAT for the purposes of any business carried on by the recipient⁶. Supplies of electricity, or gas supplied through the natural gas distribution network, other than to a dealer, are generally treated as supplied at the place where the recipient of the supply has effective use and consumption of the goods⁷.

1 See the Value Added Tax Act 1994 s 5(1), Sch 4 para 3. See also Case C-393/92 *Municipality of Almelo v NV Energiebedrijf IJsselmij* [1994] ECR I-1477 at 1516, ECJ (electricity goods, not a service).

2 See the Value Added Tax Act 1994 s 29A, Sch 7A Pt II Group 1 (as added); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 7.

3 See *ibid* Sch 7A Pt II Group 3 (as added and amended); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 9.

4 See the Value Added Tax (Removal of Gas and Electricity) Order 2004, SI 2004/3150, art 2; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 21.

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 See the Value Added Tax Act 1994 s 9A (as added); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 33. The VAT chargeable on the importation from a place outside the member states of gas through the natural gas distribution network, or electricity, is not, however, payable: see the Value Added Tax (Imported Gas and Electricity) Relief Order 2004, SI 2004/3147, art 2; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 137.

7 See the Value Added Tax (Place of Supply of Goods) Order 2004, SI 2004/3148, art 11; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 52.

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705. Petroleum revenue tax; excise duty on hydrocarbon oil etc.

Petroleum revenue tax is levied on participators in taxable oil fields and computed on a field by field basis. That tax and the corporation tax chargeable on revenues from oil and gas are discussed in a later part of this title¹.

The excise duty charged on petrol and other hydrocarbons is discussed elsewhere in this work². There is a relief from excise duty for rebated heavy oils used to generate electricity in a generating station or combined heat and power station³.

1 See OIL AND GAS TAXATION vol 78 (2010) PARA 301 et seq.

2 See CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 508 et seq.

3 See the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005, SI 2005/3320 (amended by SI 2007/2191).

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2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL

(1) THE SECRETARY OF STATE

706. Annual report on security of energy supplies.

The Secretary of State¹ must in every calendar year²:

- 548 (1) publish a report dealing, as regards both the short term and the long term, with the availability of electricity and gas³ for meeting the reasonable demands of consumers⁴ in Great Britain⁵; and
- 549 (2) lay that report before Parliament⁶.

The report must be prepared jointly by the Secretary of State and the Gas and Electricity Markets Authority ('GEMA')⁷. It must include, in particular, overall assessments, as regards both the short term and the long term, of each of the following:

- 550 (a) generating capacity in Great Britain and its offshore waters⁸ so far as it will be utilised for generating electricity for introduction into transmission systems⁹ in Great Britain;
- 551 (b) the availability of capacity in those systems and in distribution systems¹⁰ in Great Britain for transmitting¹¹ and distributing¹² electricity for supply to consumers in Great Britain;
- 552 (c) the availability of capacity in infrastructure¹³ in Great Britain for use in connection with the introduction of gas into licensed pipeline systems¹⁴ in Great Britain; and
- 553 (d) the availability of capacity in those systems for conveying gas to consumers in Great Britain¹⁵.

Certain general objectives and duties relating to gas¹⁶ and electricity¹⁷ apply to the carrying out, as respects:

- 554 (i) activities required to be authorised by gas licences¹⁸ or electricity licences¹⁹;
- 555 (ii) such licences and the conditions of such licences; or
- 556 (iii) companies holding such licences,

of functions conferred on the Secretary of State or GEMA by or under the above provisions and by or under other specified provisions of the Energy Act 2004²⁰ as they apply in relation to the carrying of functions conferred on him, or on it, by or under Part I of the Gas Act 1986²¹ or Part I²² of the Electricity Act 1989²³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie in 2005 and every subsequent calendar year: Energy Act 2004 s 172(1).

- 3 For the meaning of 'gas' see PARA 802 post (definition applied by *ibid* s 172(4)).
- 4 For these purposes, 'consumers' includes both existing and future consumers: *ibid* s 172(4).
- 5 *Ibid* s 172(1)(a). For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 6 *Ibid* s 172(1)(b).
- 7 *Ibid* s 172(3). As to GEMA see PARA 708 et seq post.
- 8 For these purposes, 'offshore waters' means, in relation to Great Britain: (1) so much of the territorial sea of the United Kingdom as is adjacent to Great Britain; and (2) waters in a renewable energy zone (within the meaning of Pt 2 Ch 2 (ss 84-104) (see PARA 1310 et seq post)): s 172(4). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.
- 9 For the meaning of 'transmission system' see PARA 1041 note 6 post (definition applied by *ibid* s 172(4)).
- 10 For the meaning of 'distribution system' see PARA 1041 note 5 post (definition applied by *ibid* s 172(4)).
- 11 For the meaning of 'transmitting' see PARA 1041 note 6 post (definition applied by *ibid* s 172(4)).
- 12 For the meaning of 'distributing' see PARA 1041 note 5 post (definition applied by *ibid* s 172(4)).
- 13 For these purposes, 'infrastructure' includes pipeline systems, terminals and other facilities but does not include licensed pipeline systems; and 'licensed pipeline system' means a pipeline system that is operated by a gas transporter for the conveyance of gas to any premises or another pipeline system, as authorised by his licence under the Gas Act 1986 s 7 (as substituted and amended) (see PARA 805 post): Energy Act 2004 s 172(4). For the meaning of 'gas transporter' see PARA 805 post (definition applied by s 172(4)).
- 14 For the meaning of 'licensed pipeline system' see note 13 supra.
- 15 Energy Act 2004 s 172(2).
- 16 *Ie* the Gas Act 1986 ss 4AA-4B (as added and amended): see PARA 789 et seq post.
- 17 *Ie* the Electricity Act 1989 ss 3A-3D (as added and amended): see PARA 1041 et seq post.
- 18 For these purposes, 'gas licence' means a licence for the purposes of the Gas Act 1986 s 5 (as substituted and amended) (prohibition on unlicensed gas activities: see PARA 803 post): Energy Act 2004 s 190(4).
- 19 For these purposes, 'electricity licence' means a licence for the purposes of the Electricity Act 1989 s 4 (as amended) (prohibition on unlicensed electricity activities: see PARA 1050 post): Energy Act 2004 s 190(4).
- 20 *Ie* (1) in relation to gas, functions conferred by or under *ibid* Pt 3 Chs 2-4 (ss 145-185) (see PARA 733 et seq post); and (2) in relation to electricity, functions conferred by or under s 90 (see PARA 1078 post), s 91 (see PARA 1079 post) or Pt 3 (ss 133-185) (see PARAS 733 et seq, 1071 et seq post) other than s 179(4) (transitional provision which may be made by certain orders).
- 21 *Ie* by or under the Gas Act 1989 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq post.
- 22 *Ie* by or under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq post.
- 23 See the Energy Act 2004 s 190(1), (2).

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707. Other functions, powers and duties of the Secretary of State.

The Secretary of State¹ has a number of specific duties and functions under the particular legislation relating to gas and electricity, which are discussed in the parts of this title which deal in detail with each of those industries². He also has a number of functions, powers and duties in relation to those industries more generally, including:

- 557 (1) the appointment of the chairmen and members of the Gas and Electricity Markets Authority ('GEMA')³ and the Gas and Electricity Consumer Council⁴;
- 558 (2) the appointment of specialist members of the Competition Commission⁵;
- 559 (3) power to give the Gas and Electricity Consumer Council a notice requiring it to perform specified duties of a financial nature⁶;
- 560 (4) powers under the Utilities Act 2000 to make regulations concerning various matters⁷;
- 561 (5) powers under the Energy Act 2004 to make orders, for example excluding certain descriptions of GEMA decisions from the right of appeal to the Competition Commission⁸;
- 562 (6) power to apply for an energy administration order or to give consent for GEMA to do so⁹;
- 563 (7) where an energy administration order is in force, power to approve or modify energy transfer schemes made by the court¹⁰;
- 564 (8) power to make grants or loans for the purpose of achieving the object of an energy administration¹¹;
- 565 (9) power to indemnify persons in respect of liabilities incurred in connection with the exercise and performance by an energy administrator of his powers and duties and loss or damage sustained in that connection¹²;
- 566 (10) power to specify an overall target for the promotion of specified measures for carbon emissions reduction¹³;
- 567 (11) power to make emergency regulations if there is an event or situation which threatens serious damage to human welfare in the United Kingdom or a part of the United Kingdom by disrupting supplies of energy or fuel¹⁴;
- 568 (12) emergency and reserve powers under the Energy Act 1976 to control the production, supply, acquisition or use of natural gas and electricity, and, in the exercise of reserve powers, to regulate the price at which natural gas may be supplied¹⁵;
- 569 (13) a duty to make annual reports on progress towards sustainable energy aims and on greenhouse gas emissions¹⁶;
- 570 (14) a duty to publish an energy measures report relating to local authorities¹⁷;
- 571 (15) a duty to prepare a strategy for the promotion of microgeneration¹⁸;
- 572 (16) a duty to promote community energy projects and renewable heat¹⁹;
- 573 (17) a duty to set combined heat and power targets²⁰; and
- 574 (18) a duty to issue guarantees of origin of electricity produced from high-efficiency cogeneration ('CHPGOs')²¹.

The Secretary of State has power to impose charges to fund certain of his energy functions, including his functions under the Electricity Act 1989 and the Gas Acts 1986 and 1995²². Any

expenditure incurred by him by virtue of the Utilities Act 2000 is to be paid out of money provided by Parliament²³.

- 1 As to the Secretary of State see PARA 601 note 1 ante.
- 2 See PARA 789 et seq post (gas), PARA 1041 et seq post (electricity).
- 3 See PARA 709 post.
- 4 See PARA 717 post. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 post.
- 5 See PARA 766 post.
- 6 See PARA 721 post. See also note 4 supra.
- 7 See eg paras 727, 728, 729 post.
- 8 See PARA 733 post.
- 9 See PARA 745 post.
- 10 See PARAS 749, 752 post.
- 11 See PARA 761 post.
- 12 See PARA 762 post.
- 13 See PARA 765 post.
- 14 See PARA 772 post.
- 15 See PARA 603 et seq ante.
- 16 See PARAS 614-615 ante.
- 17 See PARA 616 ante.
- 18 See PARA 618 ante.
- 19 See PARAS 621-622 ante.
- 20 See PARA 623 ante.
- 21 See PARA 624 et seq ante.
- 22 See PARA 602 ante.
- 23 Utilities Act 2000 s 107(b).

UPDATE

707 Other functions, powers and duties of the Secretary of State

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/ (2) THE GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')/708. Establishment etc of the Gas and Electricity Markets Authority.

(2) THE GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')

708. Establishment etc of the Gas and Electricity Markets Authority.

The Utilities Act 2000 established a body corporate to be known as the Gas and Electricity Markets Authority for the purpose of carrying out:

- 575 (1) functions transferred to that Authority¹ from the former Director General of Gas Supply and the former Director General of Electricity Supply (whose offices were abolished)²; and
- 576 (2) the other functions of that Authority under the 2000 Act³.

The Gas and Electricity Markets Authority is referred to in the Utilities Act 2000 (and thus in the Gas Act 1986 and the Electricity Act 1989 where amended by that 2000 Act) as 'the Authority'⁴ but in the Energy Act 2004 as 'GEMA'⁵. Its functions are performed on behalf of the Crown⁶ and now include a number of functions under the Energy Act 2004⁷ as well as under the Gas Act 1986⁸ and the Electricity Act 1989⁹. As from a day to be appointed¹⁰, the Authority will also exercise regulatory functions under the Consumers, Estate Agents and Redress Act 2007, including:

- 577 (a) making regulations which prescribe standards for the handling by its regulated providers¹¹ of consumer complaints made to them¹²;
- 578 (b) making regulations requiring each of its regulated providers in relation to which standards are so prescribed to give to the provider's relevant consumers¹³ such information as may be specified or described in the regulations about the standards and the levels of compliance with those standards achieved by the provider¹⁴;
- 579 (c) approving a redress scheme to which its regulated providers are to belong¹⁵; and
- 580 (d) powers of enforcement under the 2007 Act¹⁶.

1 As to the transfer of functions see PARA 711 post.

2 See the Utilities Act 2000 s 1(3).

3 Ibid s 1(1). Any expenditure incurred by the Authority by virtue of the Utilities Act 2000 must be paid out of money provided by Parliament: s 107(a). Any increase attributable to that Act in the sums payable out of money so provided out of any other Act must also be so paid: s 107(c).

4 See ibid ss 1(1), 106(1). See also the Gas Act 1986 s 4AA (added by the Utilities Act 2000 s 9, and subsequently amended); and PARA 789 post; the Electricity Act 1989 s 3A (added by the Utilities Act 2000 s 13, and subsequently amended); and PARA 1041 post.

5 See the Energy Act 2004 s 196(1). Throughout this title, and for the sake of consistency, where the full name of the Gas and Electricity Markets Authority is given it is followed by the abbreviation 'GEMA', even if not so followed in the legislation being set out; but where the full name is not given, then either 'the Authority' or 'GEMA' is used to refer to the Gas and Electricity Markets Authority in accordance with the practice of the legislation in question. The Office of the Gas and Electricity Markets Authority is known as 'Ofgem'. Ofgem

maintains an internet site on the World Wide Web, accessible at the date at which this title states the law at www.ofgem.gov.uk.

6 Utilities Act 2000 s 1(2).

7 See PARA 733 et seq post.

8 See PARA 789 et seq post.

9 See PARA 1041 et seq post.

10 le under the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.

11 For these purposes, 'regulated provider' means the holder of a supply licence or a transportation licence under the Gas Act 1986 s 7A(1) (as added and amended) (see PARA 807 post) or s 7(2) (as substituted and amended) (see PARA 805 post) or the holder of a distribution licence or a supply licence under the Electricity Act 1989 s 6(1)(c) (as substituted and amended) (see PARA 1065 post) or s 6(1)(d) (as substituted and amended) (see PARA 1065 post): see the Consumers, Estate Agents and Redress Act 2007 s 42(1) (not in force).

12 See *ibid* s 43 (not in force). In relation to standards prescribed in relation to gas or electricity licence holders (or some of them) by such regulations, the Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved; and at such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority may direct with respect to the levels of compliance with the standards which the licence holder has achieved: see the Gas Act 1986 s 33DB; the Electricity Act 1989 s 42AB (prospectively added by the Consumers, Estate Agents and Redress Act 2007 s 45(4), Sch 5 paras 1, 2 (not in force)).

13 For these purposes, 'relevant consumer' means (1) a person who is a consumer in relation to gas supplied by a gas supplier (within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq post)); (2) a person (other than a gas licensee) who is a consumer in relation to services provided by a gas transporter (within the meaning of Pt I (as amended)); (3) a person who is a consumer in relation to electricity supplied by an electricity supplier (within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq post)); (4) a person (other than an electricity licensee) who is a consumer in relation to services provided by an electricity distributor (within the meaning of Pt I (as amended)): see the Consumers, Estate Agents and Redress Act 2007 s 42(1) (not in force). For the meaning of 'gas transporter' see PARA 805 post; for the meaning of 'gas supplier' see PARA 807 post; and for the meanings of 'electricity supplier' and 'electricity distributor' see PARA 1065 notes 7, 9 post. For these purposes, 'electricity licensee' means (a) an electricity supplier (within the meaning of the Electricity Act 1989 Pt I (as amended)); (b) an electricity distributor (within the meaning of Pt I (as amended)); (c) the holder of a licence under s 6(1)(a), (b) or (e) (as substituted and amended) (generation licences, transmission licences and interconnector licences: see PARA 1065 post), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence; and 'gas licensee' means (i) a gas supplier (within the meaning of the Gas Act 1986 Pt I (as amended)); (ii) a gas transporter (within the meaning of Pt I (as amended)); (iii) a gas shipper (within the meaning of Pt I (as amended): see PARA 807 post); (iv) the holder of a licence under s 7ZA (as added) (licences for operation of gas interconnectors see PARA 806 post), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence: Consumers, Estate Agents and Redress Act 2007 s 42(4) (not in force).

14 See *ibid* s 46 (not in force).

15 See *ibid* ss 49-51 (not in force).

16 See *ibid* ss 25, 52 (not in force).

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708 Establishment etc of the Gas and Electricity Markets Authority

TEXT AND NOTES 10-16--Provisions of Consumers, Estate Agents and Redress Act 2007 cited all in force by 1 October 2008: SI 2007/3546, SI 2008/2550.

NOTE 12--See Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, SI 2008/1898.

NOTE 15--See Gas and Electricity Regulated Providers (Redress Scheme) Order 2008, SI 2008/2268.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/ (2) THE GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')/709. Membership and staff of the Gas and Electricity Markets Authority.

709. Membership and staff of the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ consists of a chairman, and no fewer than two other members, appointed by the Secretary of State²; and the Secretary of State must consult the chairman before appointing any other member³. The chairman and other members hold and vacate office⁴ as such in accordance with the terms of their respective appointments⁵, which must be determined by the Secretary of State⁶. An appointment of a person to hold office as chairman or other member must be for a term not exceeding five years⁷; but a previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office⁸.

A person holding office as chairman or other member:

- 581 (1) may resign that office by giving notice in writing⁹ to the Secretary of State; and
- 582 (2) may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour¹⁰.

The Authority must pay to the chairman and other members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State¹¹ and must, if required to do so by the Secretary of State:

- 583 (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member of the Authority; or
- 584 (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person¹².

If, where any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Authority must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State¹³.

The Authority may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such staff as it may determine¹⁴.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Utilities Act 2000 s 1(4), Sch 1 para 1(1). As to the Secretary of State see PARA 601 note 1 ante.

3 Ibid Sch 1 para 1(2).

4 Ie subject to ibid Sch 1: see the text and notes 1-3 supra, 5-14 infra; and PARA 710 post.

5 Ibid Sch 1 para 2(1).

6 Ibid Sch 1 para 2(2). Members of the Authority are disqualified for membership of the House of Commons (see the House of Commons Disqualification Act 1975 Sch 1 Pt II (amended for this purpose by the Utilities Act 2000 s 108, Sch 6 Pt II para 45)) and of the National Assembly for Wales (see the National Assembly for Wales (Disqualification) Order 2006, SI 2006/3335, art 2, Schedule Pt I).

7 Utilities Act 2000 Sch 1 para 3(1).

8 Ibid Sch 1 para 3(3).

9 As to the service of notices see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post.

10 Ibid Sch 1 para 3(2).

11 Ibid Sch 1 para 4(1).

12 Ibid Sch 1 para 4(2).

13 Ibid Sch 1 para 4(3).

14 Ibid Sch 1 para 5.

UPDATE

709 Membership and staff of the Gas and Electricity Markets Authority

NOTE 6--SI 2006/3335 Sch 1 amended: see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 234.

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710. Proceedings etc of the Gas and Electricity Markets Authority; performance of functions.

The Gas and Electricity Markets Authority ('GEMA')¹ may establish committees and any committee of the Authority may establish sub-committees². The members of a committee of the Authority may include persons who are not members of the Authority and the members of a sub-committee may include persons who are not members of the committee³.

The Authority may regulate its own procedure, including quorum⁴, and the validity of anything done by the Authority is not affected by a vacancy among its members or by a defect in the appointment of a member⁵.

The application of the Authority's seal to a statutory instrument must be authenticated by the signature of the chairman or by some other person who has been authorised by the Authority to act for that purpose⁶. A document purporting to be duly executed under the seal of the Authority, or signed on its behalf, is to be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed⁷.

Anything authorised or required to be done by the Authority may be done by:

- 585 (1) any member or employee of the Authority who is authorised for that purpose by the Authority, whether generally or specially;
- 586 (2) any committee of the Authority⁸ which has been so authorised⁹;

but this does not apply to any power to make statutory instruments¹⁰. The Statutory Instruments Act 1946 applies to any power to make statutory instruments conferred on the Authority by or under any Act as if the Authority were a Minister of the Crown¹¹.

The Authority has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions¹²; and that power includes the formation of advisory bodies¹³.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Utilities Act 2000 s 1(4), Sch 1 para 6(1).

3 Ibid Sch 1 para 6(2).

4 Ibid Sch 1 para 7(1).

5 Ibid Sch 1 para 7(2).

6 Ibid Sch 1 para 8(1).

7 Ibid Sch 1 para 8(2).

8 In head (2) in the text, 'committee of the Authority' does not include a committee whose members include any person who is not a member or employee of the Authority: ibid Sch 1 para 9(3).

- 9 Ibid Sch 1 para 9(1).
- 10 Ibid Sch 1 para 9(2).
- 11 Ibid Sch 1 para 10.
- 12 Ibid Sch 1 para 11(1).
- 13 Ibid Sch 1 para 11(2).

UPDATE

710 Proceedings etc of the Gas and Electricity Markets Authority; performance of functions

TEXT AND NOTES--The Authority has a duty to keep under review its regulatory functions, other than any function exercised under competition law (or, if exercisable in Wales, if or to the extent that it relates to a Welsh ministerial matter), and, when carrying out those functions, not to impose unnecessary burdens, and where proportionate and practicable, to remove unnecessary burdens: see the Regulatory Enforcement and Sanctions Act 2008 ss 72(1), (2), 73(1), (2)(a), (3)(c). The Authority must publish a statement each year, setting out its proposals pursuant to the duty and, where a burden that is unnecessary has not been removed, explaining why its removal would be disproportionate or impracticable: see s 72(3)-(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/ (2) THE GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')/711. Transfer to the Gas and Electricity Markets Authority of functions, property etc.

711. Transfer to the Gas and Electricity Markets Authority of functions, property etc.

The functions of the former Director General of Gas Supply and the former Director General of Electricity Supply ('the Directors') are transferred to the Gas and Electricity Markets Authority ('GEMA')¹. Any enactment which relates to a function of either of the Directors, and which was in force immediately before the transfer by the above provision of that function, has effect after the transfer, so far as necessary for the purposes of or in consequence of the transfer, as if references to the Director were references to the Authority².

The Secretary of State³ was given power under the Utilities Act 2000 to make one or more schemes ('transfer schemes') for the transfer of the property, rights and liabilities of the Directors either to the Authority or to the Gas and Electricity Consumer Council⁴. On the day appointed by a transfer scheme, the property, rights and liabilities which were the subject of the scheme were to be transferred in accordance with the provisions of the scheme⁵.

The property, rights and liabilities which may be transferred by a transfer scheme⁶ include property, rights and liabilities that would not otherwise be capable of being transferred or assigned⁷. A transfer scheme may:

- 587 (1) define the property, rights and liabilities to be transferred by specifying them or describing them or by referring to all, or all except anything specified or described, of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor, or partly in one way and partly in the other⁸;
- 588 (2) include such supplementary, incidental, transitional and consequential provision as the Secretary of State considers appropriate⁹.

If, after the day appointed by a transfer scheme, the transferor and transferee so agree in writing, the scheme must for all purposes be deemed to have come into force on that day with such modifications as may be agreed¹⁰; and an agreement under this provision may, in connection with giving effect to modifications to the scheme, include incidental, supplemental, consequential and transitional provision¹¹.

Anything done by the transferor for the purpose of or in connection with anything transferred which was in effect immediately before it is transferred is to be treated as if done by the transferee¹². A transfer does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect¹³.

There may be continued by or in relation to the transferee anything, including legal proceedings, relating to anything transferred which was in the process of being done by or in relation to the transferor immediately before it was transferred¹⁴.

The transferee must be substituted for the transferor in any document relating to anything transferred¹⁵.

1 Utilities Act 2000 s 3(1). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

Section 3(1), (2) came into force on 20 December 2000: see the Utilities Act 2000 (Commencement No 4 and Transitional Provisions) Order 2000, SI 2000/3343, art 2, Schedule.

2 Utilities Act 2000 s 3(2).

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Utilities Act 2000 s 3(3). Section 3(3), (4) came into force on 1 November 2000: see Utilities Act 2000 (Commencement No 2) Order 2000, SI 2000/2917, art 2, Schedule. As to the Gas and Electricity Consumer Council see PARA 716 et seq post; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 post.

5 See the Utilities Act 2000 s 3(5).

6 For these purposes, 'transfer scheme' means a transfer scheme under *ibid* s 3(3): s 3(8), Sch 3 para 1.

7 *Ibid* Sch 3 para 2(1). The transfers authorised by Sch 3 para 2(1) include transfers which are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question: Sch 3 para 2(2). 'Transfer' means (1) a transfer of functions under any provision of the Utilities Act 2000 to the Authority; or (2) a transfer of property, rights and liabilities under s 3: Sch 3 para 1.

8 *Ibid* Sch 3 para 3.

9 *Ibid* Sch 3 para 4.

10 *Ibid* Sch 3 para 5(1).

11 *Ibid* Sch 3 para 5(2).

12 *Ibid* Sch 3 para 6(1).

13 *Ibid* Sch 3 para 6(2).

14 *Ibid* Sch 3 para 7.

15 *Ibid* Sch 3 para 8.

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712. Forward work programmes.

The Gas and Electricity Markets Authority ('GEMA')¹ must, before each financial year, publish a document (the 'forward work programme') containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year². That description must include the objectives of each project³. The forward work programme for any year must also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its functions⁴.

Before publishing the forward work programme for any year, the Authority must give notice:

- 589 (1) containing a draft of the forward work programme; and
- 590 (2) specifying the time within which representations or objections to the proposals contained in it may be made,

and must consider any representations or objections which are duly made and not withdrawn⁵. The notice must be published by the Authority in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them⁶; and the Authority must send a copy of any notice so given by it to the Gas and Electricity Consumer Council⁷.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Utilities Act 2000 s 4(1). In the case of certain projects an environmental assessment during the preparation of the programme may be required: see the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 60 et seq. In other cases an impact assessment under the Utilities Act 2000 s 5A (as added) may be required: see PARA 714 post.

3 Utilities Act 2000 s 4(2).

4 Ibid s 4(3).

5 Ibid s 4(4).

6 Ibid s 4(5).

7 Ibid s 4(6). As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post; and as to the Gas and Electricity Consumer Council see PARA 716 et seq post. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 post.

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713. Annual and other reports of the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ must, as soon as practicable after the end of each financial year, make to the Secretary of State² a report (the 'annual report' for that year) on its activities during that year, and the activities of the Competition Commission during that year in respect of any references made by the Authority³. The annual report for each year must include:

- 591 (1) a general survey of developments in respect of matters falling within the scope of the Authority's functions, including in particular developments in competition between persons engaged in, or in commercial activities connected with:
- 33
- 48. (a) the shipping, transportation or supply of gas⁴ conveyed through pipes; or
- 49. (b) the generation, transmission⁵, distribution⁶ or supply⁷ of electricity;
- 34
- 592 (2) a report on the progress of the projects described in the forward work programme⁸ for that year;
- 593 (3) a summary of final and provisional orders⁹ made and penalties imposed by the Authority during the year; and
- 594 (4) a report on such other matters as the Secretary of State may from time to time require¹⁰.

The annual report for each year must set out:

- 595 (i) any general directions given¹¹ by the Secretary of State¹²;
- 596 (ii) a list of the impact assessments¹³ carried out during the financial year to which the report relates¹⁴; and
- 597 (iii) a summary of the decisions taken during that year in relation to proposals to which impact assessments carried out in that year or previous financial years relate¹⁵.

The Secretary of State must lay a copy of each annual report before each House of Parliament and must arrange for the report to be published in such manner as he considers appropriate¹⁶.

The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate¹⁷.

In making or preparing any report under the above provisions the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body¹⁸.

The Authority must send a copy of each annual or other report published under the above provisions to the Gas and Electricity Consumer Council¹⁹.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Utilities Act 2000 s 5(1). The Competition Act 1998 Sch 7 para 12A(1) (as added) (annual reports of the Competition Commission: see COMPETITION vol 18 (2009) PARA 9) does not apply to activities of the Competition Commission on which the Authority is required to report under the Utilities Act 2000 s 5 (as amended): s 5(9) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 43(1), (2)).

4 For the meaning of 'the supply of gas' see PARA 802 post (definition applied by the Utilities Act 2000 s 106(2)).

5 For the meaning of 'transmission' see PARA 1041 note 6 post (definition applied by ibid s 106(3)).

6 For the meaning of 'distribution' see PARA 1041 note 5 post (definition applied by ibid s 106(2)).

7 For the meaning of 'supply' see PARA 1041 note 10 post (definition applied by ibid s 106(2)).

8 As to the forward work programme see PARA 712 ante.

9 As to final and provisional orders see the Gas Act 1986 s 28 (as amended); and PARA 968 post; the Electricity Act 1989 s 25 (as amended); and PARA 1207 post.

10 Utilities Act 2000 s 5(2). The Secretary of State must consult the Authority before exercising the power under s 5(2)(d) (see head (4) in the text) in relation to any matter: s 5(4).

11 Ie under the Gas Act 1986 s 34(3) (as amended) (see PARA 792 post) or the Electricity Act 1989 s 47(2) (as amended) (see PARA 1044 post).

12 Utilities Act 2000 s 5(3).

13 Ie the assessments under ibid s 5A (as added): see PARA 714 post.

14 Ibid s 5A(9)(a) (added by the Sustainable Energy Act 2003 s 6).

15 Utilities Act 2000 s 5A(9)(b) (as added: see note 14 supra).

16 Ibid s 5(5).

17 Ibid s 5(6).

18 Ibid s 5(8).

19 Ibid s 5(7). As to the Gas and Electricity Consumer Council see PARA 716 et seq post. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 post.

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714. Duty to carry out impact assessment.

The following provisions apply where:

- 598 (1) the Gas and Electricity Markets Authority ('GEMA')¹ is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of Part I of the Gas Act 1986² or Part I of the Electricity Act 1989³; and
- 599 (2) it appears to it that the proposal is important;

but do not apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements⁴ set out below⁵. A proposal is important for these purposes only if its implementation would be likely to do one or more of the following:

- 600 (a) involve a major change in the activities carried on by the Authority;
- 601 (b) have a significant impact on persons engaged in the shipping, transportation or supply of gas⁶ conveyed through pipes or in the generation, transmission⁷, distribution⁸ or supply⁹ of electricity;
- 602 (c) have a significant impact on persons engaged in commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes or with the generation, transmission, distribution or supply of electricity;
- 603 (d) have a significant impact on the general public in Great Britain¹⁰ or in a part of Great Britain; or
- 604 (e) have significant effects on the environment¹¹.

Before implementing its proposal, the Authority must either:

- 605 (i) carry out and publish an assessment of the likely impact of implementing the proposal; or
- 606 (ii) publish¹² a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment¹³.

An assessment carried out under these provisions must include an assessment of the likely effects on the environment of implementing the proposal¹⁴ and must relate to such other matters as the Authority considers appropriate¹⁵. In determining the matters to which such an assessment should relate, the Authority must have regard to such general guidance relating to the carrying out of impact assessments as it considers appropriate¹⁶.

An assessment carried out under these provisions may take such form as the Authority considers appropriate¹⁷. Where the Authority publishes such an assessment:

- 607 (A) it must provide an opportunity of making representations to the Authority about its proposal to members of the public and other persons who, in the Authority's opinion, are likely to be affected to a significant extent by the proposal's implementation;

- 608 (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
- 609 (c) the Authority must not implement its proposal unless the period for making representations about the proposal has expired and it has considered all the representations that were made in that period¹⁸.

Where the Authority is otherwise required to consult about a proposal to which these provisions apply, or to give a person an opportunity of making representations about it, the requirements of these provisions are in addition to, but may be performed contemporaneously with, the other requirements¹⁹.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq post.

3 Ie the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq post.

4 Ie the requirements of the Utilities Act 2000 s 5A (as added): see the text and notes 5-19 infra. See also PARA 713 the text and notes 13-15 ante.

5 Ibid s 5A(1) (s 5A added by the Sustainable Energy Act 2003 s 6).

6 For the meaning of 'the supply of gas' see PARA 802 post (definition applied by the Utilities Act 2000 s 106(2)).

7 For the meaning of 'transmission' see PARA 1041 note 6 post (definition applied by ibid s 106(3)).

8 For the meaning of 'distribution' see PARA 1041 note 5 post (definition applied by ibid s 106(2)).

9 For the meaning of 'supply' see PARA 1041 note 10 post (definition applied by ibid s 106(2)).

10 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

11 Utilities Act 2000 s 5A(2) (as added: see note 5 supra).

12 The publication of anything under ibid s 5A (as added) must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected if its proposal is implemented: s 5A(10) (as added: see note 5 supra).

13 Ibid s 5A(3) (as added: see note 5 supra).

14 Ibid s 5A(4)(a) (as added: see note 5 supra).

15 Ibid s 5A(4)(b) (as added: see note 5 supra).

16 Ibid s 5A(5) (as added: see note 5 supra).

17 Ibid s 5A(6) (as added: see note 5 supra).

18 Ibid s 5A(7) (as added: see note 5 supra).

19 Ibid s 5A(8) (as added: see note 5 supra).

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715. Co-operation with the Gas and Electricity Consumer Council.

The Gas and Electricity Markets Authority ('GEMA')¹ and the Gas and Electricity Consumer Council² must make arrangements with a view to securing:

- 610 (1) co-operation and the exchange of information³ between them; and
- 611 (2) consistent treatment of matters which affect both of them⁴.

As soon as practicable after agreement is reached on those arrangements, the Authority and the Council must prepare a memorandum setting them out and send a copy of it to the Secretary of State⁵.

Arrangements under these provisions must be kept under review by the Authority and the Council⁶. As soon as practicable after agreement is reached on any changes to those arrangements, the Authority and the Council must revise their memorandum and send a copy of the revised memorandum to the Secretary of State⁷.

The Secretary of State must lay a copy of any document received by him under these provisions before each House of Parliament⁸.

The Authority has power to direct the Council to supply it with information which the Authority requires for the purpose of exercising its functions⁹.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 post. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 post.

3 'Information' includes accounts, estimates and returns: see the Gas Act 1986 s 48(1); the Electricity Act 1989 s 64(1) (definitions applied by the Utilities Act 2000 s 106(2), (3)).

4 Ibid s 7(1).

5 Ibid s 7(2). As to the Secretary of State see PARA 601 note 1 ante.

6 Ibid s 7(3).

7 Ibid s 7(4).

8 Ibid s 7(5).

9 See ibid s 26; and PARA 728 post.

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(3) THE GAS AND ELECTRICITY CONSUMER COUNCIL

(i) Establishment of the Council and General Provisions

716. Establishment etc of the Gas and Electricity Consumer Council.

The Utilities Act 2000 established a body corporate to be known as the Gas and Electricity Consumer Council ('the Council', commonly known as 'Energywatch') for the purpose of carrying out the functions of the Council under that Act¹. The former Gas Consumers' Council established under the Gas Act 1986² and the consumers' committees established under the Electricity Act 1989³ were abolished⁴.

The Council is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown⁵. It is a public authority for the purposes of the Freedom of Information Act 2000⁶ and is subject to investigation by the Parliamentary Commissioner⁷.

The Council has a statutory duty to co-operate with the Gas and Electricity Markets Authority ('GEMA')⁸. The Authority must send the Council a copy of annual and other reports published by the Authority⁹.

The Secretary of State was given power to make one or more transfer schemes for the transfer of the property, rights and liabilities of the former Director General of Gas Supply and the former Director General of Electricity Supply to either the Gas and Electricity Markets Authority or to the Council¹⁰. Such a scheme might provide for the transfer to the Council of rights and liabilities relating to persons employed in the civil service of the state¹¹.

As from a day to be appointed¹², the Council is to be abolished and its statutory functions will be transferred to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007¹³. A number of the provisions of the Utilities Act 2000 relating to the functions and powers of the Gas and Electricity Consumer Council¹⁴ are, however, prospectively repealed as from that day¹⁵.

1 See the Utilities Act 2000 s 2(1) (prospectively repealed: see the text and notes 14-15 infra).

2 Ie under the Gas Act 1986 s 2 (repealed). The property, rights and liabilities of the Gas Consumers' Council (including rights and obligations in relation to contracts of employment) were transferred to the Gas and Electricity Consumer Council (Utilities Act 2000 s 3(6) (prospectively repealed: see the text and notes 14-15 infra)); and this transfer has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would otherwise prevent or restrict the transfer of the property, rights or liabilities (s 3(7)). Section 3(6), (7) came into force on 7 November 2000: see the Utilities Act 2000 (Commencement No 3 and Transitional Provisions) Order 2000, SI 2000/2974, art 2, Schedule.

Where an employee of the Gas Consumers' Council became an employee of the Gas and Electricity Consumer Council (1) he was not to be regarded for the purposes of the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) (redundancy: see EMPLOYMENT vol 40 (2009) PARA 790 et seq) as having been dismissed by virtue of the transfer; and (2) his period of employment with the Gas Consumers' Council counts as a period of employment with the Gas and Electricity Consumer Council for the purposes of the Employment Rights Act 1996 (and the change of employer does not break the continuity of his employment): Utilities Act 2000 s 3(8), Sch 3 para 9(2).

3 Ie under the Electricity Act 1989 s 2 (repealed).

- 4 See the Utilities Act 2000 s 2(3) (prospectively repealed: see the text and notes 14-15 *infra*).
- 5 *Ibid* s 2(2) (prospectively repealed: see the text and notes 14-15 *infra*).
- 6 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI (amended for these purposes by the Freedom of Information (Additional Public Authorities) Order 2002, SI 2002/2623, art 2, Sch 1). The relevant entry is prospectively repealed by the Consumers, Estate Agents and Redress Act 2007 s 64, Sch 8 (not in force).
- 7 See the Parliamentary Commissioner Act 1967 s 4 (as substituted and amended), Sch 2 (substituted by the Parliamentary Commissioner (No 2) Order 2005, SI 2005/3430, art 2, Schedule).
- 8 See the Utilities Act 2000 s 7; and PARA 715 *ante*. As to the establishment of the Gas and Electricity Markets Authority see PARA 708 *ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.
- 9 See *ibid* s 5(7); and PARA 713 *ante*.
- 10 See *ibid* s 3(3), (5), (8), Sch 3 paras 1-8; and PARA 711 *ante*.
- 11 *Ibid* s 3(4). Where a person employed in the civil service of the state became an employee of the Council under a transfer scheme, his period of employment in that service counts as a period of employment with the Council for the purposes of the Employment Rights Act 1996 (and the change of employer does not break the continuity of the period of employment for those purposes): Utilities Act 2000 s 3(8), Sch 3 para 9(1).
- 12 *Ie* under the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.
- 13 See *ibid* s 30(1), (3) (not in force). For transitional provisions see s 30(5), Sch 3 (not in force). As from a day to be appointed (see note 12 *supra*), the National Consumer Council is to have powers to investigate complaints relating to the disconnection of gas or electricity (see s 13 (not in force)) and to refer certain matters regarding gas and electricity to the Gas and Electricity Markets Authority (see s 14 (not in force)).
- 14 *Ie* the Utilities Act 2000 ss 2, 3(6) (see the text and notes 1-5 *supra*), s 4(7) (see PARA 719 *post*), ss 17-27 (as amended) (see PARA 723 *et seq post*), Sch 2 (see PARA 717 *et seq post*).
- 15 See the Consumers, Estate Agents and Redress Act 2007 s 64, Sch 8 (not in force). The Utilities Act 2000 s 4(1), (3)-(5) (see PARA 719 *post*) is also prospectively repealed, in so far as it relates to the Council: see the Consumers, Estate Agents and Redress Act 2007 ss 63(1), 64, Sch 7 paras 18, 19, Sch 8 (not in force).

UPDATE

716 Establishment etc of the Gas and Electricity Consumer Council

NOTE 6--Relevant entry in Consumers, Estate Agents and Redress Act 2007 s 64, Sch 8 in force 1 October 2008: SI 2008/2550.

NOTE 7--As to the Parliamentary Commissioner Act 1967 Sch 2 see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

TEXT AND NOTES 12, 13--Day appointed is 1 October 2008: SI 2008/2550.

TEXT AND NOTES 14, 15--Repeal of provisions of Utilities Act 2000 cited in force 1 October 2008: SI 2008/2550.

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717. Membership and staff of the Gas and Electricity Consumer Council.

The Gas and Electricity Consumer Council¹ is to consist of a chairman and such other members as may be appointed by the Secretary of State². The Secretary of State must consult the chairman before appointing any other member³; and in appointing persons the Secretary of State must have regard to the desirability of including among the members one or more persons who:

- 612 (1) have experience of work among, and the special needs of, disabled persons;
or
- 613 (2) have or have had a disability⁴.

An appointment must be for a term not exceeding five years⁵. A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office⁶.

A person holding office as chairman or other member may resign that office by giving notice⁷ in writing to the Secretary of State⁸; and the Secretary of State may remove any person from office as chairman or other member on the ground of incapacity or misbehaviour⁹. The chairman and other members are otherwise to hold and vacate office as such in accordance with the terms of their respective appointments¹⁰. The Council must pay to the chairman and other members of the Council such remuneration, and such travelling and other allowances, as the Secretary of State may determine¹¹.

If the Secretary of State so determines in the case of any holder of the office of chairman or other member, the Council must pay:

- 614 (a) such pension, allowance or gratuity to or in respect of him; or
- 615 (b) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the Secretary of State may determine¹²; and if, when any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State¹³.

The Council must, with the approval of the Secretary of State, appoint a principal officer on such terms of employment as it may, with that approval, determine¹⁴; and it may, with the approval of the Secretary of State as to numbers and terms of employment, appoint such other employees as it may determine¹⁵.

¹ As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 Utilities Act 2000 s 2(4), Sch 2 para 1(1). As to the Secretary of State see PARA 601 note 1 ante.

3 Ibid Sch 2 para 1(2).

4 Ibid Sch 2 para 1(4).

5 Ibid Sch 2 para 1(3). Members of the Council are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 Sch 1 Pt II (amended for this purpose by the Utilities Act 2000 s 108, Sch 6 Pt II para 45).

6 Utilities Act 2000 Sch 2 para 2(4).

7 As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post.

8 Ibid Sch 2 para 2(1).

9 Ibid Sch 2 para 2(2).

10 Ibid Sch 2 para 2(3).

11 Ibid Sch 2 para 3.

12 Ibid Sch 2 para 4(1).

13 Ibid Sch 2 para 4(2).

14 Ibid Sch 2 para 5(1).

15 Ibid Sch 2 para 5(2). The persons to whom the Superannuation Act 1972 s 1 (as amended) (persons to or in respect of whom benefits may be provided by schemes under that provision) applies includes employees of the Council: Utilities Act 2000 Sch 2 para 5(3). The Council must pay to the Minister for the Civil Service at such times as he may direct, such sums as he may determine in respect of any increase attributable to Sch 2 para 5(3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Utilities Act 2000 Sch 2 para 5(4).

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718. Composition of committees; performance of functions.

The Gas and Electricity Consumer Council¹ may establish committees in addition to the regional committees² and any regional or other committee of the Council may establish sub-committees³. The Council must not, however, establish or abolish a regional committee, or alter the areas for which a regional committee is established, except with the approval of the Secretary of State⁴; and if the Council proposes to do any such thing in relation to a regional committee, it must, after consulting the Secretary of State, give notice describing its proposals and specifying the time from the date of the notice, not being less than two months, within which representations may be made with respect to the proposals⁵. Such a notice must be given by publishing it in such manner as the Council considers appropriate for bringing the proposals to the attention of those likely to be affected⁶. The Council must consider any representations that are duly made and not withdrawn⁷; and the Secretary of State must not give his approval until after the time specified in the notice⁸.

A regional or other committee of the Council is to consist of a chairman and such other members as the Council may determine⁹. The chairman and other members of a regional or other committee of the Council may be persons who are not members of the Council; and the members of a sub-committee may include persons who are not members of the relevant committee¹⁰. The Council must consult the Secretary of State before appointing a person as chairman of a regional committee¹¹. The Council may pay to the chairman and other members of a regional or other committee of the Council, or of any sub-committee, such remuneration, and such travelling and other allowances, as the Secretary of State may determine¹².

If the Secretary of State so determines in the case of any holder of the office of chairman or other member of a regional or other committee, or of any sub-committee, the Council must pay:

- 616 (1) such pension, allowance or gratuity to or in respect of him; or
- 617 (2) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the Secretary of State may determine¹³. If, when any person ceases to hold office as chairman or other member of a regional or other committee, or of any sub-committee, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council must pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State¹⁴.

Anything authorised or required to be done by the Council may be done by any member or employee¹⁵ of the Council who, or any regional or other committee of the Council which, is authorised for the purpose by the Council, whether generally or specially¹⁶. The validity of anything done by the Council is not affected by a vacancy among its members or by a defect in the appointment of a member¹⁷.

The Council has power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions¹⁸; and that power includes, among other

things, power to enter into agreements and to acquire and dispose of property¹⁹. The Council may make charges for facilities or services provided by it at the request of any person²⁰.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 As to the regional committees see further PARA 723 post.

3 Utilities Act 2000 ss 2(4), 18(7), Sch 2 para 10.

4 Ibid Sch 2 para 11(1). As to the Secretary of State see PARA 601 note 1 ante.

5 Ibid Sch 2 para 11(2)(a), (b).

6 Ibid Sch 2 para 11(3).

7 Ibid Sch 2 para 11(2).

8 Ibid Sch 2 para 11(4).

9 Ibid Sch 2 para 12(1).

10 Ibid Sch 2 para 12(2).

11 Ibid Sch 2 para 12(3).

12 Ibid Sch 2 para 13.

13 Ibid Sch 2 para 14(1).

14 Ibid Sch 2 para 14(2).

15 As to employees of the Council see PARA 717 ante.

16 Utilities Act 2000 Sch 2 para 15.

17 Ibid Sch 2 para 16.

18 Ibid Sch 2 para 17(1).

19 Ibid Sch 2 para 17(2).

20 Ibid Sch 2 para 17(3).

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719. Forward work programmes.

The Gas and Electricity Consumer Council¹ must, before each financial year, publish a document (the 'forward work programme') containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year². That description must include the objectives of each project³. The forward work programme for any year must also include an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its functions⁴.

Before publishing the forward work programme for any year, the Council must give notice:

- 618 (1) containing a draft of the forward work programme; and
- 619 (2) specifying the time within which representations or objections to the proposals contained in it may be made,

and must consider any representations or objections which are duly made and not withdrawn⁵. The notice must be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them⁶; and the Council must send a copy of any notice so given by it to the Gas and Electricity Markets Authority ('GEMA')⁷ and to the Secretary of State⁸.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph in so far as they relate to the Council, see PARA 716 the text and notes 12-15 ante.

2 Utilities Act 2000 s 4(1).

3 Ibid s 4(2).

4 Ibid s 4(3).

5 Ibid s 4(4).

6 Ibid s 4(5).

7 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Utilities Act 2000 s 4(6). As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post. As to the Secretary of State see PARA 601 note 1 ante.

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720. Annual reports.

As soon as practicable after the end of each financial year the Gas and Electricity Consumer Council¹ must report to the Secretary of State² on its activities during the year³. The annual report for each year must include a report on the progress of the projects described in the Council's forward work programme⁴ for that year⁵. In making any such report the Council must not include any information⁶ which relates to the affairs of a particular individual or body of persons, corporate or unincorporate, unless one or more of heads (1) to (3) below applies to the information⁷. Information relating to a particular individual or body may be included in the report if:

- 620 (1) that individual or body has consented to its inclusion;
- 621 (2) it is information that is available to the public from some other source; or
- 622 (3) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body⁸.

Before deciding to include any information relating to a particular individual or body in pursuance of head (3) above, the Council must:

- 623 (a) consult that person or body; and
- 624 (b) have regard to any opinion expressed by the Gas and Electricity Markets Authority ('GEMA')⁹ as to the application of head (3) above to the information or as to the desirability or otherwise of its publication¹⁰.

The Secretary of State must lay a copy of each annual report of the Council before each House of Parliament¹¹.

The Council must send a copy of each annual report to the Authority and must arrange for the report to be published in such manner as it considers appropriate¹².

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Utilities Act 2000 s 2(4), Sch 2 para 6(1).

4 As to the forward work programme see PARA 719 ante.

5 Utilities Act 2000 Sch 2 para 6(2).

6 For the meaning of 'information' see PARA 715 note 3 ante.

7 Utilities Act 2000 Sch 2 para 6(3).

8 Ibid Sch 2 para 6(4).

9 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Utilities Act 2000 Sch 2 para 6(5). Schedule 2 para 6(5)(b) (see head (b) in the text) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: Sch 2 para 6(5).

11 Ibid Sch 2 para 6(6).

12 Utilities Act 2000 Sch 2 para 6(7).

For transitional arrangements with regard to the last annual report of the Council see the Consumers, Estate Agents and Redress Act 2007 s 63(1), Sch 3 para 3.

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721. Financial provisions and accounts.

It is the duty of the Gas and Electricity Consumer Council¹ to comply with any notice given by the Secretary of State² with the approval of the Treasury requiring it to perform duties of a financial nature specified in the notice³.

The Council must prepare, in respect of each financial year, a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Council⁴. The statement of accounts must comply with any requirement which the Secretary of State has, with the approval of the Treasury, notified to the Council⁵. The Council must send each statement of accounts of the Council to the Secretary of State and to the Comptroller and Auditor General⁶ within such period after the end of the financial year to which it relates as the Secretary of State may specify by notice given to the Council⁷. The Comptroller and Auditor General must:

- 625 (1) examine, certify and report on each statement of accounts so received by him; and
- 626 (2) lay a copy of each such statement of accounts, and of his report on it, before each House of Parliament⁸.

The Secretary of State must pay to the Council such sums as he thinks fit to enable it to meet its expenses⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Utilities Act 2000 s 2(4), Sch 2 para 7. As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post.

4 Ibid Sch 2 para 8(1).

5 Ibid Sch 2 para 8(2).

6 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

7 Utilities Act 2000 Sch 2 para 8(3).

8 Ibid Sch 2 para 8(4).

9 Ibid Sch 2 para 9.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(3) THE GAS AND ELECTRICITY CONSUMER COUNCIL/(ii) Functions of the Council/A. GENERAL FUNCTIONS UNDER THE UTILITIES ACT 2000/722. Duty to have regard to interests of particular descriptions of consumer.

(ii) Functions of the Council

A. GENERAL FUNCTIONS UNDER THE UTILITIES ACT 2000

722. Duty to have regard to interests of particular descriptions of consumer.

In considering the interests of consumers¹ the Gas and Electricity Consumer Council² must have regard to the interests of:

- 627 (1) individuals who are disabled or chronically sick;
- 628 (2) individuals of pensionable age³;
- 629 (3) individuals with low incomes; and
- 630 (4) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer⁴.

1 In the Utilities Act 2000 Pt III (ss 17-27) (as amended) (see the text and notes 2-4 infra; and PARA 723 et seq post), 'consumers' includes both existing consumers and future consumers; and 'the interests of consumers' means the interests of consumers in relation to gas conveyed through pipes or electricity conveyed by distribution systems or transmission systems: s 17(1) (amended by the Energy Act 2004 s 179(2), (3)(e)). For the meaning of 'gas' see PARA 802 post (definition applied by the Utilities Act 2000 s 106(2)); and for the meanings of 'distribution system' and 'transmission system' see PARA 1041 notes 5-6 post (definitions applied by s 106(3)).

2 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

3 For the meaning of 'pensionable age' see PARA 789 note 11 post (definition applied by the Utilities Act 2000 s 106(2)).

4 Ibid s 17(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(3) THE GAS AND ELECTRICITY CONSUMER COUNCIL/(ii) Functions of the Council/A. GENERAL FUNCTIONS UNDER THE UTILITIES ACT 2000/723. Acquisition and review of information.

723. Acquisition and review of information.

The Gas and Electricity Consumer Council¹ has the function of obtaining and keeping under review:

- 631 (1) information² about consumer matters³, including matters affecting consumers in different areas of Great Britain⁴; and
- 632 (2) information about the views of consumers on such matters, including the views of consumers in different areas⁵.

As part of the arrangements it makes for carrying out that function, the Council:

- 633 (a) must establish one or more committees of the Council for, or for areas within, Wales and Scotland; and
- 634 (b) may establish one or more committees of the Council for, or for areas within, England⁶.

The composition of these committees has already been discussed⁷.

The purposes of a committee so established (a 'regional committee') are to be:

- 635 (i) the provision of advice and information to the Council on consumer matters affecting the area for which the committee is established; and
- 636 (ii) such other purposes as the Council may determine⁸.

The Council must maintain in each of England, Wales and Scotland at least one office at which consumers may apply for information⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 For the meaning of 'information' see PARA 715 note 3 ante.

3 For the purposes of the Utilities Act 2000 Pt III (ss 17-27) (as amended) (see PARA 722 ante; the text and notes 4-9 infra; and PARA 724 et seq post), 'consumer matter' means any matter connected with the interests of consumers: s 17(1). For the meanings of 'consumer' and 'the interests of consumers' see PARA 722 note 1 ante.

4 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

5 Utilities Act 2000 s 18(1).

6 Ibid s 18(2).

7 See PARA 718 ante.

8 Utilities Act 2000 s 18(3).

9 Ibid s 18(4).

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724. Provision of advice and information to public authorities and other persons.

The Gas and Electricity Consumer Council¹ has the function of:

- 637 (1) making proposals, or providing advice and information², about consumer matters³, including matters affecting consumers in different areas; and
- 638 (2) representing the views of consumers on such matters, including the views of consumers in different areas,

to public authorities, persons authorised by a licence or exemption under the Gas Act 1986⁴ or the Electricity Act 1989⁵ and other persons whose activities may affect the interests of consumers⁶.

Information which relates to the affairs of any particular individual or body of persons, corporate or unincorporate, must not, however, be disclosed⁷ in the exercise of the Council's function under these provisions unless one or more of heads (a) to (c) below applies to the information⁸. Information relating to a particular individual or body may be disclosed if:

- 639 (a) the individual or body has consented to the disclosure;
- 640 (b) it is information that is available to the public from some other source; or
- 641 (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body⁹.

Before deciding to disclose any information relating to a particular individual or body in pursuance of head (c) above, the Council must:

- 642 (i) consult that individual or body; and
- 643 (ii) have regard to any opinion expressed by the Gas and Electricity Markets Authority ('GEMA')¹⁰ as to the application of head (c) above to the information or as to the desirability or otherwise of its disclosure¹¹.

The above prohibition on the disclosure of information relating to the affairs of any particular individual or body of persons does not apply to a disclosure of information which is made to the Authority, the Secretary of State¹², the Competition Commission¹³ or any other public authority¹⁴.

The disclosure by the Council of information in the exercise of its function under these provisions does not contravene the general statutory restrictions¹⁵ on the disclosure of information¹⁶.

¹ As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 For the meaning of 'information' see PARA 715 note 3 ante.

3 For the meaning of 'consumer matter' see PARA 723 note 3 ante; and for the meaning of 'consumer' see PARA 722 note 1 ante.

4 For the meanings of 'licence' and 'exemption' for the purposes of the Gas Act 1986 see PARA 789 notes 9, 19 post.

5 As to licences under the Electricity Act 1989 see PARA 1065 post; and as to exemptions see PARA 1051 post.

6 Utilities Act 2000 s 19(1). For the meaning of 'the interests of consumers' see PARA 722 note 1 ante.

7 Ie subject to ibid s 19(5): see the text and notes 12-16 infra.

8 Ibid s 19(2).

9 Ibid s 19(3).

10 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

11 Ibid s 19(4). Section 19(4)(b) (see head (ii) in the text) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: s 19(4).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

14 Utilities Act 2000 s 19(5).

15 Ie ibid s 105 (as amended): see PARA 767 post.

16 Ibid s 19(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(3) THE GAS AND ELECTRICITY CONSUMER COUNCIL/(ii) Functions of the Council/A. GENERAL FUNCTIONS UNDER THE UTILITIES ACT 2000/725. Provision of information to consumers.

725. Provision of information to consumers.

The Gas and Electricity Consumer Council¹ has the function of providing information² about consumer matters³, in such form as appears to the Council to be most useful to the recipients, to consumers of electricity or gas⁴ supplied by persons authorised to do so by a licence or exemption⁵ under the Gas Act 1986 or the Electricity Act 1989⁶. That function may be exercised by:

- 644 (1) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
- 645 (2) furnishing information to any consumer, whether in response to a request or otherwise⁷.

Information may, however, only be disclosed in the exercise of that function if it is information that is available to the public from some other source⁸.

The disclosure by the Council of information in the exercise of that function does not contravene the general statutory restrictions⁹ on the disclosure of information¹⁰.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 For the meaning of 'information' see PARA 715 note 3 ante.

3 For the meaning of 'consumer matter' see PARA 723 note 3 ante; and for the meaning of 'consumer' see PARA 722 note 1 ante.

4 For the meaning of 'gas' see PARA 802 post (definition applied by the Utilities Act 2000 s 106(2)).

5 For the meanings of 'licence' and 'exemption' for the purposes of the Gas Act 1986 see PARA 789 notes 9, 19 post; as to licences under the Electricity Act 1989 see PARA 1065 post; and as to exemptions see PARA 1051 post.

6 Utilities Act 2000 s 20(1).

7 Ibid s 20(2).

8 Ibid s 20(3).

9 Ie ibid s 105 (as amended): see PARA 767 post.

10 Ibid s 20(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(3) THE GAS AND ELECTRICITY CONSUMER COUNCIL/(ii) Functions of the Council/A. GENERAL FUNCTIONS UNDER THE UTILITIES ACT 2000/726. Power to publish advice and information about consumer matters.

726. Power to publish advice and information about consumer matters.

If it appears to the Gas and Electricity Consumer Council¹ that the publication of any advice and information² about consumer matters³, including information about the views of consumers on such matters, would promote the interests of consumers⁴, the Council may publish that advice or information in such manner as it thinks fit⁵. Information which relates to the affairs of any particular individual or body of persons, corporate or unincorporate, must not, however, be published under these provisions unless one or more of heads (1) to (3) below applies to the information⁶. Information relating to a particular individual or body may be published if:

- 646 (1) that individual or body has consented to the publication;
- 647 (2) it is information that is available to the public from some other source; or
- 648 (3) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body⁷.

Before deciding to publish any information relating to a particular individual or body in pursuance of head (3) above, the Council must:

- 649 (a) consult that individual or body; and
- 650 (b) have regard to any opinion expressed by the Authority as to the application of head (3) above to the information or as to the desirability or otherwise of its publication⁸.

The publication by the Council of information under these provisions does not contravene the general statutory restrictions⁹ on the disclosure of information¹⁰.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 For the meaning of 'information' see PARA 715 note 3 ante.

3 For the meaning of 'consumer matter' see PARA 723 note 3 ante; and for the meaning of 'consumer' see PARA 722 note 1 ante.

4 For the meaning of 'the interests of consumers' see PARA 722 note 1 ante.

5 Utilities Act 2000 s 21(1).

6 Ibid s 21(2).

7 Ibid s 21(3).

8 Ibid s 21(4). Section 21(4) (see head (b) in the text) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: s 21(4).

9 Ie ibid s 105 (as amended): see PARA 767 post.

10 Ibid s 21(5).

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727. Provision of information to the Gas and Electricity Consumer Council.

The Gas and Electricity Consumer Council¹ may direct:

- 651 (1) the Gas and Electricity Markets Authority ('GEMA')²; or
- 652 (2) the holder of a gas licence³ or an electricity licence⁴,

to supply to it, in such form as it may reasonably specify, such information⁵ specified or described in the direction as it may require for the purpose of exercising its functions⁶. Before giving such a direction and in specifying the form in which any information is to be supplied, the Council must have regard to the desirability of minimising the costs, or any other detriment, to the Authority or licence holder⁷.

A person to whom such a direction is given must comply with it as soon as is reasonably practicable⁸. Information of certain prescribed descriptions⁹ need not, however, be given¹⁰.

The Secretary of State¹¹ may make regulations¹² for the purpose of enabling a failure to comply with such a direction to be referred by the Council to such person, other than the Authority, as may be prescribed by the regulations¹³. If no person is prescribed for this purpose, the Council may refer a failure by a licence holder to comply with such a direction to the Authority¹⁴. A person to whom such a failure is referred¹⁵ must:

- 653 (a) consider any representations made by either party;
- 654 (b) determine whether the person failing to comply with the direction is entitled to refuse to do so and, if not, order him to comply with the direction; and
- 655 (c) give notice of his determination and any order under head (b) above, with reasons, to both parties¹⁶.

A notice of determination may be published by either party to the reference¹⁷. Publication of such a notice is subject to the restrictions on publication of information relating to a particular individual or body¹⁸ which are set out below¹⁹.

If the Authority fails to comply with such a direction it must, if so required by the Council, give notice to the Council of the reasons for its failure²⁰ and the Council may²¹ publish a notice so given to it²². Information which relates to the affairs of any particular individual or body of persons, corporate or unincorporate, must be excluded from any notice so published unless one or more of heads (i) to (iii) below applies to the information²³. Information relating to a particular individual or body may be published if:

- 656 (i) that individual or body has consented to the publication;
- 657 (ii) it is information that is available to the public from some other source; or
- 658 (iii) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body²⁴.

Before deciding to publish any information relating to a particular individual or body in pursuance of head (iii) above, the Council must:

- 659 (A) consult that individual or body; and
- 660 (B) have regard to any opinion expressed by the Authority as to the application of head (iii) above to the information or as to the desirability or otherwise of its publication²⁵.

The publication by the Council of information under these provisions does not contravene the general statutory restrictions²⁶ on the disclosure of information²⁷. Nor does the publication of information in a notice of determination as described above²⁸ contravene those restrictions²⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 'Gas licence' means a licence under the Gas Act 1986 s 7 (as substituted and amended) or s 7A (as added and amended) (see PARAS 805, 807 post): Utilities Act 2000 s 106(1).

4 'Electricity licence' means a licence under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post): Utilities Act 2000 s 106(1).

5 For the meaning of 'information' see PARA 715 note 3 ante.

6 Utilities Act 2000 s 24(1).

7 Ibid s 24(3).

8 Ibid s 24(2).

9 Ie the information of the descriptions prescribed in the Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, regs 3-9 (as amended): see PARA 729 post.

10 See PARA 729 post. This is subject to ibid reg 10: see PARA 729 the text and notes 42-44 post.

11 As to the Secretary of State see PARA 601 note 1 ante.

12 The Electricity Act 1989 s 60 (as amended) (powers to make regulations) (see PARA 1306 post) applies to regulations under the Utilities Act 2000 s 27 as if they were made under the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq post): Utilities Act 2000 s 27(6). The power of the Secretary of State to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 27(7).

13 Ibid s 27(3). At the date at which this title states the law, no regulations had been made prescribing any person for these purposes.

14 Ibid s 27(2).

15 Ie whether under ibid s 27(2) or s 27(3): see the text and notes 11-14 supra.

16 Ibid s 27(4). As to the enforcement of the requirements imposed under head (b) in the text see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

17 Ibid s 27(5).

18 Ie ibid s 25(2)-(4): see the text and notes 23-25 infra.

19 See ibid s 27(5), applying s 25(2)-(4).

20 Ibid s 24(4). As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post.

21 Ie subject to ibid s 25(2)-(5): see the text and notes 23-27 infra.

22 Ibid s 25(1).

23 Ibid s 25(2).

24 Ibid s 25(3).

25 Ibid s 25(4). Section 25(4)(b) (see head (B) in the text) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: s 25(4).

26 Ie ibid s 105 (as amended): see PARA 767 post.

27 Ibid s 25(5).

28 Ie a notice under ibid s 27(4): see the text and notes 15-16 supra.

29 See ibid s 27(5), applying s 25(5).

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728. Provision of information by the Gas and Electricity Consumer Council to the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ may direct the Gas and Electricity Consumer Council² to supply to it, in such form as it may reasonably specify, such information³ specified or described in the direction as it may require for the purpose of exercising its functions⁴. The Council must comply with such a direction as soon as is reasonably practicable⁵. Information of certain prescribed descriptions⁶ need not, however, be given⁷.

Where the Council refuses to supply any information under the above provisions, it must give notice⁸ to the Authority of its reason for the refusal and the Authority may publish that notice in such manner as it considers appropriate⁹. In publishing any such notice the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that person or body¹⁰.

The Secretary of State¹¹ may make regulations¹² for the purpose of enabling a failure to comply with such a direction to be referred to such person, other than the Authority, as may be prescribed by the regulations¹³. A person to whom such a failure is referred must:

- 661 (1) consider any representations made by either party;
- 662 (2) determine whether the person failing to comply with the direction is entitled to refuse to do so and, if not, order him to comply with the direction; and
- 663 (3) give notice of his determination and any order under head (2) above, with reasons, to both parties¹⁴.

A notice of determination may be published by either party to the reference¹⁵. Publication of such a notice is subject to the restrictions on publication of information relating to a particular individual or body¹⁶ which have already been discussed¹⁷; but the publication of information in such a notice does not contravene the general statutory restrictions¹⁸ on the disclosure of information¹⁹.

1 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007, and the prospective repeal of the provisions set out in this paragraph, see PARA 716 the text and notes 12-15 ante.

3 For the meaning of 'information' see PARA 715 note 3 ante.

4 Utilities Act 2000 s 26(1).

5 Ibid s 26(2).

6 le the information of the descriptions prescribed in the Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, regs 3, 5(2), (3), 6(1), (2), 7(1), 9: see PARA 729 post.

7 See PARA 729 post.

8 As to service of notice see the Gas Act 1986 s 46 (as amended) (applied by the Utilities Act 2000 s 106(4)); and PARA 980 post.

9 Ibid s 26(3).

10 Ibid s 26(4).

11 As to the Secretary of State see PARA 601 note 1 ante.

12 As to the power to make such regulations see the Utilities Act 2000 s 27(6), (7), cited in PARA 727 note 12 ante.

13 Ibid s 27(3). At the date at which this title states the law, no regulations had been made prescribing any person for these purposes.

14 Ibid s 27(4). As to the enforcement of the requirements imposed under head (2) in the text see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

15 Ibid s 27(5).

16 Ibid s 25(2)-(4): see PARA 727 the text and notes 23-25 ante.

17 See ibid s 27(5), applying s 25(2)-(4).

18 Ibid s 105 (as amended): see PARA 767 post.

19 See ibid s 27(5), applying s 25(5).

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729. Prescribed descriptions of information which need not be supplied.

The Secretary of State¹ may make regulations² prescribing:

- 664 (1) descriptions of information which the Gas and Electricity Markets Authority ('GEMA')³, a licence holder⁴ or the Gas and Electricity Consumer Council⁵ may refuse to supply under the relevant statutory provisions⁶; or
- 665 (2) circumstances in which the Authority, a licence holder or the Council may refuse to comply with a direction under those provisions⁷.

The Authority, a licence holder or the Council may refuse to supply under the relevant statutory provisions:

- 666 (a) any information which it would be against the interests of national security to make public⁸;
- 667 (b) any information whose disclosure would be prohibited by or under any enactment other than the Gas Act 1986 or the Electricity Act 1989, or whose disclosure is incompatible with any Community obligation⁹;
- 668 (c) any information which constitutes personal data¹⁰ and where:
 - 35 50. (i) in a specified case¹¹, the disclosure of the information to a member of the public would contravene any of the data protection principles¹² or the statutory right to prevent processing likely to cause damage or distress¹³; or
 - 51. (ii) in any other case, the disclosure of the information to a member of the public would contravene any of the data protection principles if the statutory exemptions relating to manual data held by public authorities¹⁴ were disregarded¹⁵;
- 36 669 (d) any information whose disclosure would constitute or be punishable as a contempt of court¹⁶;
- 670 (e) any information whose disclosure would, or would be likely to, prejudice any criminal proceedings¹⁷;
- 671 (f) any information concerning:
 - 37 52. (i) the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action to be taken or that may be taken by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been taken¹⁸;
 - 53. (ii) the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action which has been taken and is to be announced or published by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been announced or published¹⁹;
 - 54. (iii) any information concerning the views of the Authority or a licence holder on its relationship with the Council or the performance by the Council of its functions²⁰;

55. (iv) any information concerning the views of the Council on its relationship with the Authority or the performance by the Authority of its functions²¹;
- 38 672 (g) information if that person does not hold the information specified or described in the direction²².

The Authority or a licence holder may refuse to supply²³:

- 673 (A) any information which relates to particular securities²⁴ or to a particular issuer of securities²⁵ or to particular issuers of securities, which is specific or precise, which has not been made public²⁶ and which, if it were made public, would be likely to have a significant effect on the price²⁷ of the securities²⁸;
- 674 (B) any information whose disclosure would, or would be likely to, prejudice any action for securing compliance or penalties under the specified provisions²⁹ of the Gas Act 1986 or the Electricity Act 1989³⁰.

The Authority may refuse to supply³¹ any information not falling within head (A) above which was disclosed to the Authority in specified circumstances³² or which was obtained by the Authority in the exercise of functions which it may exercise concurrently with the Office of Fair Trading under Part 4 of the Enterprise Act 2002³³ or under Part I³⁴ of the Competition Act 1998³⁵.

It may also refuse to supply any information which relates to the obtaining of information from confidential sources by the Authority for the purposes of its functions under specified provisions of the Gas Act 1986³⁶ or the Electricity Act 1989³⁷ or in relation to any criminal proceedings which the Authority has power to conduct³⁸.

A licence holder may refuse to supply³⁹ information which the licence holder could not be compelled to give as evidence in civil proceedings or which is contained in documents or records which the licence holder could not be compelled to produce in evidence in any such proceedings⁴⁰.

It may also refuse to supply any information where the cost or effort that would be incurred or suffered by the licence holder in supplying that information would be excessive in relation to the likely benefit of the information to the Council⁴¹.

Nothing in the above provisions entitles a licence holder to refuse to supply⁴² information to the Council if it is information whose supply the Council has directed in accordance with the Council's duties to publish statistical information about standards of performance under the specified provisions⁴³ of the Gas Act 1986 and the Electricity Act 1989⁴⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the power to make such regulations see the Utilities Act 2000 s 27(6), (7), cited in PARA 727 note 12 ante.

3 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 I.e. the holder of a licence under the Gas Act 1986 s 7 (as substituted and amended) or s 7A (as added and amended) (see PARAS 805, 807 post) or the holder of an electricity licence under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post): see the Utilities Act 2000 s 106(1); the Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 2.

5 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

6 le may refuse to supply under the Utilities Act 2000 s 24 (see PARA 727 ante) or s 26 (see PARA 728 ante). As to the prospective repeal of those provisions see PARA 716 the text and notes 14-15 ante.

7 Ibid s 27(1) (prospectively repealed: see PARA 716 the text and notes 14-15 ante).

8 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 3(1). The Secretary of State may certify for these purposes whether or not the making public of particular information would be against the interests of national security, and any such certificate is conclusive, subject to any exercise of a court's jurisdiction to review it: reg 3(2). Such a certificate may identify the information in question by means of a general description: reg 3(3).

9 Ibid reg 5(2).

10 le within the meaning of the Data Protection Act 1998 s 1(1) (as amended): see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 506.

11 le where the information falls within any of paras (a)-(d) of the definition of 'data' in ibid s 1 (as amended): see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 506.

12 As to the data protection principles see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 507 et seq.

13 le would contravene the Data Protection Act 1998 s 10 (as amended): see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 526.

14 le the exemptions in ibid s 33A(1) (as added): see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 552.

15 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 5(3). A licence holder may not, however, by virtue of reg 5(3), refuse to supply information which relates to a person who has made a complaint to which the Gas Act 1986 s 32 (as substituted) (see PARA 966 post) or the Electricity Act 1989 s 46 (as substituted) (see PARA 1145 post) applies and which is being investigated by the Council: Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 5(4).

16 Ibid reg 6(1).

17 Ibid reg 6(2).

18 Ibid reg 7(1)(a). A licence holder may not, however, by virtue of reg 7(1)(a) and (b) refuse to supply information which is relevant to the investigation of a complaint to which the Gas Act 1986 s 32 (as substituted) (see PARA 966 post) or the Electricity Act 1989 s 46 (as substituted) (see PARA 1145 post) applies: Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 7(2).

19 Ibid reg 7(1)(b); and see note 18 supra.

20 Ibid reg 7(1)(c).

21 Ibid reg 7(1)(d).

22 Ibid reg 9(1). For these purposes, a person holds information if (1) he holds it, otherwise than on behalf of another person; or (2) another person holds it on his behalf: reg 9(2).

23 le under the Utilities Act 2000 s 24: see PARA 727 ante.

24 For these purposes, 'securities' means any securities to which the Criminal Justice Act 1993 Pt V (ss 52-64) (insider dealing: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 574A et seq) applies: Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 4(2)(d).

25 For these purposes, information is to be treated as relating to a particular issuer of securities which is a company not only where it is about the company but also where it may affect the company's business prospects: ibid reg 4(2)(b).

26 For these purposes, 'made public', in relation to information, is to be construed in accordance with the Criminal Justice Act 1993 s 58(1) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 574A et seq): Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 4(2)(c).

27 For these purposes, 'price' includes value: ibid reg 4(2)(a).

28 Ibid reg 4(1).

29 Ie any action: (1) under the Gas Act 1986 s 28 (as amended) (orders for securing compliance: see PARA 968 post) or s 30A (as added) (penalties: see PARA 973 post); or (2) under the Electricity Act 1989 s 25 (as amended) (orders for securing compliance: see PARA 1207 post) or s 27A (as added) (penalties: see PARA 1212 post).

30 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 6(3).

31 See note 23 supra.

32 Ie in circumstances in which that disclosure would have been prohibited by or under an enactment imposing general restrictions on the disclosure of information but for an exemption from those restrictions naming the Authority as a person to whom information may be disclosed whether generally or for specified purposes or in specified circumstances: see the Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 5(1)(a).

33 Ie under the Enterprise Act 2002 Pt 4 (ss 131-184) (market investigations): see COMPETITION vol 18 (2009) PARA 276 et seq.

34 Ie under the Competition Act 1998 Pt I (ss 1-60) (as amended): see COMPETITION vol 18 (2009) PARA 115 et seq.

35 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 5(1)(b).

36 Ie under the Gas Act 1986 s 28 (as amended) (see PARA 968 post) or s 30A (as added) (see PARA 973 post).

37 Ie under the Electricity Act 1989 s 25 (as amended) (see PARA 1207 post) or s 27A (as added) (see PARA 1212 post).

38 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 7(3).

39 See note 23 supra.

40 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 6(4).

41 Ibid reg 8(1). In determining the likely benefit of the information to the Council for these purposes, the following must be taken into account: (1) the purposes for which the information is required by the Council; and (2) the extent to which the provision of the information is necessary or expedient for those purposes: reg 8(2).

42 See note 23 supra.

43 Ie under the Gas Act 1986 s 33DA (as added) (see PARA 897 post) and the Electricity Act 1989 s 42AA (as added) (see PARA 1139 post).

44 Utilities Act 2000 (Supply of Information) Regulations 2000, SI 2000/2956, reg 10.

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B. SPECIFIC FUNCTIONS UNDER GAS AND ELECTRICITY LEGISLATION

730. Functions relating to gas.

The Gas and Electricity Consumer Council¹ must be consulted by the Secretary of State² before he issues guidance on social and environmental matters to the Gas and Electricity Markets Authority ('GEMA')³; and by the Authority before it prescribes or determines standards of performance and carbon reduction targets with regard to gas transporters and suppliers⁴. It may refer disputes about standards of performance⁵, and certain other disputes⁶, to the Authority. The Council has a duty to publish statistical information about standards of performance and targets⁷. It also has a duty to investigate consumer complaints⁸ and has power to investigate other matters relating to consumers⁹.

The Council is entitled to receive a copy of each notice or document that the Authority is required to publish under the Gas Act 1986¹⁰ and is also entitled to receive copies of notices served by the Authority under a number of provisions of that Act¹¹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie under the Gas Act 1986 s 4AB (as added); see PARA 790 post. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Ie under ibid ss 33A-33BC (as added and amended); see PARA 873 et seq post.

5 See ibid s 33AB (as added); and PARA 885 post.

6 See PARA 965 post.

7 See PARA 897 post.

8 See PARA 966 post.

9 See PARA 967 post.

10 See PARA 793 note 4 post.

11 See eg para 804 the text and notes 8-10 post, PARA 813 at head (A) in the text, PARA 821 the text and note 12 post.

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731. Functions relating to electricity.

The Gas and Electricity Consumer Council¹ must be consulted by the Secretary of State² before he issues guidance on social and environmental matters to the Gas and Electricity Markets Authority ('GEMA')³; and by the Authority before it prescribes or determines standards of performance and carbon reduction targets with regard to electricity distributors and suppliers⁴. It may refer disputes about standards of performance⁵, and certain other disputes⁶, to the Authority. The Council has a duty to publish statistical information about standards of performance and targets⁷. It also has a duty to investigate consumer complaints⁸ and has power to investigate other matters relating to consumers⁹.

The Council is entitled to receive a copy of each notice or document that the Authority is required to publish under the Electricity Act 1989¹⁰ and is also entitled to receive copies of certain other documents¹¹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie under the Electricity Act 1989 s 3B (as added): see PARA 1042 post. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Ie under ibid ss 39-41A (as amended): see PARA 1110 et seq post.

5 See ibid s 39B (as added); and PARA 1127 post.

6 See PARA 1100 post.

7 See PARA 1139 post.

8 See PARA 1145 post.

9 See PARA 1146 post.

10 See PARA 1045 note 6 post.

11 See eg para 1083 post at head (i) in the text.

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(4) PAYMENTS BY LICENCE HOLDERS RELATING TO REGULATORY ARRANGEMENTS

732. Payments relating to regulatory arrangements.

The payment conditions¹ of a gas licence² or an electricity licence³ may⁴ require the payment by the licence holder⁵ of sums relating to any of the following expenses, namely:

- 675 (1) the expenses of the Gas and Electricity Consumer Council⁶; and
- 676 (2) the expenses of the Secretary of State⁷ in relation to the establishment of the Gas and Electricity Markets Authority ('GEMA')⁸ and the Council⁹.

The Secretary of State may give directions to the Authority for the purpose of securing that sums relating to any of the expenses mentioned in heads (1) and (2) above are included in the sums payable by virtue of payment conditions in gas licences and electricity licences; and the Authority must comply with any such direction¹⁰.

The Utilities Act 2000 conferred transitional powers on the Authority to modify any payment conditions of a gas licence or an electricity licence where the Authority considered it necessary or expedient to do so in consequence of, or in preparation for, the establishment of the Authority or the Council or the abolition of the former offices of Director General of Gas Supply and Director General of Electricity Supply or the abolition of the former Gas Consumers' Council and consumers' committees established under the Electricity Act 1989¹¹.

1 For these purposes, 'payment conditions' means (1) in relation to a gas licence, conditions included in the licence by virtue of the Gas Act 1986 s 7B(4)(c) (as added and amended) (see PARA 809 post); or (2) in relation to an electricity licence, conditions included in the licence by virtue of the Electricity Act 1989 s 7(1)(b) (see PARA 1068 post): Utilities Act 2000 s 8(1).

2 For the meaning of 'gas licence' see PARA 727 note 3 ante.

3 For the meaning of 'electricity licence' see PARA 727 note 4 ante.

4 Ie without prejudice to the generality of the provisions mentioned in the Utilities Act 2000 s 8(1) (see note 1 supra): s 8(2).

5 For the meanings of 'licence holder' see PARAS 789 note 9, 1041 note 12 post (definitions applied by ibid s 106(2), (3)).

6 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

7 As to the Secretary of State see PARA 601 note 1 ante.

8 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 Utilities Act 2000 s 8(2), (3). As from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), head (2) in the text is repealed: see s 64, Sch 8 (not in force).

10 Utilities Act 2000 s 8(9).

11 See *ibid* s 8(4), (5). For the consultation provisions see s 8(6), (7) (s 8(7) prospectively repealed by the Consumers, Estate Agents and Redress Act 2007 Sch 8, as from a day to be appointed under s 66(2); at the date at which this title states the law, no such day had been appointed and that repeal was not in force). Those transitional powers were to be exercised within two years of 20 December 2000: see the Utilities Act 2000 s 8(8); and the Utilities Act 2000 (Commencement No 4 and Transitional Provisions) Order 2000, art 2, Schedule.

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732 Payments relating to regulatory arrangements

NOTE 9--Day appointed is 21 December 2007: SI 2007/3546.

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(5) APPEALS FROM GEMA DECISIONS

(i) Right of Appeal

733. Right of appeal to the Competition Commission; application for permission to bring an appeal.

An appeal lies to the Competition Commission¹ from a decision by the Gas and Electricity Markets Authority ('GEMA')² to which these provisions apply³. These provisions apply to a decision by GEMA if:

- 677 (1) it is a decision relating to a document⁴ by reference to which provision is made by a condition of a gas or electricity licence⁵;
- 678 (2) that document is designated for these purposes by an order made by the Secretary of State⁶;
- 679 (3) the decision consists in the giving or refusal of a consent⁷ by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications⁸ or as reissued; and
- 680 (4) the decision is not of a description of decisions for the time being excluded from the right of appeal under these provisions by an order made by the Secretary of State⁹.

An appeal against a decision may be brought under these provisions only by:

- 681 (a) a person whose interests are materially affected by it; or
- 682 (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected¹⁰.

The permission of the Competition Commission is required for the bringing of an appeal under these provisions¹¹. An application for permission to bring an appeal may be made only by sending a notice to the Commission requesting the permission¹²; and only a person who will be entitled¹³ to bring the appeal if permission is granted may apply for permission¹⁴. Where GEMA publishes a decision to which the right of appeal set out above applies, an application for permission is not to be made after the end of 15 working days following the earliest day on which the decision was published¹⁵. An application for permission must be accompanied by all such information as may be required by appeal rules¹⁶; and those rules may require information contained in the application to be verified by a statement of truth¹⁷.

The applicant must send GEMA a copy of his application and such other information as may be required by appeal rules¹⁸. He must also send a copy of that application and of that information to such persons, apart from GEMA, as appear to him to be affected by the decision appealed against, and to such other persons as GEMA may require him to keep informed about his appeal¹⁹.

The Commission's decision on an application for permission must be made before the end of ten working days following the day on which it received it²⁰. The decision whether to grant

permission is to be taken by an authorised member of the Commission²¹. The Commission may refuse permission only on one of the following grounds:

- 683 (i) that the appeal is brought for reasons that are trivial or vexatious;
- 684 (ii) that the appeal has no reasonable prospect of success²².

A decision to grant permission may be made subject to conditions²³. Those conditions may include conditions:

- 685 (A) which limit the matters that are to be considered on the appeal in question;
- 686 (B) for the purpose of expediting the determination of the appeal; and
- 687 (C) requiring that appeal to be considered together with other appeals, including appeals relating to different matters or decisions and appeals brought by different persons²⁴.

Where a decision is made to grant or to refuse an application for permission, the Commission must notify the decision to the applicant, to GEMA and to each person who was sent²⁵ a copy of the application²⁶.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. The Competition Commission's functions with respect to appeals under the Energy Act 2004 s 173 (see the text and notes 2-11 infra) are to be treated as included in: (1) the functions for the purposes of which members of the Competition Commission are appointed under the Utilities Act 2000 s 104(1) (specialist members: see PARA 766 post); and (2) the functions for the purposes of which the members appointed under s 104(1) before 5 October 2004 (ie the commencement date of the Energy Act 2004 s 176: see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1) were appointed: Energy Act 2004 s 176.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

3 Energy Act 2004 s 173(1).

4 'Documents' includes accounts, drawings, written representations and records of any description: *ibid* s 196(1).

5 For these purposes, 'gas or electricity licence' means a licence for the purposes of the Gas Act 1986 s 5 (as substituted and amended) or the Electricity Act 1989 s 4 (as amended) (prohibition on unlicensed activities: see PARAS 803, 1050 post): Energy Act 2004 ss 173(9), 196(1).

6 Before making an order under *ibid* s 173, the Secretary of State must consult (1) GEMA; and (2) such other persons as he considers appropriate: s 173(6). An order so made is subject to the negative resolution procedure: s 173(8). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante; and as to the Secretary of State see PARA 601 note 1 ante.

In the exercise of the power under heads (2), (4) in the text, the Secretary of State has made the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, which came into force on 14 July 2005: art 1(1). The documents designated for these purposes are those set out as follows (art 3), ie:

- 5 (1) the Balancing and Settlement Code, being the document of that title required to be prepared pursuant to Standard Condition C3 of transmission licences;
- 6 (2) the Connection and Use of System Code, being the document of that title required to be prepared pursuant to Standard Condition C10 of transmission licences;
- 7 (3) a Network Code, being a document of that title required to be prepared pursuant to the conditions of a transportation licence to which Standard Special Condition A11 (Network and Uniform Network Code) applies;
- 8 (4) the Supply Point Administration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 34A of supply licences granted under the Gas Act 1986 s 7A (as added and amended) (see PARA 807 post);

9 (5) the Master Registration Agreement, being the document of that title required to be entered into pursuant to Standard Condition 37 of supply licences granted under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post); and

10 (6) the Uniform Network Code, being the document of that title required to be prepared pursuant to Standard Special Condition A11 of transportation licences.

The documents listed in heads (1)-(6) supra may be inspected at the offices of the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE. 'Transmission licence' has the same meaning as in the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post); and 'transportation licence' means a licence granted under the Gas Act 1986 s 7(2) (as substituted and amended) (see PARA 805 post): Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 2.

7 For these purposes, 'consent' includes an approval or direction: *ibid* s 173(9).

8 'Modification' includes omission, addition or alteration, and cognate expressions are to be construed accordingly: Energy Act 2004 s 196(1).

9 *Ibid* s 173(2). An order excluding decisions from the right of appeal under s 173(2) may provide (1) for the exclusion to apply only in such cases as may be determined in accordance with the order; and (2) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order: s 173(7). As to the excluded decisions see PARA 734 post.

10 *Ibid* s 173(3).

11 *Ibid* s 173(4).

12 *Ibid* s 174(2), Sch 22 para 1(1).

13 *Ie* under *ibid* s 173: see the text and notes 1-11 supra.

14 *Ibid* Sch 22 para 1(2).

15 *Ibid* Sch 22 para 1(3). The Secretary of State may, however, by order modify any period specified in Sch 22 (as amended) as the period within which anything must be done: Sch 22 para 14(1). Such an order is subject to the negative resolution procedure: Sch 22 para 14(2). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante; as to the Secretary of State see PARA 601 note 1 ante; and for the meaning of 'modify' see note 8 supra. At the date at which this title states the law, no such order modifying the time limit under Sch 22 para 1(3) or under Sch 22 para 1(8) (see the text to note 20 infra) had been made.

16 *Ibid* Sch 22 para 1(4). 'Appeal rules' means rules under Sch 22 para 12: Sch 22 para 15(1). As to the power to make such rules see PARA 735 post. For the required information see the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 4.1-4.3.

17 Energy Act 2004 Sch 22 para 1(5). 'Statement of truth' means a statement that the person producing the document believes the facts stated in the document to be true: Sch 11 para 15(1).

18 *Ibid* Sch 22 para 1(6); and see note 16 supra.

19 *Ibid* Sch 22 para 1(7).

20 *Ibid* Sch 22 para 1(8). As to modification of time limits see note 15 supra.

21 *Ibid* Sch 22 para 1(9). 'Authorised member of the Commission', in relation to a power exercisable in the case of an appeal or an application for permission to bring an appeal, means (1) the Chairman of the Commission; (2) a member of the Commission authorised by the chairman to exercise that power; or (3) the chairman of the group which has, or (if permission is granted) will have, the function of determining the appeal; and a 'group' means a group selected in accordance with Sch 22 para 5 (see PARA 735 post): Sch 22 para 15(1).

As to the procedure on permission applications see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 5. As to amendment of the application see r 8.1.

22 Energy Act 2004 s 173(5).

23 *Ibid* Sch 22 para 1(10).

24 *Ibid* Sch 22 para 1(11).

25 le in accordance with *ibid* Sch 22 para 1(7); see the text to note 19 *supra*.

26 *Ibid* Sch 22 para 1(12).

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NOTE 6--The following documents have also been so designated: (7) the Distribution Connection and Use of System Agreement, which means the document of that title referred to in the condition which, on 1 October 2008, constituted condition 22 of the standard conditions of distribution licences; and (8) the Uniform Network Code, which means the document of that title referred to in the condition which, on 1 October 2008, constituted condition 9 of the standard conditions of transportation licences: Electricity and Gas Appeals (Designation and Exclusion) Order 2009, SI 2009/648, arts 2, 3.

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734. Excluded decisions.

No appeal lies¹ to the Competition Commission² from a decision made by the Gas and Electricity Markets Authority ('GEMA')³ on or after 14 July 2005⁴ which consists in the giving or refusal of a consent⁵ by virtue of which a designated document⁶ has effect or would have had effect for the purposes of a gas or electricity licence⁷ with modifications or as reissued⁸, if the relevant condition⁹ is satisfied in respect of that decision¹⁰.

The relevant condition is, in the case of a decision in relation to:

- 688 (1) the Balancing and Settlement Code¹¹, that the decision consists in the giving of a consent to a majority recommendation made by the panel in the modification report¹²;
- 689 (2) the Connection and Use of System Code, that the decision consists in the giving of a consent to a majority recommendation¹³ of panel members in the amendment report¹⁴;
- 690 (3) a Network Code, that the decision accords with a majority recommendation made by the modification panel in the modification report¹⁵;
- 691 (4) the Supply Point Administration Agreement, that the decision consists in the giving of a consent to a change proposal¹⁶;
- 692 (5) the Master Registration Agreement, that the decision consists in the giving of a consent to a resolution of the MEC arising from the change procedures¹⁷; and
- 693 (6) the Uniform Network Code, that the decision consists in the giving of a consent to a majority recommendation made by the modification panel in the modification report¹⁸.

When on or after 14 July 2005 a decision in relation to a designated document is made by GEMA which is not excluded under the above provisions from the right of appeal which would otherwise be conferred¹⁹ and which consists in the giving or refusal of a consent by virtue of which that document has effect or would have had effect as mentioned above²⁰, GEMA must at the same time or as soon as reasonably practicable thereafter:

- 694 (a) decide whether to exclude that decision²¹; and
- 695 (b) give notice of the decision taken under head (a) above in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested²².

GEMA may exclude a decision referred to in heads (a) and (b) from the statutory right of appeal²³ if the delay caused by the holding of the appeal against that decision is likely to have a material adverse effect on the availability of electricity or gas for meeting the reasonable demands of consumers in Great Britain²⁴. Where GEMA so excludes a decision, it must, as soon as reasonably practicable after the exclusion of that decision, publish a notice stating the reasons for its having exercised its power to exclude in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested²⁵.

- 1 le under the Energy Act 2004 s 173: see PARA 733 ante.
- 2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.
- 3 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.
- 4 le the date on which the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, came into force: see art 1(1).
- 5 For the meaning of 'consent' for these purposes see PARA 733 note 7 ante.
- 6 le a document designated in the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 3: see PARA 733 note 6 ante.
- 7 For the meaning of 'gas or electricity licence' for these purposes see PARA 733 note 5 ante.
- 8 le has effect or would have had effect as mentioned in the Energy Act 2004 s 173(2)(c): see PARA 733 ante at head (3) in the text.
- 9 le the condition referred to in the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 4(2): see heads (1)-(6) in the text.
- 10 Ibid art 4(1).
- 11 The Balancing and Settlement Code, and the other documents mentioned in heads (1)-(6) in the text, may be inspected at the offices of the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE.
- 12 Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, arts 4(2)(a), (5)(1). For these purposes, the words 'panel' and 'modification report' have the same meanings as in the Balancing and Settlement Code: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 5(2).
- 13 'Majority recommendation' means a recommendation that is supported by the majority of those views of panel members which, in the reasonable opinion of GEMA, are clearly expressed in the amendment report; and for these purposes 'panel members' and 'amendment report' have the same meanings as in the Connection and Use of System Code: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 6(2). See also note 11 supra.
- 14 Ibid arts 4(2)(b), 6(1).
- 15 Ibid arts 4(2)(c), 7(1). For these purposes, the words 'modification panel' and 'modification report' have the same meanings as in the Uniform Network Code: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 7(2). See also note 11 supra.
- 16 Ibid arts 4(2)(d), 8(1). For these purposes, the expression 'change proposal' has the same meaning as in the Supply Point Administration Agreement: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 8(2). See also note 11 supra.
- 17 Ibid arts 4(2)(e), 9(1). For these purposes, the words 'MEC' and 'change procedures' have the same meanings as in the Master Registration Agreement: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 9(2). See also note 11 supra.
- 18 Ibid arts 4(2)(f), 10(1). For these purposes, the words 'modification panel' and 'modification report' have the same meanings as in the Uniform Network Code: Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 10(2). See also note 11 supra.
- 19 le by the Energy Act 2004: see PARA 733 ante.
- 20 See note 8 supra.
- 21 le under the Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 12: see the text and notes 23-24 infra.
- 22 Ibid art 11.
- 23 le the right of appeal conferred by the Energy Act 2004: see PARA 733 ante.

24 Electricity and Gas Appeals (Designation and Exclusion) Order 2005, SI 2005/1646, art 12. For the meaning of 'Great Britain' see PARA 602 note 7 ante.

25 Ibid art 13.

UPDATE

734 Excluded decisions

TEXT AND NOTES--As to further decisions excluded from the right of appeal see Electricity and Gas Appeals (Designation and Exclusion) Order 2009, SI 2009/648, arts 4-6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/735. Procedure on appeals; in general.

(ii) Procedure on Appeals

735. Procedure on appeals; in general.

The functions of the Competition Commission¹ with respect to appeals from certain decisions of the Gas and Electricity Markets Authority ('GEMA')² are not to be regarded as comprised in its general functions for the purposes of the provisions of the Competition Act 1998³ which set out the manner in which the Commission's general functions are to be carried out⁴. Instead, the provisions of the Energy Act 2004 setting out the procedure on appeals⁵ have effect⁶.

The Commission may make rules regulating the conduct and disposal of such appeals⁷. Those rules may:

- 696 (1) include provision supplementing the relevant statutory provisions⁸ in relation to any application, notice, hearing or requirement for which those provisions provide; and that provision may, in particular, impose time limits or other restrictions on the taking of evidence at an oral hearing or the making of representations or observations at such a hearing⁹;
- 697 (2) make different provision for different cases¹⁰.

Before making such rules, the Commission must consult such persons as it considers appropriate¹¹. The Commission must publish rules so made in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them¹². In the exercise of this power, the Commission has made the Energy Code Modification Rules¹³, and it has also published a Guide to Appeals in Energy Code Modification Cases¹⁴.

The following functions of the Commission must be carried out, in accordance with appeal rules, by a group selected for the purpose by the chairman¹⁵:

- 698 (a) considering an appeal;
- 699 (b) determining an appeal; and
- 700 (c) giving directions and taking other steps to give effect to the Commission's determination on an appeal¹⁶.

A group must consist of three members of the Commission¹⁷; and the chairman must appoint one of the members of a group to be its chairman¹⁸. The Chairman of the Commission may select a member of the Commission to replace another as a member of a group if:

- 701 (i) the person being replaced has ceased to be a member of the Commission;
- 702 (ii) that chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform his duties as a member of the group; or
- 703 (iii) it appears to that chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group¹⁹.

The replacement of a member of a group does not, however, prevent the group from continuing after his replacement with anything begun before it²⁰.

A decision of a group is effective if, and only if, all the members of the group are present when it is made, and at least two members of the group are in favour of the decision²¹.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

2 I.e. appeals under the Energy Act 2004 s 173: see PARA 733 ante. As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

3 I.e. the Competition Act 1998 Sch 7 Pt II (paras 14-22) (as amended): see COMPETITION vol 18 (2009) PARA 11.

4 Energy Act 2004 s 174(1).

5 I.e. ibid s 174(2), Sch 22 (as amended): see PARA 733 the text and notes 12-26 ante; the text and notes 7-21 infra; and PARA 736 et seq post.

6 Ibid s 174(2).

7 Ibid Sch 22 para 12(1).

8 I.e. supplementing ibid Sch 22 (as amended).

9 Ibid Sch 22 para 12(2).

10 Ibid Sch 22 para 12(5).

11 Ibid Sch 22 para 12(4).

12 Ibid Sch 22 para 12(3).

13 See the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005). At the date at which this title states the law, the rules were available on the Commission's website, accessible at www.competition-commission.org.uk.

14 See *Guide to Appeals in Energy Code Modification Cases* (CC 11) (Competition Commission, July 2005). At the date at which this title states the law, the guide was available on the Commission's website, accessible at www.competition-commission.org.uk.

15 In selecting members of a group (whether originally or by way of replacement) the Chairman of the Commission must ensure that at least one of the group's members is a person appointed to the Commission under the Utilities Act 2000 s 104(1) (as amended) (specialist members: see PARA 766 post): Energy Act 2004 Sch 22 para 5(6). The persons who may be selected by that chairman to be (or to replace) a member of a group, or who may be appointed by him to be the chairman of a group, include himself: Sch 22 para 5(7).

16 Ibid Sch 22 para 5(1).|

17 Ibid Sch 22 para 5(2).

18 Ibid Sch 22 para 5(3).

19 Ibid Sch 22 para 5(4).

20 Ibid Sch 22 para 5(5).

21 Ibid Sch 22 para 5(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/736. Suspension of GEMA decision pending determination of the appeal; representations by GEMA.

736. Suspension of GEMA decision pending determination of the appeal; representations by GEMA.

Where permission has been granted to bring an appeal¹ against a decision to give a consent², an authorised member of the Competition Commission³ may, on behalf of the Commission, direct that, pending the determination of the appeal:

- 704 (1) the consent is not to have effect; or
- 705 (2) the consent is not to have effect to such extent as may be specified in the direction⁴.

The power to give such a direction is exercisable only where:

- 706 (a) an application for its exercise has been made by the applicant for permission or by another person with interests or functions that entitle him, or would have entitled him, to appeal against the decision;
- 707 (b) the applicant for the exercise of the power would incur significant costs if the consent were to have effect, or to continue to have effect, before the determination of the appeal; and
- 708 (c) the balance of convenience does not otherwise require effect to be given to the consent pending that determination⁵.

That power is exercisable at any time before the determination of the appeal⁶.

A person making such an application must notify the Gas and Electricity Markets Authority ('GEMA')⁷.

Before determining whether to grant such an application, the authorised member of the Commission must give GEMA an opportunity of making representations about the matter⁸.

Where GEMA wishes to make representations or observations to the Commission about:

- 709 (i) a decision in respect of which permission to bring an appeal has been granted;
- 710 (ii) GEMA's reasons for that decision; or
- 711 (iii) the grounds on which an appeal is being brought against that decision,

it must do so before the end of 15 working days⁹ following the day of the making of the application for permission to bring the appeal¹⁰. Where more than one application for permission to bring an appeal was made¹¹ in respect of the same decision, that period of 15 working days begins to run from the end of the day of the making of the last of those applications to be made¹². GEMA must send a copy of its representations and observations to every person who received a copy of:

- 712 (A) the application for permission to bring the appeal; or
- 713 (B) a notice by which a person asked to become a party¹³ to the appeal¹⁴.

- 1 le an appeal under the Energy Act 2004 s 173: see PARA 733 ante.
- 2 For these purposes, 'consent' includes an approval or direction: *ibid* s 174(2), Sch 22 para 3(6).
- 3 For the meaning of 'authorised member of the Commission' see PARA 733 note 21 ante. As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.
- 4 Energy Act 2004 Sch 22 para 3(1).
- 5 *Ibid* Sch 22 para 3(2). As to suspension applications see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 14.
- 6 Energy Act 2004 Sch 22 para 3(3).
- 7 *Ibid* Sch 22 para 3(4). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.
- 8 *Ibid* Sch 22 para 3(5).
- 9 'Working day' means any day other than (1) Saturday or Sunday; (2) Christmas Day or Good Friday; (3) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971: Energy Act 2004 s 174(2), Sch 22 para 15(1). As to the power to modify this time limit see PARA 733 note 15 ante.
- 10 *Ibid* Sch 22 para 4(1).
- 11 le in accordance with *ibid* Sch 22 para 1: see PARA 733 the text and notes 12-26 ante.
- 12 *Ibid* Sch 22 para 4(2).
- 13 References in *ibid* Sch 22 (as amended) to a party to an appeal are references to (1) the appellant; (2) an intervener; or (3) GEMA: Sch 22 para 15(2). 'Intervener' means a person who has become a party to an appeal in pursuance of a direction under *ibid* Sch 22 para 2: Sch 22 para 15(1).
- 14 *Ibid* Sch 22 para 4(3). As to representations by GEMA see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/737. Addition of parties to appeal.

737. Addition of parties to appeal.

The following provisions apply if:

- 714 (1) before the end of 20 working days¹ following the day of the making of an application for permission to bring an appeal²; or
- 715 (2) within such longer period as an authorised member of the Competition Commission³ may allow,

a person who is not the applicant for permission, but who is a person who would have been entitled, at the time of the application, to make his own application to the Commission for permission to bring an appeal against the decision in question, gives notice to the Commission asking to become a party to the appeal⁴. A person who gives a notice asking to become a party to an appeal must send the Gas and Electricity Markets Authority ('GEMA')⁵ a copy of the notice and such other information as may be required by appeal rules⁶. That person must also send a copy of the notice and of that information to such persons, apart from GEMA, as appear to him to be affected by the decision appealed against, and to such other persons as GEMA may require him to keep informed about his appeal⁷.

An authorised member of the Commission may, on behalf of the Commission, give a direction that a person who has asked in accordance with the above provisions to become a party to an appeal is to be a party to that appeal⁸. A member of the Commission is not, however, to give such a direction if he considers that it would prevent the determination of the appeal within the period allowed⁹ to do so¹⁰. Such a direction:

- 716 (a) does not allow the intervener¹¹ to rely on grounds of appeal not contained in the appellant's application for permission to bring an appeal;
- 717 (b) may allow the intervener to become a party to the appeal for the purpose of opposing it; and
- 718 (c) may be given subject to conditions¹²;

and the conditions of such a direction may include:

- 719 (i) conditions which limit the matters that are to be considered on the appeal in question;
- 720 (ii) conditions for the purpose of expediting the determination of the appeal¹³.

Where a direction is so given, the application for permission, and, if permission is or has been granted, the appeal brought by the applicant and any other appeals that are considered with it, are to proceed¹⁴ as if the intervener had joined with the applicant in making that application and bringing the appeal¹⁵.

¹ For the meaning of 'working day' see PARA 736 note 9 ante; and as to the power to modify this time limit see PARA 733 note 15 ante.

² ie an appeal under the Energy Act 2004 s 173: see PARA 733 ante.

3 For the meaning of 'authorised member of the Commission' see PARA 733 note 21 ante. As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

4 Energy Act 2004 Sch 22 para 2(1), (2).

5 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

6 Energy Act 2004 Sch 22 para 2(3). For the meaning of 'appeal rules' see PARA 733 note 16 ante; and for the information required by appeal rules see the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 7.2-7.4.

7 Energy Act 2004 Sch 22 para 2(4).

8 Ibid Sch 22 para 2(5).

9 Ie allowed by ibid Sch 22 para 6: see PARA 738 post.

10 Ibid Sch 22 para 2(6).

11 For the meaning of 'intervener' see PARA 736 note 13 ante.

12 Energy Act 2004 Sch 22 para 2(8).

13 Ibid Sch 22 para 2(9).

14 Ie subject to any direction under ibid Sch 22 para 2(8)(b): see head (b) in the text.

15 Ibid Sch 22 para 2(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/738. Timetable for determination of an appeal and matters to be considered.

738. Timetable for determination of an appeal and matters to be considered.

The group¹ with the function of determining an appeal² must determine that appeal before the end of 30 working days³ following the last day for the making⁴ of representations or observations by the Gas and Electricity Markets Authority ('GEMA')⁵. If the group with the function of determining an appeal is satisfied that there are good reasons for departing from the normal requirements, it may on one occasion only extend that period of 30 working days by not more than ten more working days⁶. The Competition Commission⁷ must ensure that such an extension is notified to every party to the appeal⁸.

The group with the function of determining an appeal, if it thinks it necessary to do so for the purpose of securing the determination of the appeal within the period allowed by the above provisions, may disregard:

- 721 (1) all matters raised by the appellant or an intervener⁹ that were not raised by him at the time of his application for permission to bring the appeal or in his request to become a party¹⁰; and
- 722 (2) all matters raised by GEMA that were not contained in representations or observations made¹¹ for the purposes of the appeal¹².

Appeal rules made by the Commission contain further provisions about case management¹³.

1 'Group' means a group selected in accordance with the Energy Act 2004 s 174(2), Sch 22 para 5 (see PARA 735 ante); Sch 22 para 15(1).

2 Ie an appeal under *ibid* s 173: see PARA 733 ante.

3 For the meaning of 'working day' see PARA 736 note 9 ante; and as to the Secretary of State's power to modify time limits see PARA 733 note 15 ante.

4 Ie in accordance with the Energy Act 2004 Sch 22 para 4: see PARA 736 ante.

5 *Ibid* Sch 22 para 6(1). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

6 *Ibid* Sch 22 para 6(2).

7 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

8 *Ibid* Sch 22 para 6(3).

9 For the meaning of 'intervener' see PARA 736 note 13 ante.

10 Ie in his request under the Energy Act 2004 Sch 22 para 2: see PARA 737 ante.

11 See note 4 *supra*.

12 Energy Act 2004 Sch 22 para 7.

13 See the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) rr 10-11. As to consolidation of appeals see r 9.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/739. Documents, hearings and evidence.

739. Documents, hearings and evidence.

The Competition Commission¹ may, by notice², require a person to produce to the Commission the documents³ specified or otherwise identified in the notice⁴. The power to require the production of a document is a power to require its production at the time and place specified in the notice and in a legible form⁵; and the Commission may take copies of a document so produced to it⁶. No person is, however, to be compelled under these provisions to produce a document that he could not be compelled to produce in civil proceedings in the High Court⁷.

For the purposes of the procedural provisions relating to appeals⁸ an oral hearing may be held, and evidence may be taken on oath, by a person considering an application for permission to bring an appeal, by a person considering an application for a direction⁹ or by a group¹⁰ with the function of determining an appeal; and, for that purpose, such a person or group may administer oaths¹¹. The Commission may, by notice¹², require a person to attend at a time and place¹³ specified in the notice and at that time and place to give evidence to a person or group mentioned above¹⁴. At any oral hearing the person or group conducting the hearing may require:

- 723 (1) the applicant, or the appellant or any intervener¹⁵, if he is present at the hearing; or
- 724 (2) a person attending the hearing as a representative of a person mentioned in head (1) above or as a representative of the Gas and Electricity Markets Authority ('GEMA')¹⁶,

to give evidence or to make representations or observations¹⁷. If, however, a person is not present at a hearing to be subjected to such a requirement, the Commission is not required to give notice to him¹⁸ and the person or group conducting the hearing may determine the application or appeal without hearing his evidence, representations or observations¹⁹. A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal²⁰. No person is, however, to be compelled under these provisions to give evidence which he could not be compelled to give in civil proceedings in the High Court²¹.

The Commission may, by notice²², require a person to produce a written statement with respect to a matter specified in the notice to:

- 725 (a) a person who is considering, or is to consider, an application for a suspension direction²³; or
- 726 (b) a group with the function of determining an appeal²⁴.

The power to require the production of a written statement includes power to specify the time and place at which it is to be produced and to require it to be verified by a statement of truth; and a statement so produced must be disregarded unless it is so verified²⁵. No person is, however, to be compelled under these provisions to produce a written statement with respect to any matter about which he could not be compelled to give evidence in civil proceedings in the High Court²⁶.

If a person ('the defaulter'):

- 727 (i) fails to comply with a notice or other requirement issued or imposed under any of the above provisions;
- 728 (ii) in complying with a notice to produce a written statement²⁷, makes a statement that is false in any material particular; or
- 729 (iii) in providing information otherwise verified in accordance with a statement of truth required by appeal rules²⁸, provides information that is false in a material particular,

a member of the Commission may certify the failure, or the fact that such a false statement has been made, to the High Court²⁹. The High Court may inquire into a matter so certified to it; and if, after having heard any witness against or on behalf of the defaulter, and any statement in his defence, it is satisfied that the defaulter did, without reasonable excuse, refuse or otherwise fail to comply with the notice or other requirement, or made the false statement, that court may punish him as if he had been guilty of contempt of court³⁰. Where the High Court has such power to punish a body corporate for contempt of court, it may so punish any director or other officer of that body, either instead of or as well as punishing the body³¹.

A person who wilfully alters, suppresses or destroys a document that he has been required to produce³² is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum³³, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both³⁴.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

2 A notice for these purposes, or for the purposes of the Energy Act 2004 s 174(2), Sch 22 para 9 (see the text and notes 8-21 infra) or Sch 22 para 10 (see the text and notes 22-26 infra) may be issued on the Commission's behalf by any member of the Commission or by its secretary: Energy Act 2004 Sch 22 paras 8(5), 9(8), 10(4). As to such notices see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 12.

Where provision made (in whatever terms) by or under the Energy Act 2004, other than ss 129-131 (see PARAS 1334-1336 post) or Pt 3 Ch 3 (ss 51-71) (as amended) (see PARA 1520 et seq post), authorises or requires a notification to be given to a person or a document of any other description (including a copy of a document) to be sent to a person, the notification or document may be given or sent to the person in question (1) by delivering it to him; (2) by leaving it at his proper address; or (3) by sending it by post to him at that address: s 193(1), (2). The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body (s 193(3)) and may be given or sent to a firm by being given or sent to a partner in the firm or to a person having the control or management of the partnership business (s 193(4)). It may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association: s 193(5). For these purposes and the purposes of the Interpretation Act 1978 s 7 (service of documents by post) in its application to the Energy Act 2004 s 193, the proper address of a person is (a) in the case of a body corporate, the address of the registered or principal office of the body; (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association; (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of s 193(3)-(5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and (d) in any other case, the last known address of the person in question: s 193(6). In the case of a company registered outside the United Kingdom, a firm carrying on business outside the United Kingdom, or an unincorporated body or association with offices outside the United Kingdom, the references in s 193(6) to its principal office include references to its principal office within the United Kingdom (if any): s 193(7). For these purposes, 'notification' includes notice; and references in s 193 to sending a document to a person include references to making an application to him: s 193(8). Section 193 has effect subject to s 194: s 193(9).

Where s 193 authorises the giving or sending of a notification or other document by its delivery to a particular person ('the recipient'), and the notification or other document is transmitted to the recipient by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible, the transmission has effect for the purposes of the Energy Act 2004 as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under s 194 are complied with: s 194(1), (2). Where the recipient is a person other than the Nuclear Decommissioning Authority ('the NDA'), then the recipient, or the person on whose behalf the recipient receives the notification or other document, must have indicated to the person making the transmission the

recipient's willingness to receive notifications or documents transmitted in the form and manner used: s 194(5). An indication to any person for the purposes of s 194(5): (i) must be given to that person in such manner as he may require; (ii) may be a general indication or one that is limited to notifications or documents of a particular description; (iii) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and (iv) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require: s 194(6). Section 193(8) applies for these purposes as it applies for the purposes of s 193: s 194(8). As to the NDA see PARA 1394 et seq post; and as to delivery under s 194 by or to the NDA see s 194(3), (4), (6); and PARA 1591 post. For these purposes, 'electronic communications network' has the same meaning as in the Communications Act 2003 (see TELECOMMUNICATIONS vol 97 (2010) PARA 60): Energy Act 2004 s 196(1).

The Secretary of State may, by order, make provision specifying, for the purposes of any enactment or subordinate legislation contained in or made under the Energy Act 2004, the manner of determining (A) the times at which things done under that enactment or subordinate legislation by means of electronic communications networks are done; and (B) the places at which such things are so done, and at which things transmitted by means of such networks are received: s 195(1). The provision so made may include provision as to the country or territory in which an electronic address is to be treated as located: s 195(2). An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings (aa) that something done by means of an electronic communications network satisfies the requirements of an enactment or subordinate legislation contained in or made under the Energy Act 2004 for the doing of that thing; and (bb) the matters mentioned in heads (A)-(B) supra: s 195(3). Such an order may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate: s 195(4). An order under s 195 is subject to the negative resolution procedure: s 195(5). As to the negative resolution procedure see PARA 602 note 2 ante. At the date at which this title states the law, no such order had been made. For the meanings of 'enactment' and 'subordinate legislation' see PARA 750 notes 9, 10 post.

3 For the meaning of 'document' see PARA 733 note 4 ante.

4 Energy Act 2004 Sch 22 para 8(1).

5 Ibid Sch 22 para 8(2).

6 Ibid Sch 22 para 8(4).

7 Ibid Sch 22 para 8(3).

8 Ie for the purposes of ibid Sch 22 (as amended): see PARA 733 et seq ante; the text and notes 1-7 supra, 9-34 infra; and PARA 714 post.

9 Ie a direction under ibid Sch 22 para 2 (see PARA 737 ante) or Sch 22 para 3 (see PARA 736 ante).

10 For the meaning of 'group' see PARA 738 note 1 ante.

11 Energy Act 2004 Sch 22 para 9(1).

12 See note 2 supra.

13 Where a person is so required to attend at a place more than ten miles from his place of residence, the Commission must pay him the necessary expenses of his attendance: Energy Act 2004 Sch 22 para 9(7).

14 Ibid Sch 22 para 9(2).

15 For the meaning of 'intervener' see PARA 736 note 13 ante.

16 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

17 Energy Act 2004 Sch 22 para 9(3).

18 Ie under ibid Sch 22 para 9(2): see the text to note 14 supra.

19 Ibid Sch 22 para 9(5).

20 Ibid Sch 22 para 9(4).

21 Ibid Sch 22 para 9(6). As to evidence see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 16; and as to hearings and representation at hearings see rr 18, 19.

22 See note 2 supra.

- 23 le a direction under the Energy Act 2004 Sch 22 para 3: see PARA 736 ante.
- 24 Ibid Sch 22 para 10(1).
- 25 Ibid Sch 22 para 10(2).
- 26 Ibid Sch 22 para 10(3). As to written evidence see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 17.
- 27 le a notice under the Energy Act 2004 Sch 22 para 10: see the text and notes 22-26 supra.
- 28 For the meaning of 'appeal rules' see PARA 733 note 16 ante.
- 29 Energy Act 2004 Sch 22 para 11(1).
- 30 Ibid Sch 22 para 11(2).
- 31 Ibid Sch 22 para 11(3).
- 32 le under ibid Sch 22 para 8: see the text and notes 1-7 supra.
- 33 As to the statutory maximum see PARA 689 note 2 ante.
- 34 Energy Act 2004 Sch 22 para 11(4).

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740. Determination of appeals.

The following provisions apply to every appeal brought¹ under the relevant statutory provision². In determining the appeal the Competition Commission³ must have regard, to the same extent as is required of the Gas and Electricity Markets Authority ('GEMA')⁴, to the matters to which GEMA must have regard:

- 730 (1) in the carrying out of its principal objectives under the specified provision of the Gas Act 1986⁵ and its principal objectives and general duties under the specified provision of the Electricity Act 1989⁶;
- 731 (2) in the performance of its duties under the provisions mentioned in head (1) above; and
- 732 (3) in the performance of its duties under the provisions of those 1986 and 1989 Acts⁷ relating to environmental and health and safety considerations⁸.

The Commission may, in determining the appeal, have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against⁹; but it must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so¹⁰.

The Commission may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds:

- 733 (a) that GEMA failed properly to have regard to the matters mentioned in heads (1) to (3) above;
- 734 (b) that GEMA failed properly to have regard to the purposes for which the relevant condition¹¹ has effect;
- 735 (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
- 736 (d) that the decision was based, wholly or partly, on an error of fact;
- 737 (e) that the decision was wrong in law¹².

Where the Commission does not allow the appeal, it must confirm the decision appealed against¹³. Where it allows the appeal, it must do one or more of the following:

- 738 (i) quash the decision appealed against;
- 739 (ii) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the Commission;
- 740 (iii) where it quashes the refusal of a consent¹⁴, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given¹⁵.

A person to whom a direction is given under the above provision must comply with it; and such a direction given to a person other than GEMA is enforceable as if it were an order of the High Court¹⁶; but a person may not be directed under that provision to do anything that he would not have power to do apart from the direction¹⁷.

The decision of the Commission on the appeal:

- 741 (A) must be contained in an order made by the Commission;
- 742 (B) must set out the reasons for the decision;
- 743 (C) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
- 744 (D) must be notified by the Commission to the persons who were parties¹⁸ to the appeal; and
- 745 (E) must be published by the Commission in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it¹⁹.

The Commission may, however, exclude from what it publishes under head (E) above any information which it is satisfied is commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates²⁰ or information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests²¹.

1 Ile every appeal brought under the Energy Act 2004 s 173: see PARA 733 ante.

2 Ibid s 175(1).

3 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

4 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

5 Ile under the Gas Act 1986 s 4AA (as substituted and amended): see PARA 789 post.

6 Ile under the Electricity Act 1989 s 3A (as substituted and amended): see PARA 1041 post.

7 Ile under the Gas Act 1986 ss 4AB, 4A (as respectively added and substituted) (see PARAS 790-791 post) and under the Electricity Act 1989 ss 3B, 3C (as added) (see PARAS 1042-1043 post).

8 Energy Act 2004 s 175(2).

9 Ibid s 175(3)(a).

10 Ibid s 175(3)(b).

11 For these purposes, 'the relevant condition', in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates: *ibid* s 175(11). For the meaning of 'document' see PARA 733 note 4 ante.

12 Ibid s 174(4).

13 Ibid s 174(5).

14 For these purposes, 'consent' includes an approval or direction: *ibid* s 175(11).

15 Ibid s 175(6).

16 Ibid s 175(8).

17 Ibid s 175(7).

18 Ile within the meaning of *ibid* Sch 22 (as amended): see PARA 733 et seq ante, PARA 741 post. For the meaning of 'party' for those purposes see PARA 736 note 13 ante.

19 Ibid s 175(9). The decision is given in public and published on the Commission's website: see the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 21.

20 Energy Act 2004 s 175(10)(a).

21 Ibid s 175(10)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(ii) Procedure on Appeals/741. Costs.

741. Costs.

A group¹ that determines an appeal² must make an order requiring the payment to the Competition Commission³ of the costs incurred by the Commission in connection with the appeal⁴. Where the appeal is allowed, the order must require those costs to be paid by the Gas and Electricity Markets Authority ('GEMA')⁵; and where the appeal is dismissed, the order must require those costs to be paid by the appellant⁶ but, if there is more than one appellant, the order:

746 (1) may provide that only such one or more of the appellants as may be specified in the order is to be liable for the costs; and

747 (2) may determine the proportions in which the appellants so specified are to be so liable⁷.

The group that determines an appeal may also make such order as it thinks fit for requiring a party⁸ to the appeal to make payments to another in respect of costs incurred by that other party in connection with the appeal⁹.

A person who is required by an order under these provisions to pay a sum to another person must comply with the order before the end of the period of 28 days¹⁰ beginning with the day after the making of the order¹¹. Sums required to be paid by such an order but not paid within that 28-day period are to bear interest at such rate as may be determined in accordance with provision contained in the order¹².

1 For the meaning of 'group' see PARA 738 note 1 ante.

2 Is an appeal under the Energy Act 2004 s 173: see PARA 733 ante.

3 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12. See also PARA 733 note 1 ante.

4 Energy Act 2004 s 174(2). Sch 22 para 13(1).

5 Ibid Sch 22 para 13(2). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

6 In ibid Sch 22 para 13(3) (see the text and note 7 infra), references to an appellant do not include references to an intervener: Sch 22 para 13(4). For the meaning of 'intervener' see PARA 736 note 13 ante.

7 Ibid Sch 22 para 13(3).

8 For the meaning of 'party' see PARA 736 note 13 ante.

9 Energy Act 2004 Sch 22 para 13(5). As to costs between the parties see further the *Energy Code Modification Rules* (CC 10) (Competition Commission, July 2005) r 22.

10 As to the Secretary of State's power to modify this time limit see PARA 733 note 15 ante.

11 Energy Act 2004 Sch 22 para 13(6) (amended by the Electricity and Gas Appeals (Modification of Time Limits) Order 2006, SI 2006/1519, art 2).

12 Energy Act 2004 Sch 22 para 13(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(5) APPEALS FROM GEMA DECISIONS/(iii) Funding of Appeals and References/742. Modifications of standard conditions for funding appeals and references.

(iii) Funding of Appeals and References

742. Modifications of standard conditions for funding appeals and references.

The Energy Act 2004 conferred powers on the Secretary of State¹, which were to be exercised within the three months beginning with 1 November 2005², in the following terms³. Where the Secretary of State considered it appropriate to do so:

- 748 (1) in connection with the provision made in relation to appeals against certain decisions by the Gas and Electricity Markets Authority ('GEMA')⁴; or
- 749 (2) in relation to modification references⁵ to the Competition Commission⁶,

he might make licence modifications⁷ as follows, namely:

- 750 (a) modifications of so much of the standard conditions of gas or electricity licences⁸ of any type as related to licence charges⁹; and
- 751 (b) such incidental, consequential or transitional modifications in connection with modifications falling within head (a) above as he thought fit¹⁰.

Before making a modification under the above provisions that applied to licences of any type, the Secretary of State was to consult the holders of the licences and such other persons as he considered appropriate¹¹.

The Secretary of State must publish every modification so made by him¹² in such manner as he considers appropriate¹³.

Where the Secretary of State has made modifications under these provisions of the standard conditions of licences of any type, GEMA must:

- 752 (i) make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- 753 (ii) publish the modifications in such manner as it considers appropriate¹⁴.

Where the standard conditions of gas or electricity licences contain provision authorising the imposition of licence charges in respect of costs incurred by the Commission in connection with a reference mentioned in head (2) above, the Commission has power, on such a reference, to give directions to GEMA about the manner in which the Competition Commission's costs in connection with that reference are to be recovered by means of such charges, and GEMA must comply with any such directions¹⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Energy Act 2004 s 177(9); Energy Act 2004 (Commencement No 6) Order 2005, SI 2005/2965, art 2.

3 See the Energy Act 2004 s 177(1)-(2), (4)-(11); and the text and notes 4-14 *infra*. As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 *ante*.

4 *Ie* the provision made by *ibid* ss 173-175, Sch 22 (as amended): see PARA 733 *et seq* *ante*.

5 *Ie* references under the Gas Act 1986 s 24 (as amended) (see PARAS 813-814 *post*) or the Electricity Act 1989 s 12 (as amended) (see PARA 1081 *post*).

6 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

7 For the meaning of 'modification' see PARA 733 note 8 *ante*.

8 For the meaning of 'gas or electricity licence' see PARA 733 note 5 *ante* (definition applied by the Energy Act 2004 s 177(10)).

9 For these purposes, 'licence charges' means payments which (1) under the conditions of a gas or electricity licence, are required to be paid on the grant or during the currency of the licence by the licence holder; and (2) are payments of amounts determined by or under the licence: *ibid* s 177(10).

10 *Ibid* s 177(1), (2).

11 *Ibid* s 177(4). Section 177(4) might be satisfied by consultation that took place wholly or partly before the commencement of s 177 (*ie* 1 November 2005: see note 2 *supra*): s 177(5).

12 *Ibid* s 177(6).

13 *Ibid* s 177(7).

14 *Ibid* s 177(8). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 *ante*.

15 *Ibid* s 177(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(i) Energy Administration Orders/743. Energy administration orders; in general.

(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES

(i) Energy Administration Orders

743. Energy administration orders; in general.

For the relevant statutory purposes¹, 'energy administration order' means an order which:

- 754 (1) is made by the court² in relation to a protected energy company³; and
- 755 (2) directs that, while the order is in force, the affairs, business⁴ and property⁵ of the company are to be managed by a person appointed by the court⁶.

The person appointed in relation to a company for the purposes of an energy administration order is referred to as the energy administrator of the company⁷. The energy administrator of a company must manage its affairs, business and property, and exercise and perform all his powers and duties as such, so as to achieve the statutory⁸ objective⁹.

The power to modify or apply enactments conferred on the Secretary of State¹⁰ by each of the specified provisions of the Enterprise Act 2002¹¹ includes power to make such consequential modifications¹² of the provisions of the Energy Act 2004 relating to energy administration¹³ as he considers appropriate in connection with any other provision made under that power¹⁴.

1 le for the purposes of the Energy Act 2004 Pt 3 Ch 3 (ss 154-171): see PARA 744 et seq post.

2 For these purposes, 'court' (1) in relation to a company other than a Northern Irish joint stock company, means the court having jurisdiction to wind up the company; and (2) in relation to a Northern Irish joint stock company, means the court that would have jurisdiction to wind it up if it were an unregistered company within the meaning of the Insolvency Act 1986 Pt V (ss 220-229) (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq): Energy Act 2004 s 171(1). 'Company' means (a) a company formed and registered under the Companies Act 1985 or the Companies Act 2006; (b) an existing company; or (c) an unregistered company: Energy Act 2004 s 171(1); Companies Act 2006 s 1297(5). 'Existing company' has the same meaning as in the Companies Act 1985 (see s 735(1) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed); and COMPANIES vol 14 (2009) PARA 14); and 'Northern Irish joint stock company' means a company registered in Northern Ireland under the Joint Stock Companies Acts (as defined in the Companies Act 1985 s 735(3) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 14): Energy Act 2004 s 171(8). 'Unregistered company' means (i) an unregistered company within the meaning of the Insolvency Act 1986 Pt V (as amended); or (ii) a Northern Irish joint stock company: Energy Act 2004 s 171(1).

3 For these purposes, 'protected energy company' means a company which is the holder of a relevant licence; and 'relevant licence' means (1) a licence granted under the Electricity Act 1989 s 6(1)(b) or (c) (as substituted and amended) (transmission and distribution licences for electricity: see PARA 1065 post); or (2) a licence granted under the Gas Act 1986 s 7 (as substituted and amended) (licensing of gas transporters: see PARA 805 post): Energy Act 2004 ss 154(5), 171(1).

4 Except in so far as the context otherwise requires, 'business' includes a trade or profession: Insolvency Act 1986 s 436 (definition applied by the Energy Act 2004 s 171(1)).

5 Except in so far as the context otherwise requires, 'property' includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property: Insolvency Act 1986 s 436 (definition applied by the Energy Act 2004 s 171(1)). In relation to an energy administration order applying to a non-GB company, references in s 154 to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain: s 154(4). 'Non-GB company' means an unregistered company incorporated outside Great Britain: s 171(1). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

6 Ibid ss 154(1), 171(1).

7 Ibid ss 154(2), 171(1). For these purposes, references to the energy administrator of a company (1) include references to a person appointed under the Insolvency 1986 Sch B1 para 91 (as added) or Sch B1 para 103 (as added), as applied by the Energy Act 2004 Sch 20 Pt 1, to be the energy administrator of that company; and (2) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under s 158(5) (see PARA 747 post): s 171(2).

8 Ie the objective set out in ibid s 155: see PARA 744 post.

9 Ibid s 154(3).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 Ie the power conferred by the Enterprise Act 2002 ss 248, 277 (amendments consequential on that Act) and s 254 (power to apply insolvency law to foreign companies: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1161).

12 For the meaning of 'modifications' see PARA 733 note 8 ante.

13 Ie the Energy Act 2004 Pt 3 Ch 3: see PARA 744 et seq post.

14 Ibid s 170(1), (2). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante.

UPDATE

743 Energy administration orders; in general

NOTES 2, 5--Definitions of 'court', 'company', 'non-GB company' and 'unregistered company' amended: SI 2009/1941.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(i) Energy Administration Orders/744. Objective of an energy administration.

744. Objective of an energy administration.

The objective of an energy administration is to secure:

- 756 (1) that the company's system¹ is and continues to be maintained and developed as an efficient and economical system²; and
- 757 (2) that it becomes unnecessary, by one or both of the following means, for the energy administration order³ to remain in force for that purpose⁴.

Those means are:

- 758 (a) the rescue as a going concern of the company subject to the energy administration order; and
- 759 (b) transfers falling within the following provision, namely a transfer as a going concern either to another company, or, as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies, of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration⁵.

The means by which such transfers may be effected include, in particular:

- 760 (i) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary⁶ of that company; and
- 761 (ii) a transfer to a company of securities⁷ of a wholly-owned subsidiary to which there has been a transfer falling within head (i) above⁸.

The objective of an energy administration may be achieved by such transfers to the extent only that:

- 762 (A) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
- 763 (B) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
- 764 (C) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them; or
- 765 (D) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members⁹ as a whole that is better than the result that would be produced without them¹⁰.

¹ For these purposes, 'the company's system', in relation to an energy administration, means (1) the system of electricity distribution or of electricity transmission; or (2) the pipeline system for the conveyance of gas, which the company subject to the energy administration order has been maintaining as the holder of a relevant

licence: Energy Act 2004 s 155(6). For the meaning of 'company' see PARA 743 note 2 ante; and for the meaning of 'relevant licence' see PARA 743 note 3 ante.

2 For these purposes, 'efficient and economical', in relation to a system for electricity distribution or electricity transmission, includes co-ordinated: *ibid* s 155(7).

3 For the meaning of 'energy administration order' see PARA 743 ante.

4 Energy Act 2004 ss 155(1), 171(1).

5 *Ibid* s 155(2), (3).

6 'Subsidiary' and 'wholly-owned subsidiary' have the meanings given by the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25): Energy Act 2004 s 196(1).

7 'Securities', in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate; and 'shares' includes stock: *ibid* s 196(1).

8 *Ibid* s 155(4).

9 For these purposes, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly: Insolvency Act 1986 s 250 (applied by the Energy Act 2004 s 171(1)).

10 *Ibid* s 155(5).

UPDATE

744 Objective of an energy administration

NOTE 6--Energy Act 2004 s 196(1) amended: SI 2009/1941.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(i) Energy Administration Orders/745. Applications for energy administration orders.

745. Applications for energy administration orders.

An application for an energy administration order¹ in relation to a company² may be made only by the Secretary of State³ or, with the consent of the Secretary of State, by the Gas and Electricity Markets Authority ('GEMA')⁴.

The energy administration application must be in the prescribed form⁵ and an affidavit⁶ must be prepared and sworn, with a view to its being filed with the court⁷ in support of the application⁸. The application must state by whom it is made and the applicant's address for service⁹; and where it is made by GEMA, the application must contain a statement that it is made with the consent of the Secretary of State¹⁰. There must be attached to the application a written statement which must be in the prescribed form¹¹ by each of the persons proposed to be energy administrator¹² stating:

- 766 (1) that he consents to accept the appointment; and
- 767 (2) details of any prior professional relationship or relationships that he has had with the protected energy company¹³ to which he is to be appointed as energy administrator¹⁴.

The energy administration application must state that the company is a protected energy company¹⁵ and must also state one or both of the following:

- 768 (a) the applicant's belief that the protected energy company is, or is likely to be, unable to pay its debts¹⁶;
- 769 (b) that the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the protected energy company¹⁷ on grounds of public interest¹⁸.

The applicant for an energy administration order in relation to a company must give notice of the application to:

- 770 (i) every person who has appointed an administrative receiver¹⁹ of the company;
- 771 (ii) every person who is or may be entitled to appoint an administrative receiver of the company;
- 772 (iii) every person who is or may be entitled to make an appointment in relation to the company under the statutory provision for the appointment of administrators by holders of floating charges²⁰; and
- 773 (iv) such other persons as may be prescribed by energy administration rules²¹.

The notice must be given as soon as reasonably practicable after the making of the application²².

As soon as reasonably practicable after filing the application, the applicant must give notice of its being made to:

- 774 (A) any enforcement officer²³ or other officer who to the applicant's knowledge is charged with an execution or other legal process against the protected energy company or its property; and
- 775 (B) any person who to the applicant's knowledge has distrained against the protected energy company or its property²⁴.

1 For the meaning of 'energy administration order' see PARA 743 ante.

2 For the meaning of 'company' see PARA 743 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 Energy Act 2004 s 156(1). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante. As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

5 For the prescribed form see the Energy Administration Rules 2005, SI 2005/2483, rr 4, 160, Sch 1, Form EA1.

6 Ie an affidavit complying with *ibid* r 6: r 4. There must be attached to the application an affidavit in support which must contain: (1) a statement of the protected energy company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities; (2) details of any security known or believed to be held by the creditors of the protected energy company and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under the Insolvency Act 1986 Sch B1 para 14 (as added), without the modifications made by the Energy Act 2004 Sch 20 (see PARA 753 post); if an administrative receiver has been appointed, that fact must be stated; (3) details of any insolvency proceedings in relation to the protected energy company including any petition that has been presented for the winding up of the protected energy company so far as within the immediate knowledge of the applicant; (4) details of any notice served in accordance with s 164 (see PARA 760 post) by any person intending to enforce any security over the protected energy company's assets, so far as within the immediate knowledge of the applicant; (5) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant; (6) details of any application for leave of the court to pass a resolution for the voluntary winding up of the protected energy company, so far as within the immediate knowledge of the applicant; (7) where it is intended to appoint a number of persons as energy administrators, details of the matters set out in s 158(5) (see PARA 747 post) regarding the exercise of the powers and duties of the energy administrator; and (8) any other matters which, in the opinion of those intending to make the application for an energy administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant: Energy Administration Rules 2005, SI 2005/2483, r 6(3).

7 'File in court' and 'file with the court' means deliver to the court for filing: *ibid* r 186(3). Anything to be done in energy administration proceedings by, to or before the court may be done by, to or before a judge or the registrar: r 177(1). The registrar may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor: r 177(2). In energy administration proceedings, 'the registrar' means: (1) subject to head (2) *infra*, a registrar in bankruptcy of the High Court; (2) where the proceedings are in the district registry of Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, the district registrar: r 177(3).

8 *Ibid* r 4. The application (and all supporting documents) must be filed with the court, with a sufficient number of copies for service and use as provided by r 8 (see note 21 *infra*): r 7(1). Each of the copies filed must have applied to it the seal of the court and be issued to the applicant; and on each copy there must be indorsed the date and time of filing: r 7(2). The court must fix a venue for the hearing of the application and this also must be indorsed on each copy of the application issued under r 7(2): r 7(3). After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, in relation to the protected energy company, as soon as the applicant becomes aware of them: r 7(4).

9 *Ibid* r 5(1).

10 *Ibid* r 5(2).

11 For the prescribed form see *ibid* Sch 1, Form EA2.

12 For the meaning of 'energy administrator' see PARA 743 note 7 ante.

13 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

14 Energy Administration Rules 2005, SI 2005/2483, r 5(3).

15 Ibid r 6(1).

16 Ibid r 6(2)(a).

17 Ie under the Insolvency Act 1986 s 124A (as added and amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 444.

18 Energy Administration Rules 2005, SI 2005/2483, r 6(2)(b).

19 For these purposes, 'administrative receiver' means (1) an administrative receiver within the meaning given by the Insolvency Act 1986 s 251 for the purposes of Pts I-VII (ss 1-251) (as amended) (see COMPANIES vol 15 (2009) PARA 1337); or (2) a person whose functions in relation to a non-GB company (a) are equivalent to those of an administrative receiver; and (b) relate only to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain: Energy Act 2004 s 156(4). For the meaning of 'non-GB company' see PARA 743 note 5 ante; for the meaning of 'business' see PARA 743 note 4 ante; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

20 Ie under the Insolvency Act 1986 Sch B1 para 14 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 228 et seq. References in the Energy Act 2004 Pt 3 Ch 3 (ss 154-171) (see PARAS 743-744 ante; the text and notes 1-19 supra, 21-22 infra; and PARA 746 et seq post), to the Insolvency Act 1986 Sch B1 (as added), or to a provision of Sch B1 (as added) are, except for the references in the Energy Act 2004 s 171(2) (see PARA 743 note 7 ante), references to that Schedule or that provision without the modifications made by the Energy Act 2004 Sch 20 Pt 1 (see PARA 753 post): s 171(7).

21 Ibid s 156(2). 'Energy administration rules' means rules made under the Insolvency Act 1986 s 411 (as amended) by virtue of the Energy Act 2004 s 159(3): s 171(1). The power to make rules conferred by the Insolvency Act 1986 s 411 (as amended) (company insolvency rules: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1041) applies for the purpose of giving effect to the Energy Act 2004 Pt 3 Ch 3 as it applies for the purpose of giving effect to the Insolvency Act 1986 Pts I-VII (as amended) and, accordingly, as if references in s 411 (as amended) to Pts I-VII (as amended) included references to the Energy Act 2004 Pt 3 Ch 3: s 159(3). In the exercise of that power to make rules, the Secretary of State has made the Energy Administration Rules 2005, SI 2005/2483, which came into force on 1 October 2005 (r 1) and which apply in relation to protected energy companies which the courts in England and Wales have jurisdiction to wind up (r 3). They apply to energy administration proceedings commenced on or after 1 October 2005, and nothing in the Insolvency Rules 1986, SI 1986/1925 (as amended) (see generally COMPANY AND PARTNERSHIP INSOLVENCY) applies to such proceedings commenced on or after that date: Energy Administration Rules 2005, SI 2005/2483, r 187. For miscellaneous and general provisions made by the 2005 Rules see Pt 14 (rr 153-175).

Notification for the purposes of the Energy Act 2004 s 156(2) must be by way of service in accordance with the Energy Administration Rules 2005, SI 2005/2483, r 10, verified in accordance with r 11: r 8(2). In addition to those persons referred to in the Energy Act 2004 s 156(2), the application must be served: (1) if an administrative receiver has been appointed, on him; (2) if there is pending an administration application under the Insolvency Act 1986 Sch B1 (as added), without the modifications made by the Energy Act 2004 Sch 20, on the applicant; (3) if there is pending a petition for the winding up of the protected energy company, on the petitioner (and also on the provisional liquidator, if any); (4) on any creditor who has served notice in accordance with the Energy Act 2004 s 164 (see PARA 760 post) of his intention to enforce his security over property of the protected energy company; (5) on the person proposed as energy administrator; (6) on the protected energy company; (7) if the applicant is the Secretary of State, on GEMA; (8) if the applicant is GEMA, on the Secretary of State; (9) if a supervisor of a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq) has been appointed, on him: Energy Administration Rules 2005, SI 2005/2483, r 8(3). In r 8(2), (3), references to the application are to a copy of the application issued by the court under r 7(2) together with the affidavit in support of it and the documents attached to the application: r 8(1).

Service of the application in accordance with r 8 must be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than two days before the date fixed for the hearing: r 10(1). Service must be effected as follows: (a) on the protected energy company (subject to r 10(3)), by delivering the documents to its registered office; (b) on any other person (subject to r 10(4)), by delivering the documents to his proper address; (c) in either case, in such other manner as the court may direct: r 10(2). If delivery to a protected energy company's registered office is not practicable or if the protected energy company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales: r 10(3). Subject to r 10(5), for the purposes of head (2) supra a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address: r 10(4). In the case of a person who: (i) is an authorised deposit-taker or a former authorised deposit-taker; (ii) has appointed, or is or may be entitled to appoint, an administrative receiver of the protected energy company, or is, or may be entitled to appoint an administrator of the protected energy company under the Insolvency Act 1986 Sch B1

para 14 (as added) without the modifications made by the Energy Act 2004 Sch 20; and (iii) has not notified an address for service, the proper address is the address of an office of that person where, to the knowledge of the applicant, the protected energy company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address: r 10(5). Delivery of the documents to any place or address may be made by leaving them there, or sending them by first class post: r 10(6). 'Authorised deposit-taker' means a person with permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) to accept deposits: Energy Administration Rules 2005, SI 2005/2483, r 186(1). 'Former authorised deposit-taker' means a person who is not an authorised deposit-taker, was formerly an authorised institution under the Banking Act 1987 (repealed), or a recognised bank or a licensed institution under the Banking Act 1979 (repealed), and continues to have liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution: Energy Administration Rules 2005, SI 2005/2483, r 186(2). Rule 186(1), (2) must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22, and Sch 22: Energy Administration Rules 2005, SI 2005/2483, r 186(3).

Service of the application must be verified by an affidavit of service in the form set out in Sch 1, Form EA3, specifying the date on which, and the manner in which, service was effected: r 11(1). The affidavit of service, with a sealed copy of the application exhibited to it, must be filed with the court as soon as reasonably practicable after service, and in any event not less than one day before the hearing of the application: r 11(2).

22 Energy Act 2004 s 156(3).

23 'Enforcement officer' means an individual who is authorised to act as an enforcement officer under the Courts Act 2003: Energy Administration Rules 2005, SI 2005/2483, r 2(1).

24 Ibid r 9.

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746. The hearing; powers of the court.

At the hearing of the energy administration application, any of the following may appear or be represented:

- 776 (1) the Secretary of State¹;
- 777 (2) the Gas and Electricity Markets Authority ('GEMA')²;
- 778 (3) the protected energy company³;
- 779 (4) one or more of the directors;
- 780 (5) if an administrative receiver⁴ has been appointed, that person;
- 781 (6) any person who has presented a petition for the winding up of the protected energy company;
- 782 (7) the person proposed for appointment as energy administrator⁵;
- 783 (8) any person who is the holder of a qualifying floating charge⁶;
- 784 (9) any person who has applied to the court⁷ for an administration order under the Insolvency Act 1986⁸;
- 785 (10) any creditor who has served notice⁹ of his intention to enforce his security over the protected energy company's property;
- 786 (11) any supervisor of a voluntary arrangement under Part I of the 1986 Act¹⁰;
- 787 (12) with the permission of the court, any other person who appears to have an interest justifying his appearance¹¹.

On hearing an application for an energy administration order¹², the court¹³ has the following powers:

- 788 (a) it may make the order¹⁴;
- 789 (b) it may dismiss the application;
- 790 (c) it may adjourn the hearing conditionally or unconditionally;
- 791 (d) it may make an interim order¹⁵;
- 792 (e) it may treat the application as a winding-up petition and make any order the court could make under the relevant provision of the Insolvency Act 1986¹⁶;
- 793 (f) it may make any other order which the court thinks appropriate¹⁷.

The court may, however, make an energy administration order in relation to a company only if it is satisfied:

- 794 (i) that the company is unable to pay its debts¹⁸;
- 795 (ii) that it is likely to be unable to pay its debts; or
- 796 (iii) that, on a petition by the Secretary of State for winding up of the company in the public interest¹⁹, it would be just and equitable, disregarding the objective of the energy administration²⁰, to wind up the company in the public interest²¹;

and the court must not make an energy administration order in relation to a company on the ground set out in head (iii) above unless the Secretary of State has certified to the court that

the case is one in which he considers, disregarding the objective of the energy administration, that it would be appropriate for him to petition²² for such winding up²³.

An energy administration order comes into force at the time appointed by the court or, if no time is so appointed, when the order is made²⁴. It must be in the prescribed form²⁵. As soon as reasonably practicable, the court must send two sealed copies of the order to the person who made the application²⁶ and the applicant must send a sealed copy of the order as soon as reasonably practicable to the person appointed as energy administrator²⁷. If the court makes an interim order under head (d) above or if it makes any other order under head (f) above, it must give directions as to the persons to whom, and how, notice of that order is to be given²⁸.

If the court makes an energy administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the energy administration²⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

3 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

4 For the meaning of 'administrative receiver' see PARA 745 note 19 ante (definition applied by the Energy Administration Rules 2005, SI 2005/2483, r 2(1)).

5 For the meaning of 'energy administrator' see PARA 743 note 7 ante.

6 'Qualifying floating charge' has the same meaning as in the Insolvency Act 1986 Sch B1 para 14(2) (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 228 note 1) without the modifications made by the Energy Act 2004 Sch 20 (see PARA 753 post): Energy Administration Rules 2005, SI 2005/2483, r 2(1).

7 For the meaning of 'the court' for these purposes see PARA 745 note 7 ante.

8 Ie under the Insolvency Act 1986 Sch B1 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 216 et seq), without the modifications made by the Energy Act 2004 Sch 20 (see PARA 753 post).

9 Ie in accordance with ibid s 164: see PARA 760 post.

10 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq.

11 Energy Administration Rules 2005, SI 2005/2483, r 12(1).

12 For the meaning of 'energy administration order' see PARA 743 ante.

13 For the meaning of 'the court' for these purposes see PARA 743 note 2 ante.

14 The court has no power to make an energy administration order in relation to a company which (1) is in administration under the Insolvency Act 1986 Sch B1 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 216 et seq); or (2) has gone into liquidation (within the meaning of s 247(2) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 9 note 3): Energy Act 2004 s 157(4). See also PARA 745 note 20 ante.

15 An interim order under ibid s 157(1)(d) (see head (d) in the text) may, in particular: (1) restrict the exercise of a power of the company or of its directors; or (2) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company: s 157(6). References for these purposes to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with the Insolvency Act 1986 Pt XIII (ss 388-398) (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 8 et seq); but as if references in Pt XIII (as amended) included references to a Northern Irish joint stock company: Energy Act 2004 s 171(3). For the meaning of 'Northern Irish joint stock company' see PARA 743 note 2 ante. Where the company in relation to which an application is made is a non-GB company, the reference in s 157(6)(a) (see head (1) supra) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power: (a) within Great Britain; or (b) in relation to the company's affairs or business so far as carried on in Great Britain, or to its

property in Great Britain: s 157(7). For the meaning of 'non-GB company' see PARA 743 note 5 ante; for the meaning of 'business' see PARA 743 note 4 ante; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

16 Ie under the Insolvency Act 1986 s 125: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 477.

17 Energy Act 2004 s 157(1).

18 For the purposes of ibid s 157, a company is unable to pay its debts if: (1) it is a company which is deemed to be so unable under the Insolvency Act 1986 s 123 (definition of inability to pay debts: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 446); or (2) it is an unregistered company which is deemed, by virtue of any of ss 222-224, to be so unable for the purposes of s 221 (as amended) (winding up of unregistered companies: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1152), or which would be so deemed if it were an unregistered company for the purposes of ss 222-224: Energy Act 2004 s 157(8). For the meaning of 'unregistered company' see PARA 743 note 2 ante,

19 Ie under the Insolvency Act 1986 s 124A (as added and amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 444.

20 As to the objective of the energy administration see PARA 744 ante.

21 Energy Act 2004 s 157(2).

22 See note 19 supra.

23 Energy Act 2004 s 157(3).

24 Ibid s 157(5).

25 Energy Administration Rules 2005, SI 2005/2483, r 12(2). For the prescribed form see rr 12(2), 160, Sch 1, Form EA4.

26 Ibid r 13(1).

27 Ibid r 13(2).

28 Ibid r 13(3).

29 Ibid r 12(3). As to the priority of expenses of the energy administration see r 35; and as to costs and expenses generally see r 154.

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747. Energy administrators.

The energy administrator¹ of a company² is an officer of the court³. In exercising and performing his powers and duties in relation to the company, he is the company's agent⁴.

A person is not to be the energy administrator of a company unless he is a person qualified to act as an insolvency practitioner⁵ in relation to the company⁶. Where the court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out:

- 797 (1) which, if any, of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
- 798 (2) the circumstances, if any, in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and
- 799 (3) the circumstances, if any, in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them⁷.

The management by the energy administrator of a company of any affairs, business⁸ or property⁹ of the company must be carried out for the purpose of achieving the objective of the energy administration¹⁰ as quickly and as efficiently as is reasonably practicable¹¹. The energy administrator of a company must exercise and perform his powers and duties in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects:

- 800 (a) the interests of the creditors of the company as a whole; and
- 801 (b) subject to those interests, the interests of the members¹² of the company as a whole¹³.

The energy administrator is entitled to receive remuneration for his services as such¹⁴. The remuneration must be fixed by reference to the time properly given by the insolvency practitioner (as energy administrator) and his staff in attending to matters arising in the energy administration¹⁵. It must be fixed by the court¹⁶ and the energy administrator must make an application to court accordingly¹⁷. He must give at least 14 days' notice of his application to the following, who may appear or be represented:

- 802 (i) the Secretary of State¹⁸;
- 803 (ii) the Gas and Electricity Markets Authority ('GEMA')¹⁹; and
- 804 (iii) the creditors of the protected energy company²⁰.

In fixing the remuneration, the court must have regard to the following matters:

- 805 (A) the complexity (or otherwise) of the case;

- 806 (b) any respects in which, in connection with the protected energy company's affairs, there falls on the energy administrator any responsibility of an exceptional kind or degree;
- 807 (c) the effectiveness with which the energy administrator appears to be carrying out, or to have carried out, his duties as such; and
- 808 (d) the value and nature of the property with which he has to deal²¹.

Where there are joint energy administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court for settlement by order²².

If the energy administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the protected energy company, profit costs must not be paid unless this is authorised by the court²³.

1 For the meaning of 'energy administrator' see PARA 743 note 7 ante.

2 For the meaning of 'company' see PARA 743 note 2 ante.

3 Energy Act 2004 s 158(1)(a). For the meaning of 'court' see PARA 743 note 2 ante.

4 Ibid s 158(1)(b).

5 For the meaning of references to a person qualified to act as an insolvency practitioner see PARA 746 note 15 ante.

6 Energy Act 2004 s 158(4).

7 Ibid s 158(5).

8 For the meaning of 'business' see PARA 743 note 4 ante.

9 For the meaning of 'property' see PARA 743 note 5 ante.

10 As to the objective of the energy administration see PARA 744 ante.

11 Energy Act 2004 s 158(2).

12 For the meaning of 'member' see PARA 744 note 9 ante.

13 Energy Act 2004 s 158(3).

14 Energy Administration Rules 2005, SI 2005/2483, r 74(1).

15 Ibid r 74(2).

16 For the meaning of 'court' for these purposes see PARA 745 note 7 ante.

17 Energy Administration Rules 2005, SI 2005/2483, r 74(3).

18 As to the Secretary of State see PARA 601 note 1 ante.

19 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

20 Energy Administration Rules 2005, SI 2005/2483, r 74(4). For the meaning of 'protected energy company' see PARA 743 note 3 ante.

21 Ibid r 74(5).

22 Ibid r 74(6).

23 Ibid r 74(7).

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(ii) Transfer Schemes to Achieve the Objective of an Energy Administration

748. Transfer schemes; in general.

Where the court¹ has made an energy administration order² in relation to a company³ (the 'old energy company') and it is proposed that a transfer to achieve the objective of the energy administration⁴ be made to another company (the 'new energy company'), the provisions set out in Schedule 21 to the Energy Act 2004⁵ apply⁶. It is for the energy administrator⁷, while the energy administration order is in force, to act on behalf of the old energy company in the doing of anything that it is authorised or required to do by or under those provisions⁸.

1 For the meaning of 'court' see PARA 743 note 2 ante.

2 For the meaning of 'energy administration order' see PARA 743 ante.

3 For the meaning of 'company' see PARA 743 note 2 ante.

4 I.e. a transfer falling within the Energy Act 2004 s 155(3); see PARA 744 ante.

5 I.e. *ibid* s 159(2), Sch 21 (paras 1-13); see the text and notes 1-4 *supra*, 6-8 *infra*; and PARA 749 *et seq post*.

6 *Ibid* Sch 21 para 1.

7 For the meaning of 'energy administrator' see PARA 743 note 7 ante.

8 Energy Act 2004 Sch 21 para 2.

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749. Making and effect of energy transfer schemes.

The old energy company¹ may, with the consent of the new energy company², and for the purpose of giving effect to the proposed transfer, make a scheme³ for the transfer of property⁴, rights and liabilities from the old energy company to the new energy company (an 'energy transfer scheme')⁵. Such a scheme may be made only at a time when the energy administration order⁶ is in force in relation to the old energy company⁷.

An energy transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways:

- 809 (1) by specifying or describing them in particular;
- 810 (2) by identifying them generally by reference to, or to a specified part of, the undertaking of the old energy company; or
- 811 (3) by specifying the manner in which they are to be determined⁸.

An energy transfer scheme takes effect⁹ at the time appointed by the court¹⁰; but the court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Secretary of State¹¹. The Secretary of State may modify¹² an energy transfer scheme before approving it, but only modifications to which both the old energy company and the new energy company have consented may be made¹³.

In deciding whether to approve an energy transfer scheme, the Secretary of State must have regard, in particular, to the public interest and to the effect the scheme is likely to have, if any, upon the interests of third parties¹⁴. Before approving an energy transfer scheme, the Secretary of State must consult the Gas and Electricity Markets Authority ('GEMA')¹⁵.

The old energy company and the new energy company each have a duty to provide the Secretary of State with all information and other assistance that he may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on him by the above provisions¹⁶.

1 For the meaning of 'the old energy company' see PARA 748 ante.

2 For the meaning of 'the new energy company' see PARA 748 ante.

3 I.e. a scheme under the Energy Act 2004 s 159(2), Sch 21 (paras 1-13): see PARA 748 ante; the text and notes 4-16 infra; and PARA 750 et seq post.

4 For the meaning of 'property' see PARA 743 note 5 ante.

5 Energy Act 2004 Sch 21 para 3(1). Where the proposed transfer is a transfer of a kind mentioned in s 155(4)(a) (transfer to a wholly-owned subsidiary: see PARA 744 ante), Sch 21 has effect in relation to that transfer as if the requirement for the consent of the new company in Sch 21 para 3(1) were omitted: see Sch 21 para 12(a).

6 For the meaning of 'energy administration order' see PARA 743 ante.

7 Energy Act 2004 Sch 21 para 3(2).

8 Ibid Sch 21 para 3(3).

9 le in accordance with ibid Sch 21 para 8. In relation to each provision of an energy transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities: (1) the Energy Act 2004 has effect so as, without further assurance, to vest the property or interests, or those rights or liabilities, in the transferee at the time appointed by the court for the purposes of Sch 21 para 3(4); and (2) the provisions of that scheme in relation to that property or those interests, or those rights or liabilities, have effect from that time: Sch 21 para 8(1). For these purposes, 'the transferee' (a) in relation to property, rights or liabilities transferred by an energy transfer scheme, means the new energy company; and (b) in relation to interests, rights or liabilities created by such a scheme, means the person in whose favour, or in relation to whom, they are created: Sch 21 para 8(2).

10 Ibid Sch 21 para 3(4). For the meaning of 'court' see PARA 743 note 2 ante.

11 Ibid Sch 21 para 3(5). As to the Secretary of State see PARA 601 note 1 ante.

12 For the meaning of 'modify' see PARA 733 note 8 ante.

13 Energy Act 2004 Sch 21 para 3(6). Where the proposed transfer is a transfer of a kind mentioned in s 155(4)(a) (transfer to a wholly-owned subsidiary: see PARA 744 ante), Sch 21 has effect in relation to that transfer as if Sch 21 para 3(6) had effect with 'the old energy company has consented may be made' substituted for the words from 'both' onwards: Sch 21 para 12(b).

14 Ibid Sch 21 para 3(7). 'Third party', in relation to an energy transfer scheme or any modification of such a scheme, means a person who is neither the old energy company nor the new energy company: Sch 21 para 13.

15 Ibid Sch 21 para 3(8). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

16 Ibid Sch 21 para 3(9).

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750. Provision that may be made by a scheme; in general.

An energy transfer scheme¹ may contain provision:

- 812 (1) for the creation, in favour of the old energy company² or the new energy company³, of an interest or right in or in relation to property⁴ transferred in accordance with the scheme;
- 813 (2) for giving effect to a transfer to the new energy company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old energy company;
- 814 (3) for the creation of new rights and liabilities, including rights of indemnity and duties to indemnify, as between the old energy company and the new energy company;
- 815 (4) in connection with any provision made under heads (1) to (3) above, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates⁵.

The property, rights and liabilities of the old energy company that may be transferred in accordance with an energy transfer scheme include:

- 816 (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old energy company;
- 817 (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
- 818 (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
- 819 (d) property situated anywhere in Great Britain⁶ or elsewhere⁷;
- 820 (e) rights and liabilities under the law of a part of Great Britain or of a place outside Great Britain⁸;
- 821 (f) rights and liabilities under an enactment⁹, Community instrument or subordinate legislation¹⁰.

The transfers to which effect may be given by an energy transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were no such requirement to obtain a person's consent or concurrence, no such liability in respect of a contravention of any other requirement, and no such interference with any interest or right, as there would be, in the case of a transaction apart from the Energy Act 2004, by reason of a provision¹¹ that has effect, whether under an enactment or agreement or otherwise, in relation to the terms on which the old energy company is entitled, or subject, to anything to which the transfer relates¹².

Where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under the 2004 Act in connection with an energy transfer scheme, to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as modified or

terminated, then that entitlement is not enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme, and is then enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement¹³.

An energy transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme¹⁴; and such provision may include different provision for different cases or different purposes¹⁵. In particular, an energy transfer scheme may make provision, in relation to a provision of the scheme:

- 822 (i) for the new energy company to be treated as the same person in law as the old energy company;
- 823 (ii) for agreements made, transactions effected or other things done by or in relation to the old energy company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme¹⁶, as made, effected or done by or in relation to the new energy company;
- 824 (iii) for references in an agreement, instrument or other document¹⁷ to the old energy company or to an employee or office holder with the old energy company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications¹⁸ as are specified in the scheme¹⁹;
- 825 (iv) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old energy company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new energy company;
- 826 (v) for proceedings commenced by or against the old energy company to be continued by or against the new energy company²⁰.

An energy transfer scheme may make provision for disputes as to the effect of the scheme between the old energy company and the new energy company to be referred to such arbitration as may be specified in or determined under the scheme²¹.

Where a person is entitled, in consequence of an energy transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property, the scheme may provide for that person to be treated as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of it²².

1 For the meaning of 'energy transfer scheme' see PARA 749 ante.

2 For the meaning of 'the old energy company' see PARA 748 ante.

3 For the meaning of 'the new energy company' see PARA 748 ante.

4 For the meaning of 'property' see PARA 743 note 5 ante.

5 Energy Act 2004 s 159(2), Sch 21 para 4(1).

6 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

7 Where, however, the old energy company is a non-GB company, the property, rights and liabilities of that company which may be transferred by an energy transfer scheme, or in relation to which interests, rights or liabilities may be created by such a scheme, are confined to (1) property of the old energy company in Great Britain; (2) rights and liabilities arising in relation to any such property; and (3) rights and liabilities arising in connection with the affairs and business of the company so far as carried on in Great Britain: Energy Act 2004 Sch 21 para 10. For the meaning of 'non-GB company' see PARA 743 note 5 ante; and for the meaning of 'business' see PARA 743 note 4 ante. As to foreign property etc of other companies see note 8 infra.

8 Where there is a transfer in accordance with an energy transfer scheme of any foreign property, or a foreign right or liability, the old energy company and the new energy company must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the new energy company is effective under the relevant foreign law: *ibid* Sch 21 para 11(1). Until the vesting of the foreign property, right or liability in the new energy company in accordance with the energy transfer scheme is effective under the relevant foreign law, the old energy company must either hold the property or right for the benefit of the new energy company or discharge the liability on behalf of the new energy company: Sch 21 para 11(2). The old energy company must comply with any directions given to it by the new energy company in relation to the performance of the obligations under Sch 21 para 11(1), (2) of the old energy company (Sch 21 para 11(3)); but nothing in Sch 21 para 11(1)-(3) prejudices the effect under the law of a part of Great Britain of the vesting of a foreign property, right or liability in the new energy company in accordance with an energy transfer scheme (Sch 21 para 11(4)). Where (1) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a company; and (2) by virtue of Sch 21 para 11, the company holds the other property or right for the benefit of the new energy company or is required to discharge the liability on behalf of the new energy company, the property, right or liability acquired or incurred immediately becomes the property, right or liability of the new energy company: Sch 21 para 11(5). The provisions of Sch 21 para 11(1)-(5) have effect in relation to foreign property, rights or liabilities transferred to the new energy company under Sch 21 para 11(5) as they have effect in the case of property, rights and liabilities transferred in accordance with an energy transfer scheme: Sch 21 para 11(6). References for these purposes to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside Great Britain: Sch 21 para 11(7).

Expenses incurred under Sch 21 para 11 by a company as the company from which anything is transferred are to be met by the new energy company (Sch 21 para 11(8)); and an obligation imposed under Sch 21 para 11 in relation to property, rights or liabilities is enforceable as if contained in a contract between the old energy company and the new energy company (Sch 21 para 11(9)).

9 For these purposes, 'enactment' includes Acts of the Scottish Parliament and Northern Ireland legislation: *ibid* s 196(1).

10 *Ibid* Sch 21 para 4(2). 'Subordinate legislation' has the same meaning as in the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232): Energy Act 2004 s 196(1).

11 *Ie* a provision falling within *ibid* Sch 21 para 4(4).

12 *Ibid* Sch 21 para 4(3), (4). Schedule 21 para 4(3), (4) applies to the creation of an interest or right by an energy transfer scheme as it applies to the transfer of an interest or right (Sch 21 para 4(8)); and Sch 21 para 4(3)-(6) has effect where shares in a subsidiary of the old energy company are transferred: (1) as if the reference in Sch 21 para 4(4) to the terms on which the old energy company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and (2) in relation to an interest or right of the subsidiary, as if the references in Sch 21 para 4(6) (see the text to note 13 *infra*) to the transfer of the interest or right included a reference to the transfer of the shares (Sch 21 para 4(7)).

13 *Ibid* Sch 21 para 4(5), (6).

14 *Ibid* Sch 21 para 7(1).

15 *Ibid* Sch 21 para 7(2).

16 For these purposes, references to a transfer in accordance with an energy transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability: *ibid* Sch 21 para 7(8).

17 For the meaning of 'document' see PARA 733 note 4 *ante*.

18 For the meaning of 'modifications' see PARA 733 note 8 *ante*.

19 The Energy Act 2004 Sch 21 para 7(3)(c) (see head (iii) in the text) does not apply to references in an enactment or in subordinate legislation: Sch 21 para 7(4).

20 *Ibid* Sch 21 para 7(3).

21 *Ibid* Sch 21 para 7(5).

22 *Ibid* Sch 21 para 7(6)(a). The Law of Property Act 1925 s 64 (production and safe custody of documents: see SALE OF LAND vol 42 (Reissue) PARA 299) has effect accordingly, and on the basis that the acknowledgment did not contain an expression of contrary intention: Energy Act 2004 Sch 21 para 7(6)(b).

UPDATE

750 Provision that may be made by a scheme; in general

NOTE 9--Energy Act 2004 s 196(1) amended: Climate Change Act 2008 Sch 7 para 7(4).

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751. Provision for transfer of licences and of statutory powers and duties.

The provision that may be made by an energy transfer scheme¹ includes the transfer of a relevant licence² from the old energy company³ to the new energy company⁴; and such a transfer may relate to the whole or any part of the licence⁵. Where such a transfer relates to a part of the licence, the provision so made may include:

- 827 (1) provision apportioning responsibility between the old energy company and the new energy company in relation to the making of payments required by conditions included in the licence and ensuring compliance with any other requirements of the conditions included in the licence; and
- 828 (2) provision making incidental modifications⁶ to the terms and conditions of the licence⁷.

The provision that may be made by an energy transfer scheme also includes provision for some or all of the powers and duties conferred or imposed upon the old energy company by or under an enactment⁸, so far as those powers and duties are connected with:

- 829 (a) the undertaking of the old energy company to the extent the energy transfer scheme relates to that undertaking; or
- 830 (b) any property, rights or liabilities to be transferred in accordance with the scheme,

and including, in particular, powers and duties relating to the carrying out of works or the acquisition of land, to be transferred to the new energy company or to become powers and duties that are exercisable, or must be performed, concurrently by the old energy company and the new energy company⁹. Such provision may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision¹⁰.

1 For the meaning of 'energy transfer scheme' see PARA 749 ante.

2 For the meaning of 'relevant licence' see PARA 743 note 3 ante.

3 For the meaning of 'old energy company' see PARA 748 ante.

4 Energy Act 2004 s 159(2), Sch 21 para 5(1). For the meaning of 'new energy company' see PARA 748 ante.

5 Ibid Sch 21 para 5(2). References in Sch 21 para 5 to a part of a licence are references to one or both of (1) a part of the activities authorised by the licence; (2) a part of the area in relation to which the holder of the licence is authorised to carry on those activities: Sch 21 para 5(4).

6 For the meaning of 'modifications' see PARA 733 note 8 ante.

7 Energy Act 2004 Sch 21 para 5(3).

8 For the meaning of 'enactment' see PARA 750 note 9 ante.

9 Energy Act 2004 Sch 21 para 6(1), (3), (4).

10 Ibid Sch 21 para 6(2).

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752. Subsequent modification of scheme.

The Secretary of State¹ may by notice to the old energy company² and the new energy company³ modify⁴ an energy transfer scheme⁵ after it has taken effect, but only modifications to which both the old energy company and the new energy company have consented may be made⁶. The notice must specify the time at which it is to take effect (the 'modification time')⁷.

Where a notice is so issued in relation to an energy transfer scheme, as from the modification time, the scheme is to be treated for all purposes as having taken effect, at the time appointed for the statutory purposes⁸, with the modifications made by the notice⁹. Those modifications may make:

- 831 (1) any provision that could have been included in the scheme when it took effect at the time appointed for the statutory purposes; and
- 832 (2) transitional provision in connection with provision falling within head (1) above¹⁰.

In deciding whether to modify an energy transfer scheme, the Secretary of State must have regard, in particular, to the public interest, and to the effect the modification is likely to have, if any, upon the interests of third parties¹¹. Before modifying an energy transfer scheme that has taken effect, the Secretary of State must consult the Gas and Electricity Markets Authority ('GEMA')¹².

The old energy company and the new energy company each have a duty to provide the Secretary of State with all information and other assistance that he may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on him by these provisions¹³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'old energy company' see PARA 748 ante.

3 For the meaning of 'new energy company' see PARA 748 ante.

4 For the meaning of 'modify' see PARA 733 note 8 ante.

5 For the meaning of 'energy transfer scheme' see PARA 749 ante.

6 Energy Act 2004 s 159(2), Sch 21 para 9(1).

7 Ibid Sch 21 para 9(2).

8 Ie for the purposes of ibid Sch 21 para 3(4): see PARA 749 ante.

9 Ibid Sch 21 para 9(3).

10 Ibid Sch 21 para 9(4).

11 Ibid Sch 21 para 9(5). For the meaning of 'third party' see PARA 749 note 14 ante.

12 Ibid Sch 21 para 9(6). As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

13 Ibid Sch 21 para 9(7).

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(iii) Conduct of the Administration

753. Application, with modifications, of specified provisions of the Insolvency Act 1986.

Specified provisions of the Insolvency Act 1986 relating to:

- 833 (1) the nature of administration¹;
- 834 (2) the effect of administration²;
- 835 (3) announcement of the administrator's appointment³;
- 836 (4) statement of the company's affairs⁴;
- 837 (5) the administrator's proposals⁵;
- 838 (6) the creditors' meeting⁶;
- 839 (7) revision of the administrator's proposals⁷;
- 840 (8) general powers and duties of the administrator and functions as to distribution⁸;
- 841 (9) charged property and hire purchase property⁹;
- 842 (10) protection for a secured or preferential creditor¹⁰;
- 843 (11) challenge to an administrator's conduct of the company and misfeasance¹¹;
- 844 (12) termination of the administrator's appointment from a specified time¹²;
- 845 (13) the ending of administration¹³;
- 846 (14) replacement of the administrator¹⁴;
- 847 (15) vacation of office¹⁵;
- 848 (16) joint and concurrent administrators¹⁶;
- 849 (17) the presumption of validity¹⁷;
- 850 (18) majority decision by directors¹⁸;
- 851 (19) penalties and extension of time limits¹⁹; and
- 852 (20) interpretation and application²⁰;

have effect with modifications²¹ in relation to energy administration orders²² as they have effect in relation to administration orders under that 1986 Act²³. Those provisions, as so modified, have effect in the case of an unregistered company²⁴ with further modifications²⁵.

1 Ie the Insolvency Act 1986 Sch B1 para 1 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 212, 214.

2 Ie ibid Sch B1 paras 40-45 (as added and amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 261-263.

3 Ie ibid Sch B1 para 46 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 264. As to notification and advertisement of the energy administrator's appointment see also the Energy Administration Rules 2005, SI 2005/2483, rr 14, 90.

4 Ie the Insolvency Act 1986 Sch B1 paras 47, 48 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 266, 267. As to the statement of affairs see also the Energy Administration Rules 2005, SI 2005/2483, rr 15-19.

- 5 le the Insolvency Act 1986 Sch B1 para 49 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 273, 274. As to the energy administrator's proposals see also the Energy Administration Rules 2005, SI 2005/2483, r 20.
- 6 le the Insolvency Act 1986 Sch B1 para 50 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 274, 275. As to creditors' meetings see also the Energy Administration Rules 2005, SI 2005/2483, Pt 4 Ch 1 (rr 21-32); as to the quorum at such meetings see r 157; and as to evidence of proceedings at meetings see r 158. As to company meetings see r 33; and as to proxies and company representation see Pt 12 (rr 140-146).
- 7 le the Insolvency Act 1986 Sch B1 para 54 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 292, 293.
- 8 le ibid Sch B1 paras 59-68 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 312 et seq. As to distribution see also the Energy Administration Rules 2005, SI 2005/2483, Pt 7 (rr 36-73); and as to provable debts see r 155.
- 9 le the Insolvency Act 1986 Sch B1 paras 70-72 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 357-359. As to the disposal of charged property see also the Energy Administration Rules 2005, SI 2005/2483, r 34.
- 10 le the Insolvency Act 1986 Sch B1 para 73 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 360.
- 11 le ibid Sch B1 paras 74-75 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 361, 362.
- 12 le ibid Sch B1 para 79 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 365.
- 13 le ibid Sch B1 paras 83-86 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 370 et seq. As to the ending of energy administration see also the Energy Administration Rules 2005, SI 2005/2483, Pt 9 (rr 75-80).
- 14 le the Insolvency Act 1986 Sch B1 paras 87-91 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 244 et seq. As to replacing the energy administrator see also the Energy Administration Rules 2005, SI 2005/2483, rr 87-88.
- 15 le the Insolvency Act 1986 Sch B1 paras 98-99 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 250, 251. As to vacation of office see also the Energy Administration Rules 2005, SI 2005/2483, rr 81-86, 91.
- 16 le the Insolvency Act 1986 Sch B1 paras 100-103 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 259, 260. See also the Energy Administration Rules 2005, SI 2005/2483, r 89.
- 17 le the Insolvency Act 1986 Sch B1 para 104 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 note 1.
- 18 le ibid Sch B1 para 105 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 et seq.
- 19 le ibid Sch B1 paras 106-107, 109-110 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 232 et seq. As to time limits for the purposes of the Energy Administration Rules 2005, SI 2005/2483, see r 162.
- 20 le the Insolvency Act 1986 Sch B1 paras 111, 111A (as added and amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 et seq. As to the interpretation of the Energy Administration Rules 2005, SI 2005/2483, see rr 176-186.
- 21 For the meaning of 'modifications' see PARA 733 note 8 ante.
- 22 For the meaning of 'energy administration order' see PARA 743 ante.
- 23 Energy Act 2004 s 159(1), Sch 20 paras 1(1), 2. For the relevant modifications see Sch 20 Pt 2 (paras 3-32).
- 24 For the meaning of 'unregistered company' see PARA 743 note 2 ante.

25 Energy Act 2004 Sch 20 para 1(2). For the relevant modifications see Sch 20 Pt 3 (paras 33-40).

UPDATE

753 Application, with modifications, of specified provisions of the Insolvency Act 1986

NOTE 20--SI 2005/2483 r 186 amended: SI 2009/2748.

NOTE 23--2004 Act Sch 20 para 16 amended: SI 2008/948.

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754. Modifications of other relevant enactments.

Every reference, however, expressed, which is or includes reference to:

- 853 (1) an administrator¹ appointed by an administration order²;
- 854 (2) an administration order;
- 855 (3) an application for an administration order;
- 856 (4) a company in administration;
- 857 (5) entering into administration;
- 858 (6) Schedule B1 to the Insolvency Act 1986³ or a provision of that Schedule,

which is contained in a provision of the 1986 Act, other than in that Schedule, or in any other enactment⁴ passed before 22 July 2004, has effect as including a reference to whatever corresponds to it for the purposes of energy administration⁵. This does not, however:

- 859 (a) entitle the energy administrator of an unregistered company⁶ to make a proposal⁷ for a company voluntary arrangement⁸;
- 860 (b) confer any right⁹ for a supervisor of a voluntary arrangement to apply for an energy administration order in relation to a protected energy company¹⁰; or
- 861 (c) apply to the statutory provision¹¹ relating to administration applications by the Financial Services Authority¹².

There are specific modifications to the provisions of the Insolvency Act 1986 relating to the effect of the approval of voluntary arrangements¹³, challenging decisions in relation to voluntary arrangements¹⁴ and the commencement of winding up¹⁵. Additionally, the Secretary of State¹⁶ may by order¹⁷ make such modifications of the 1986 Act, or any other enactment passed before 22 July 2004 that relates to insolvency or makes provision by reference to anything that is or may be done under the 1986 Act, as he considers appropriate in relation to any provision made by or under the provisions of the Energy Act 2004¹⁸ relating to energy administration¹⁹.

1 For these purposes, 'administrator' is to be construed in accordance with the Insolvency Act 1986 Sch B1 (as added and amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 note 1), disregarding the Energy Act 2004 s 159(2), Sch 20 Pt 1 (paras 1-2) (see PARA 753 ante): Sch 20 para 47.

2 For these purposes, 'administration order' is to be construed in accordance with the Insolvency Act 1986 Sch B1 (as added and amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212), disregarding the Energy Act 2004 Sch 20 Pt 1 (paras 1-2) (see PARA 753 ante): Sch 20 para 47.

3 Ie the Insolvency Act 1986 Sch B1 (as added and amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 212 et seq.

4 For the meaning of 'enactment' see PARA 748 note 9 ante.

5 See the Energy Act 2004 Sch 20 para 41(1), (2). For these purposes: (1) an energy administrator corresponds to an administrator appointed by an administration order; (2) an energy administration order corresponds to an administration order; (3) an application for an energy administration order corresponds to an application for an administration order; (4) a company in energy administration corresponds to a company in

administration; (5) entering into energy administration corresponds to entering into administration; (6) what corresponds to the Insolvency Act 1986 Sch B1 (as added) or a provision of that Schedule is that Schedule or that provision as applied by the Energy Act 2004 Sch 20 Pt 1: Sch 20 para 41(3). For the meaning of 'energy administrator' see PARA 743 note 7 ante; and for the meaning of 'energy administration order' see PARA 743 ante.

6 For the meaning of 'unregistered company' see PARA 743 note 2 ante.

7 Ie under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq.

8 Energy Act 2004 Sch 20 para 42(1).

9 Ie under the Insolvency Act 1986 s 7(4): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 133.

10 Energy Act 2004 Sch 20 para 42(2). For the meaning of 'protected energy company' see PARA 743 note 3 ante.

11 Ie apply to the Financial Services and Markets Act 2000 s 359 (as substituted) (administration orders): see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 491.

12 Energy Act 2004 Sch 20 para 42(3).

13 Ie the Insolvency Act 1986 s 5 (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 131. For the specified modifications see the Energy Act 2004 Sch 20 para 43.

14 Ie the Insolvency Act 1986 s 6 (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 135. For the specified modifications see the Energy Act 2004 Sch 20 para 44.

15 Ie the Insolvency Act 1986 s 129(1A) (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 489. For the specified modifications see the Energy Act 2004 Sch 20 para 45.

16 As to the Secretary of State see PARA 601 note 1 ante.

17 The power to make an order containing provision so authorised is subject to the affirmative resolution procedure: Energy Act 2004 Sch 20 para 46(3). Where the Energy Act 2004 specifies that the power to make any provision by Order in Council or other order is subject to the affirmative resolution procedure, no order under that Act containing that provision (with or without other provision) may be made unless a draft of the Order in Council or other order has been laid before Parliament and approved by a resolution of each House: s 192(3).

18 Ie by or under *ibid* Pt 3 Ch 3 (ss 154-171): see PARA 743 et seq ante, PARA 755 et seq post.

19 *Ibid* Sch 20 para 46(1). Such an order may also make modifications of Sch 20 Pt 4 (paras 41-46) (see the text and notes 1-18 *supra*): Sch 20 para 46(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(iii) Conduct of the Administration/755. Court procedure and practice; examination of persons in energy administration proceedings.

755. Court procedure and practice; examination of persons in energy administration proceedings.

Court procedure and practice in energy administration proceedings¹ is set out in Part 11 of the Energy Administration Rules 2005². Those rules make provision for:

- 862 (1) the form and contents of, and the procedure for, applications³;
- 863 (2) the nomination, appointment and remuneration of shorthand writers⁴;
- 864 (3) enforcement procedures⁵;
- 865 (4) court records and returns⁶;
- 866 (5) costs and detailed assessment⁷;
- 867 (6) persons incapable of managing their affairs⁸; and
- 868 (7) appeals in energy administration proceedings⁹.

They also make provision for general procedural matters such as rights of audience and attendance and the giving of security for costs¹⁰. The Civil Procedure Rules ('CPR') and the practice and procedure of the High Court, including any practice direction, apply to energy administration proceedings with any necessary modifications, except so far as inconsistent with the 2005 Rules¹¹. All energy administration proceedings must be allocated to the multi-track¹² and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply¹³. Rights of audience in energy administration proceedings are the same as obtain in insolvency proceedings¹⁴.

Part 13 of the 2005 Rules makes provision for the examination of persons in energy administration proceedings¹⁵.

1 'Energy administration proceedings' means any proceedings under the Energy Act 2004 ss 154-171, Schs 20, 21 (see PARA 743 et seq ante, PARA 756 et seq post): Energy Administration Rules 2005, SI 2005/2483, r 182.

2 See *ibid* Pt 11 (rr 92-139).

3 See *ibid* Pt 11 Ch 1 (rr 92-103).

4 See *ibid* Pt 11 Ch 2 (rr 104, 105).

5 See *ibid* Pt 11 Ch 3 (rr 106-108).

6 See *ibid* Pt 11 Ch 4 (rr 109-114).

7 See *ibid* Pt 11 Ch 5 (rr 115-122).

8 See *ibid* Pt 11 Ch 6 (rr 123-126).

9 See *ibid* Pt 11 Ch 7 (rr 127-128).

10 See *ibid* Pt 11 Ch 8 (rr 129-139).

11 *Ibid* r 129(1).

12 le the multi-track for which CPR Pt 29 (the multi-track) makes provision: see CIVIL PROCEDURE vol 11 (2009) PARA 293 et seq.

13 Energy Administration Rules 2005, SI 2005/2483, r 129(2).

14 Ibid r 130. As to rights of audience in insolvency proceedings see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1061.

15 See ibid Pt 13 (rr 147-152).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(iv) Restrictions on other Insolvency Procedures/756. Restrictions on winding-up orders.

(iv) Restrictions on other Insolvency Procedures

756. Restrictions on winding-up orders.

Where a petition for the winding up of a protected energy company¹ is presented by a person other than the Secretary of State², the court³ is not to exercise its powers on a winding-up petition⁴ unless:

- 869 (1) notice of the petition has been served both on the Secretary of State and on the Gas and Electricity Markets Authority ('GEMA')⁵; and
- 870 (2) a period of at least 14 days has elapsed since the service of the last of those notices to be served⁶.

If an application for an energy administration order⁷ in relation to the company is made⁸ to the court before a winding-up order is made on the petition, the court may exercise its powers on the hearing of the application for the energy administration order⁹, instead of exercising its powers on a winding-up petition¹⁰.

1 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'court' see PARA 743 note 2 ante.

4 For these purposes, references to the court's powers on a winding-up petition are references to (1) its powers under the Insolvency Act 1986 s 125 (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 477), other than its power of adjournment; and (2) its powers under s 135 (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 491); Energy Act 2004 s 160(4).

5 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

6 Energy Act 2004 s 160(1), (2).

7 For the meaning of 'energy administration order' see PARA 743 ante.

8 Ie in accordance with the Energy Act 2004 s 156(1); see PARA 745 ante.

9 Ie its powers under ibid s 157; see PARA 746 ante.

10 Ibid s 160(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(iv) Restrictions on other Insolvency Procedures/757. Restrictions on voluntary winding up.

757. Restrictions on voluntary winding up.

A protected energy company¹ has no power to pass a resolution for voluntary winding up² without the permission of the court³; and such permission may be granted only on an application made by the company⁴. The court is not to grant permission on such an application unless:

- 871 (1) notice of the application has been served both on the Secretary of State⁵ and on the Gas and Electricity Markets Authority ('GEMA')⁶; and
- 872 (2) a period of at least 14 days has elapsed since the service of the last of those notices to be served⁷.

If an application for an energy administration order⁸ in relation to the company is made⁹ after an application for permission under the above provisions has been made and before it is granted, the court may exercise its powers on the hearing of the application for the energy administration order¹⁰, instead of granting permission¹¹.

1 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

2 Ie a resolution passed under any of the Insolvency Act 1986 s 84(1)(a)-(c) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 939); s 84(2) (definition applied by the Energy Act 2004 s 161(5)).

3 Ibid s 161(1). For the meaning of 'court' see PARA 743 note 2 ante.

4 Ibid s 161(2).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

7 Energy Act 2004 s 161(3).

8 For the meaning of 'energy administration order' see PARA 743 ante.

9 Ie in accordance with the Energy Act 2004 s 156(1); see PARA 745 ante.

10 Ie its powers under ibid s 157; see PARA 746 ante.

11 Ibid s 161(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(6) SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES/(iv) Restrictions on other Insolvency Procedures/758. Restrictions on making of ordinary administration orders.

758. Restrictions on making of ordinary administration orders.

The following provisions apply where an ordinary administration application¹ is made in relation to a protected energy company² by a person other than the Secretary of State³:

- 873 (1) the court⁴ must dismiss the application if:
- 39
56. (a) an energy administration order⁵ is in force in relation to the company; or
57. (b) an energy administration order has been made in relation to the company but is not yet in force⁶;
- 40
- 874 (2) where head (1) above does not apply, the court, on hearing the application, must not exercise its powers under the relevant provision of the Insolvency Act 1986⁷, other than its power of adjournment, unless:
- 41
58. (a) notice of the application has been served both on the Secretary of State and on the Gas and Electricity Markets Authority ('GEMA')⁸;
59. (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served; and
60. (c) there is no application for an energy administration order that is outstanding⁹;
- 42
- 875 (3) the provision of the 1986 Act with respect to an interim moratorium¹⁰ does not prevent, or require the permission of the court for, the making of an application for an energy administration order¹¹;
- 876 (4) upon the making of an energy administration order in relation to a protected energy company, the court must dismiss any ordinary administration application made in relation to that company which is outstanding¹².

1 For these purposes, 'ordinary administration application' means an application in accordance with the Insolvency Act 1986 Sch B1 para 12 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 216); Energy Act 2004 s 162(6).

2 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

3 Energy Act 2004 s 162(1). As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'court' see PARA 743 note 2 ante.

5 For the meaning of 'energy administration order' see PARA 743 ante.

6 Energy Act 2004 s 162(2).

7 Its powers under the Insolvency Act 1986 Sch B1 para 13 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 226.

8 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

9 Energy Act 2004 s 162(3). For these purposes, an application made to the court is outstanding if it (1) has not yet been granted or dismissed; and (2) has not been withdrawn (s 171(4)); and an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending (s 171(5)). An appeal is to be treated as pending for the purposes of s 171(5) if: (a) such an appeal has been brought and has been neither determined nor withdrawn; (b) an application for permission to appeal has been made but has not been determined or withdrawn; or (c) no such appeal has been brought and the period for bringing an appeal is still running: s 171(6).

10 Ie the Insolvency Act 1986 Sch B1 para 44 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 224.

11 Energy Act 2004 s 162(4).

12 Ibid s 162(5).

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759. Restrictions on administrator appointments by creditors etc.

No step is to be taken by any person to make an appointment in relation to a company¹ under the provisions of the Insolvency Act 1986 conferring powers on the holder of a floating charge and on the company itself and its directors to appoint administrators² if:

- 877 (1) an energy administration order³ is in force in relation to the company;
- 878 (2) an energy administration order has been made in relation to the company but is not yet in force; or
- 879 (3) an application for such an order is outstanding⁴.

In the case of a protected energy company⁵ to which heads (1) to (3) above do not apply, such an appointment in relation to that company takes effect only if each of the following conditions is met⁶, namely that:

- 880 (a) a copy of every document⁷ in relation to the appointment that is filed or lodged with the court⁸ in accordance with the provisions of the 1986 Act regarding documents to be filed or lodged for the appointment of an administrator⁹ has been served both on the Secretary of State¹⁰ and on the Gas and Electricity Markets Authority ('GEMA')¹¹;
- 881 (b) a period of 14 days has elapsed since the service of the last of those copies to be served;
- 882 (c) there is no outstanding application to the court for an energy administration order in relation to the company in question; and
- 883 (d) the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force¹².

The provision of the 1986 Act with respect to an interim moratorium¹³ does not prevent, or require the permission of the court for, the making of an application for an energy administration order at any time before the appointment takes effect¹⁴.

1 For the meaning of 'company' see PARA 743 note 2 ante.

2 I.e. under the Insolvency Act 1986 Sch B1 para 14 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 228 et seq) or Sch B1 para 22 (as added) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 236 et seq).

3 For the meaning of 'energy administration order' see PARA 743 ante.

4 Energy Act 2004 s 163(1). As to when an application is outstanding see PARA 758 note 9 ante.

5 For the meaning of 'protected energy company' see PARA 743 note 3 ante.

6 Energy Act 2004 s 163(2).

7 For the meaning of 'document' see PARA 733 note 4 ante.

8 For the meaning of 'court' see PARA 743 note 2 ante.

9 le in accordance with the Insolvency Act 1986 Sch B1 para 18 (as added) or Sch B1 para 29 (as added):
see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARAS 232, 241.

10 As to the Secretary of State see PARA 601 note 1 ante.

11 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

12 Energy Act 2004 s 163(3).

13 le the Insolvency Act 1986 Sch B1 para 44 (as added): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3)
(2004 Reissue) PARA 224 et seq.

14 Energy Act 2004 s 163(4).

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760. Restrictions on enforcement of security.

No step to enforce a security¹ over property² of a protected energy company is to be taken by any person, unless:

884 (1) notice of his intention to do so has been served both on the Secretary of State³ and on the Gas and Electricity Markets Authority ('GEMA')⁴; and

885 (2) a period of at least 14 days has elapsed since the service of the last of those notices to be served⁵.

1 For these purposes, 'security' means any mortgage, charge, lien or other security: Insolvency Act 1986 s 248(b)(i) (definition applied by the Energy Act 2004 s 171(1)).

2 For the meaning of 'property' see PARA 743 note 5 ante. In the case of a protected energy company which is a non-GB company, the reference in the text to this note to the property of the company is a reference only to its property in Great Britain: *ibid* s 164(2). For the meaning of 'protected energy company' see PARA 743 note 3 ante; for the meaning of 'non-GB company' see PARA 743 note 5 ante; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

5 Energy Act 2004 s 164(1).

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(v) Financial Support for Companies in Administration

761. Grants and loans.

Where an energy administration order¹ has been made in relation to a company², the Secretary of State³ may, with the consent of the Treasury⁴, make grants or loans to the company of such amounts as it appears to him appropriate to pay or lend for achieving the objective of the energy administration⁵. Such a grant or loan may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate⁶; and the terms:

- 886 (1) on which a grant may be so made include, in particular, terms requiring the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention⁷ of the other terms on which the grant is made⁸;
- 887 (2) on which a loan may be so made include, in particular, terms requiring:
 - 43 61. (a) the loan to be repaid at such times and by such methods; and
 - 62. (b) interest to be paid on the loan at such rates and at such times,
 - 44
 - 888 as the Secretary of State may from time to time and with Treasury consent direct⁹.

The Secretary of State must pay sums received by him by virtue of these provisions into the Consolidated Fund¹⁰.

1 For the meaning of 'energy administration order' see PARA 743 ante.

2 For the meaning of 'company' see PARA 743 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Energy Act 2004 s 165(6)(a).

5 Ibid s 165(1), (2). As to the objective of the energy administration see PARA 744 ante. As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante.

6 Ibid s 165(3).

7 'Contravention' includes a failure to comply, and cognate expressions are to be construed accordingly: ibid s 196(1).

8 Ibid s 165(4).

9 Ibid s 165(5), (6)(b).

10 Ibid s 165(7). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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762. Indemnities.

Where an energy administration order¹ has been made in relation to a company², the Secretary of State³ may, with the consent of the Treasury⁴, agree to indemnify persons in respect of one or both of the following:

- 889 (1) liabilities incurred in connection with the exercise and performance by the energy administrator⁵ of his powers and duties; and
- 890 (2) loss or damage sustained in that connection⁶.

The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate⁷.

The power of the Secretary of State to agree to indemnify persons:

- 891 (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
- 892 (b) includes power to agree to indemnify persons, whether or not they are identified or identifiable at the time of the agreement, who subsequently become relevant persons⁸;

and a person is a relevant person for these purposes if he is:

- 893 (i) the energy administrator⁹;
- 894 (ii) an employee of the energy administrator;
- 895 (iii) a member or employee of a firm¹⁰ of which the energy administrator is a member;
- 896 (iv) a member or employee of a firm of which the energy administrator is an employee;
- 897 (v) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
- 898 (vi) a body corporate which is the employer of the energy administrator;
- 899 (vii) an officer, employee or member of such a body corporate¹¹.

If sums are paid by the Secretary of State in consequence of an indemnity agreed to under these provisions, the company must pay him:

- 900 (A) such amounts in or towards the repayment to him of those sums as he may, with Treasury consent¹², direct; and
- 901 (B) interest, at such rates as he may with the like consent direct, on amounts outstanding under this provision¹³;

but this does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the energy administration

order was made¹⁴. The Secretary of State must pay sums received by him by virtue of heads (A) and (B) above into the Consolidated Fund¹⁵.

1 For the meaning of 'energy administration order' see PARA 743 ante.

2 For the meaning of 'company' see PARA 743 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Energy Act 2004 s 166(7)(a).

5 For the meaning of 'energy administrator' see PARA 743 note 7 ante.

6 Energy Act 2004 s 166(1), (2). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante.

7 Ibid s 166(3).

8 Ibid s 166(8).

9 For the purposes of ibid s 166(9) (see heads (i)-(vii) in the text), the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them: s 166(10)(a).

10 For the purposes of ibid s 166(9) (see heads (i)-(vii) in the text), the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time: s 166(10)(b).

11 Ibid s 166(9).

12 See ibid s 166(7)(b).

13 Ibid s 166(4); and see note 12 supra. Payments to the Secretary of State under ss 166(4) must be made at such times and in such manner as he may, with Treasury consent, determine: s 166(5), (7)(c).

14 Ibid s 166(6).

15 Ibid s 166(11). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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763. Guarantees where energy administration order is made.

Where an energy administration order¹ has been made in relation to a company², the Secretary of State³ may, with the consent of the Treasury⁴, guarantee:

- 902 (1) the repayment of any sum borrowed by the company while the energy administration order is in force;
- 903 (2) the payment of interest on such a sum; and
- 904 (3) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum⁵;

and he may so give a guarantee in such manner, and on such terms, as he thinks fit⁶. As soon as practicable after giving such a guarantee, the Secretary of State must lay a statement of the guarantee before Parliament⁷.

If sums are paid out by the Secretary of State under a guarantee given under these provisions, the company must pay him:

- 905 (a) such amounts in or towards the repayment to him of those sums as he may, with Treasury consent⁸, direct; and
- 906 (b) interest, at such rates as he may direct, on amounts outstanding under this provision⁹.

The Secretary of State must pay sums received by him by virtue of heads (a) and (b) above into the Consolidated Fund¹⁰.

Where a sum has been paid out by the Secretary of State under a guarantee given under the above provisions, he must lay a statement relating to that sum before Parliament:

- 907 (i) as soon as practicable after the end of the financial year¹¹ in which that sum is paid out; and
- 908 (ii) as soon as practicable after the end of each subsequent relevant financial year¹².

1 For the meaning of 'energy administration order' see PARA 743 ante.

2 For the meaning of 'company' see PARA 743 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Energy Act 2004 s 167(9)(a).

5 Ibid s 167(1), (2). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante.

6 Ibid s 167(3).

7 Ibid s 167(4).

8 See *ibid* s 167(9)(b).

9 *Ibid* s 167(5). Payments to the Secretary of State under s 167(5) must be made at such times, and in such manner, as he may from time to time and with Treasury consent direct: s 167(9)(b), (6).

10 *Ibid* s 167(10). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

11 'Financial year' means a period of 12 months ending with 31 March: *ibid* s 196(1).

12 *Ibid* s 167(7). In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for these purposes unless: (1) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under s 167(5); and (2) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under s 167(5) in respect of that sum: s 167(8).

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(vi) Licence Modifications relating to Energy Administration

764. Modifications of particular or standard conditions.

The Energy Act 2004 conferred transitional powers on the Secretary of State¹, where he considered it appropriate to do so in connection with the provision made by the provisions of that Act relating to energy administration², to make:

- 909 (1) modifications³ of the conditions of a gas or electricity licence⁴ held by a particular person⁵;
- 910 (2) modifications of the standard conditions of such licences of any type⁶.

The power to make such modifications included power to make incidental, consequential or transitional modifications⁷ and was exercisable only during the period of 18 months beginning with 5 October 2004⁸.

Before so making a modification, the Secretary of State was to consult the holder of any licence being modified and such other persons as he considered appropriate⁹.

The Secretary of State must publish every modification so made by him¹⁰ in such manner as he considers appropriate¹¹.

Where the Secretary of State has made modifications under head (2) above of the standard conditions of licences of any type, the Gas and Electricity Markets Authority ('GEMA')¹² must:

- 911 (a) make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after the 18-month period referred to above; and
- 912 (b) publish the modifications in such manner as it considers appropriate¹³.

The modifications that might, or may, be made under the above provisions include, in particular, modifications imposing conditions requiring the holder of the licence:

- 913 (i) so to modify the charges imposed by him for anything done by him in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
- 914 (ii) to pay the amounts so raised to such persons as may be so determined for the purpose of:

45

- 63. (A) their applying those amounts in making good any shortfall in the property¹⁴ available for meeting the expenses of an energy administration¹⁵; or

- 64. (B) enabling those persons to secure that those amounts are so applied¹⁶;

46

and might, or may, include modifications imposing on the licence holder an obligation to apply amounts paid to him in pursuance of conditions falling within head (i) or head (ii) above in making good any such shortfall¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 le the provision made by the Energy Act 2004 Pt 3 Ch 3 (ss 154-171): see PARA 743 et seq ante.

3 For the meaning of 'modifications' see PARA 733 note 8 ante.

4 For these purposes, 'gas or electricity licence' means a licence for the purposes of the Gas Act 1986 s 5 (as substituted and amended) or the Electricity Act 1989 s 4 (as amended) (prohibition on unlicensed activities: see PARAS 803, 1050 post): Energy Act 2004 s 168(11).

5 A modification under *ibid* s 168(1)(a) (see head (1) in the text) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) or the Gas Act 1986 Pt I (ss 4AA-48) (as amended): Energy Act 2004 s 168(7).

6 See *ibid* s 168(1). Section 191 applies to (1) the Secretary of State's powers under Pt 3 Chs 2-4 (ss 145-185) with respect to the conditions of gas licences; and (2) his powers under ss 90 and 91 (see PARAS 1078-1079 post) and Pt 3 (ss 133-185) with respect to the conditions of electricity licences; and s 191 is to be disregarded in determining the generality of those or any other powers conferred on the Secretary of State by the Energy Act 2004 or otherwise: s 191(1). Conditions included in a gas licence, or in an electricity licence, by virtue of a power to which s 191 applies need not relate to the activities authorised by the licence: s 191(2). Conditions included in a gas licence by virtue of a power to which s 191 applies may do any of the things authorised by the Gas Act 1986 s 7B(4A) or (5) (as added and amended) (which apply to GEMA's power with respect to licence conditions under s 7B(4)(a) (as added and amended): see PARA 809 post): Energy Act 2004 s 191(3). Conditions included in an electricity licence by virtue of a power to which s 191 applies may do any of the things authorised by the Electricity Act 1989 s 7(2)-(4) (as amended) (which apply to GEMA's power with respect to licence conditions under s 7(1)(a) (as amended): see PARA 1068 post): Energy Act 2004 s 191(4). For these purposes, 'electricity licence' means a licence for the purposes of the Electricity Act 1989 s 4 (as amended) (prohibition on unlicensed electricity activities: see PARA 1050 post); and 'gas licence' means a licence for the purposes of the Gas Act 1986 s 5 (as substituted and amended) (prohibition on unlicensed gas activities: see PARA 803 post): Energy Act 2004 s 191(5). As to the exercise of these functions see also s 190, cited in PARA 706 the text and notes 16-23 ante.

7 See *ibid* s 168(2).

8 See *ibid* s 168(9); and the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1.

9 See the Energy Act 2004 s 168(3). This requirement might be satisfied by consultation that took place wholly or partly before 5 October 2004: see s 168(4).

10 *Ibid* s 168(5).

11 *Ibid* s 168(6).

12 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

13 Energy Act 2004 s 168(8).

14 For the meaning of 'property' see PARA 743 note 5 ante.

15 For these purposes: (1) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within the Energy Act 2004 s 169(1) or (2): see heads (i)-(ii) in the text) for meeting relevant debts is insufficient for meeting them; and (2) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts: s 169(3). 'Relevant debt', in relation to a case in which a company is or has been subject to an energy administration order, means an obligation (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company; (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company; (c) to repay the whole or a part of a grant made to that company under s 165 (see PARA 761

ante); (d) to repay a loan made to the company under s 165, or to pay interest on such a loan; (e) to make a payment under s 166(4) (see PARA 762 ante); or (f) to make a payment under s 167(5) (see PARA 763 ante): s 169(4). For the meaning of 'company' see PARA 743 note 2 ante; for the meaning of 'energy administration order' see PARA 743 ante; and for the meaning of 'energy administrator' see PARA 743 note 7 ante.

16 Ibid s 169(1).

17 Ibid s 169(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(7) SUPPLEMENTARY PROVISIONS/765. Overall carbon emissions reduction.

(7) SUPPLEMENTARY PROVISIONS

765. Overall carbon emissions reduction.

As from 28 February 2007¹, the following provisions have effect. For the purposes of the exercise by the Gas and Electricity Markets Authority ('GEMA')² of its functions under either or both of the specified provisions of the Gas Act 1986³ and the Electricity Act 1989⁴, the Secretary of State⁵ may by order⁶ specify an overall target for the promotion of the specified measures⁷ for carbon emissions reduction⁸. Before making such an order the Secretary of State must consult the Authority, the Gas and Electricity Consumer Council⁹, gas transporters¹⁰, gas suppliers¹¹, electricity distributors¹², electricity suppliers¹³, and such other persons as he considers appropriate¹⁴.

Where an overall target applies in relation to both of the specified provisions¹⁵, the order specifying the target may make provision for the Authority to apportion the target between:

- 915 (1) persons who are gas transporters or gas suppliers¹⁶; and
- 916 (2) persons who are electricity distributors or electricity suppliers¹⁷;

by reference to such criteria as may be specified in the order¹⁸.

The Authority must exercise its functions under the specified provisions¹⁹ in relation to which an overall target applies, and in particular its functions relating to the determination of carbon emissions reduction targets, in the manner it considers best calculated to result in the achievement of the overall target²⁰.

Until 28 February 2007, the above provisions had effect with the substitution:

- 917 (a) for the reference to an overall target for the promotion of the specified measures for carbon emissions reduction, of a reference to an overall target for the promotion of improvement in energy efficiency²¹; and
- 918 (b) for the reference to functions relating to the determination of carbon emissions reduction targets, of a reference to functions relating to the determination of energy efficiency targets²².

The Secretary of State has made orders under the above provisions, as they had effect in accordance with heads (a) and (b) above, specifying overall targets for the promotion of improvement in energy efficiency:

- 919 (i) over the period beginning on 1 April 2002 and ending immediately before 1 April 2005²³;
- 920 (ii) in relation to domestic consumers as regards the period from 1 April 2005 to 31 March 2008²⁴.

To comply with his energy efficiency obligation a supplier²⁵ must achieve the latest energy efficiency target determined for him by the Authority²⁶ by 31 March 2008²⁷. A supplier's energy efficiency target must be met by improvements in energy efficiency attributable to qualifying

actions²⁸, where at least 50 per cent of the total improvement in energy efficiency attributed to those actions²⁹ is to be achieved in relation to domestic consumers in the priority group³⁰. Following the receipt by the Authority of a written request from the suppliers concerned, the Authority may agree to the whole or any part of a supplier's energy efficiency target being treated as having been achieved by a qualifying action taken by another supplier or being transferred to another supplier, and such agreement must be in writing and must not be unreasonably withheld³¹.

A supplier must provide to the Authority such information relating to his proposals for complying with his energy efficiency obligation, or the question whether he has complied with that obligation, in such form and at such time as the Authority may reasonably require in writing³². By 31 July 2008 the Authority must submit to the Secretary of State a report setting out in respect of the year ending on the preceding 31 March the progress made by each supplier towards complying with his energy efficiency obligation and the progress made towards achieving the overall target³³.

1 Ie the day appointed for these purposes under the Climate Change and Sustainable Energy Act 2006 s 28(3): see the Climate Change and Sustainable Energy Act 2006 (Commencement) Order 2007, SI 2007/538, art 2.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

3 Ie the Gas Act 1986 s 33BC (as added and amended) and any order made thereunder: see PARA 895 post.

4 Ie the Electricity Act 1989 s 41A (as added and amended) and any order made thereunder: see PARA 1137 post.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 An order under the Utilities Act 2000 s 103 (as amended) may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: s 103(5).

7 Ie for the promotion of the measures mentioned in the Gas Act 1986 s 33BC(2) (as added and amended) or in the Electricity Act 1986 s 41A(2) (as added and amended): see PARAS 895, 1137 post.

8 Utilities Act 2000 s 103(1) (s 103(1), (3) amended by the Climate Change and Sustainable Energy Act 2006 s 17, Schedule para 7(1)-(4)).

9 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

10 For the meaning of 'gas transporter' see PARA 805 post (definition applied by the Utilities Act 2000 s 106(2)).

11 For the meaning of 'gas supplier' see PARA 807 post (definition applied by ibid s 106(2)).

12 For the meaning of 'electricity distributor' see PARA 1065 note 9 post (definition applied by ibid s 106(3)).

13 For the meaning of 'electricity supplier' see PARA 1065 note 7 post (definition applied by ibid s 106(3)).

14 Ibid s 103(4).

15 Ie the provisions referred to in notes 3-4 supra.

16 Ie for the purposes of the Gas Act 1986 s 33BC (as added and amended) and any order made thereunder: see PARA 895 post.

17 Ie for the purposes of the Electricity Act 1989 s 41A (as added and amended) and any order made thereunder: see PARA 1137 post.

18 Utilities Act 2000 s 103(2).

19 See note 15 *supra*.

20 Utilities Act 2000 s 103(3) (as amended: see note 8 *supra*).

21 See *ibid* s 103(1) (as originally enacted).

22 See *ibid* s 103(2) (as originally enacted).

23 See the Electricity and Gas (Energy Efficiency Obligations) Order 2001, SI 2001/4011 (amended by SI 2003/1180). For the purposes of the exercise by the Authority of its functions under that Order, the overall target for the promotion of improvements in energy efficiency in Great Britain, as regards that period, was 62 fuel-standardised terawatt hours: see the Electricity and Gas (Energy Efficiency Obligations) Order 2001, SI 2001/4011, art 3(1). Certain records made by the Authority under that Order must be kept for a period of at least five years: see art 11(5).

24 See the Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392. For the purposes of the exercise by the Authority of its functions under that Order, the overall target for the promotion of improvements in energy efficiency in relation to domestic consumers as regards that period is 130 fuel-standardised, lifetime-discounted terawatt hours: art 2. For these purposes: (1) 'domestic consumer' means a person who uses coal, electricity, gas, liquid petroleum gas or oil at domestic premises in Great Britain wholly or mainly for domestic purposes; (2) 'energy efficiency' includes efficiency in the use by consumers of coal, liquid petroleum gas or oil; (3) 'fuel-standardised' means, in respect of an improvement in energy efficiency, the number of kilowatt hours of improvement multiplied (a) where the source of energy is coal, by 0.557; (b) where the source of energy is electricity, by 0.801; (c) where the source of energy is gas, by 0.353; (d) where the source of energy is liquid petroleum gas, by 0.398; or (e) where the source of energy is oil, by 0.464; and (4) 'lifetime-discounted' means, in respect of an improvement in energy efficiency, the number of kilowatt hours of improvement discounted by 3.5% a year over its lifetime (as estimated by the Authority under art 6(1)(a)(ii)): art 1(2).

25 For these purposes, 'supplier' means an electricity supplier or a gas supplier who supplies at least 50,000 domestic customers (including those supplied by his holding company or subsidiary or by any subsidiary of such a holding company, where 'holding company' and 'subsidiary' have the same meaning as in the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25): Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392, art 1(2). A person who ceases to be a supplier after 31 December 2004 but who continues to hold a supply licence under the Electricity Act 1989 s 6(1)(d) (as substituted and amended) (see PARA 1065 *post*) or the Gas Act 1986 s 7A (as added and amended) (see PARA 807 *post*) is to continue to be treated as a supplier: Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392, art 1(3)(a).

A requirement imposed on a supplier by the 2004 Order is to be treated as a relevant requirement (1) if the supplier is a gas supplier, for the purposes of the Gas Act 1986 Pt I (ss 4AA-48) (as amended); (2) if the supplier is an electricity supplier, for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392, art 10.

26 See *ibid* art 4. The Authority must determine an energy efficiency target to be achieved by a supplier (1) if he was a supplier on 31 December 2004, from 1 April 2005; (2) if he becomes a supplier after 31 December 2004 and was a supplier on 31 December 2005, from 1 April 2006; or (3) if he becomes a supplier after 31 December 2005 and was a supplier on 31 December 2006, from 1 April 2007: art 4(1)(a). The Authority may alter that target with effect from 1 April 2006 or 1 April 2007 (art 4(1)(b)); and by 31 January 2005, 31 January 2006 and 31 January 2007, must notify the supplier of the target to be achieved by him as determined or altered from 1 April of that year (art 4(1)(c)). The Authority must determine or alter a supplier's energy efficiency target by reference to the following criteria: (a) the overall target under art 2; (b) the mean of the total number of domestic customers supplied by suppliers on 31 December 2004 and on any anniversary of that date; (c) the mean of the number of domestic customers supplied by him on 31 December 2004 and on any anniversary of that date; and (d) the time available for its achievement: art 4(2). By 14 January 2005, 14 January 2006 and 14 January 2007 a supplier was to notify the Authority of the number of domestic customers supplied by him on the preceding 31 December: art 4(3). For these purposes, a reference to notification is a reference to notification in writing and includes notification by electronic mail, facsimile or similar means (art 1(3)(b)); and 'domestic customer' means an owner or occupier of domestic premises in Great Britain who is supplied with electricity or gas at those premises wholly or mainly for domestic purposes (art 1(2)).

27 *Ibid* art 3(1).

28 'Qualifying action' means an action determined by the Authority under *ibid* art 5(1)(b) as promoting an improvement in energy efficiency: art 1(2). The Authority must: (1) approve an action notified under art 5(2)(a) (see head (a) *infra*) if it is satisfied that the action would promote an improvement in energy efficiency in

relation to domestic consumers, and estimate what improvement in energy efficiency would be attributable to that action; and (2) after it has been notified under art 5(2)(b) (see head (b) *infra*), determine whether the action promotes such an improvement and if so what improvement is to be attributed to it under art 6, and must notify the supplier accordingly: art 5(1). Subject to art 5(3) (transitional provisions), a supplier must notify the Authority: (a) before or within one month of its commencement, of any action by him which he intends is to qualify for the purpose of meeting the whole or part of his energy efficiency target, indicating how the action would contribute, if at all, to the achievement of the requirement in art 3(2) in relation to domestic consumers in the priority group; and (b) by 30 April 2008, whether an action approved under art 5(1)(a) (see head (1) *supra*) has been taken: art 5(2). For these purposes, the promotion of the supply to domestic premises of (i) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity; (ii) heat produced in association with electricity or steam produced from (or air or water heated by) such heat; or (iii) any gas or liquid subjected to a cooling effect produced in association with electricity, is to be treated as promotion of improvements in energy efficiency: art 5(4).

'Priority group' means persons (A) who are in receipt of at least one of the benefits described in Schedule para 2 (ie council tax benefit; housing benefit; income support; an income-based jobseeker's allowance; an attendance allowance; a disability living allowance; a war disablement pension which includes either a mobility supplement or a constant attendance allowance; a disablement pension which includes a constant attendance allowance; and state pension credit); or (B) who are in receipt of at least one of the credits described in Schedule para 3 (ie child tax credit and working tax credit) and whose relevant income (within the meaning of the Tax Credits Act 2002 Pt 1 (ss 1-48)) is £14,600 or less: Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392, art 1(2).

29 Ie under *ibid* art 6. Subject to art 6(2), the Authority must determine the improvement in energy efficiency, assessed in fuel-standardised, lifetime-discounted kilowatt hours, to be attributed to a qualifying action by reference to (1) the improvement in energy efficiency in relation to domestic consumers which it is satisfied will result from that action; and (2) its estimate of the lifetime of that improvement: art 6(1)(a). It must also determine the amount, if any, of that improvement which it is satisfied will be achieved in relation to domestic consumers in the priority group: art 6(1)(b). The Authority must attribute an improvement in energy efficiency which is 50% higher than the improvement which would otherwise be attributed under art 6(1): (a) to an energy service action, provided that the total improvement in energy efficiency that would otherwise be attributed to such actions under art 6(1) in relation to the supplier's energy efficiency target would achieve at least 5% and no more than 10% of that target; (b) to an innovative action, provided that the total improvement that would otherwise be attributed to such actions under art 6(1) in relation to the supplier's energy efficiency target would achieve no more than 10% of that target: art 6(2). For these purposes, 'energy service action' means a qualifying action undertaken in pursuance of an agreement between a supplier and a domestic consumer which is intended to achieve improvements in energy efficiency at the domestic premises concerned by at least 13%, where that agreement requires the supplier (i) to undertake an energy efficiency audit of the premises; and (ii) to offer the consumer the option of making an arrangement with the supplier for deferring the whole or any part of the cost incurred by the consumer under the agreement: art 6(3)(a). 'Innovative action' means a qualifying action which is not an energy service action and which (A) achieves an improvement in energy efficiency by a means which was not used in respect of an action by any supplier which was determined by the Authority as a qualifying action under the Electricity and Gas (Energy Efficiency Obligations) Order 2001, SI 2001/4011, art 8(1)(a) and which the Authority is satisfied is significantly greater than that achieved by any similar action so determined; or (B) achieves an improvement in energy efficiency through the use of a micro-cogeneration unit, as defined in European Parliament and EC Council Directive 2004/8 on the promotion of cogeneration based on a useful heat demand in the internal energy market (OJ L52, 21.2.2004, p 50), art 3(m): Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392, art 6(3)(b).

30 Ibid art 3(2).

31 Ibid art 7.

32 Ibid art 8.

33 See *ibid* art 9. Such a report was also to be submitted by 31 July 2006 and 31 July 2007: see art 9.

UPDATE

765 Overall carbon emissions reduction

TEXT AND NOTES 1-22--The power conferred by the Utilities Act 2000 s 103 may be exercised so as to specify more than one overall target in relation to the same period or to periods that overlap to any extent: s 103(1A) (added by the Climate Change Act 2008 Sch 8 para 6(3)). Utilities Act 2000 s 103 amended in order to refer to electricity generators as well as electricity distributors and suppliers: Climate Change Act 2008

Sch 8 para 6(2), (4), (5). For general provision on carbon emissions reduction see PARA 615A et seq.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(7) SUPPLEMENTARY PROVISIONS/766. Specialist members of the Competition Commission.

766. Specialist members of the Competition Commission.

The Secretary of State¹ must appoint not less than six members of the Competition Commission² ('the Commission') for the purpose of the exercise by the Commission of any function under or by virtue of the specified provisions³ of the Gas Act 1986 or of the Electricity Act 1989⁴. In selecting a group to perform any function of the Commission under or by virtue of any of the specified provisions, the chairman of the Commission must select one or more of the members so appointed to be members of the group⁵.

Specialist members must also be appointed for the purposes of appeals against certain decisions of the Gas and Electricity Markets Authority ('GEMA') under the Energy Act 2004⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

3 I.e. under or by virtue of (1) the Gas Act 1986 s 24 (as amended) (modification references: see PARAS 813-814 post); s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post); or (2) the Electricity Act 1989 s 12 (as amended) (modification references: see PARA 1081 post); s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post); or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post).

4 Utilities Act 2000 s 104(1)(a), (b) (amended by the Water Act 2003 ss 53(1)(a), 101(2), Sch 9 Pt 2; the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 SI 2005/3172, art 11, Schedule Pt 1 para 4(a)).

5 Utilities Act 2000 s 104(2). For transitional provisions see s 104(5), (6).

6 See the Energy Act 2004 s 176; and PARA 733 note 1 ante. As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(7) SUPPLEMENTARY PROVISIONS/767. General restrictions on disclosure of information.

767. General restrictions on disclosure of information.

Information¹ which:

- 921 (1) has been obtained under or by virtue of the provisions of the Utilities Act 2000, Part I of the Gas Act 1986², Part I of the Electricity Act 1989³, or specified provisions of the Energy Act 2004⁴; and
- 922 (2) relates to the affairs of any individual or to any particular business,

must not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below⁵.

The above prohibition does not apply to a disclosure:

- 923 (a) made with the consent of the individual or the person for the time being carrying on the business⁶;
- 924 (b) if it is made for the purpose of facilitating the performance of any functions of the Secretary of State⁷, the Gas and Electricity Markets Authority ('GEMA')⁸, the Gas and Electricity Consumer Council⁹ or the Competition Commission¹⁰ under the 1986 Act, the 1989 Act, the 2000 Act or certain provisions¹¹ of the 2004 Act¹²;
- 925 (c) if it is required by a notice under specified provisions¹³ of the 1986 Act or the 1989 Act¹⁴;
- 926 (d) if it is made by a licence holder¹⁵ and is required to be made by a condition of his licence¹⁶; or
- 927 (e) if it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of relevant activities¹⁷.

Nor does it apply to any disclosure of information made:

- 928 (i) for the purpose of facilitating the performance by a specified person or body¹⁸ of any function under a specified Act or instrument¹⁹;
- 929 (ii) for the purpose of facilitating the performance by the Comptroller and Auditor General²⁰, the Health and Safety Commission²¹ or the Health and Safety Executive²² of any of his or its functions;
- 930 (iii) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the enactments relating to companies or insolvency;
- 931 (iv) for the purpose of facilitating the performance of the functions of an inspector appointed under the enactments relating to companies;
- 932 (v) for the purpose of facilitating the performance by the Secretary of State, the Treasury or the Financial Services Authority²³ of any functions under the Financial Services and Markets Act 2000;
- 933 (vi) for the purpose of facilitating the discharge of any function by a person appointed under specified provisions of the Financial Services and Markets Act 2000²⁴;

- 934 (vii) for the purpose of facilitating the performance by an official receiver of his functions under the enactments relating to insolvency or the performance by a recognised professional body²⁵ of its functions as such a body;
- 935 (viii) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- 936 (ix) for the purposes of any civil proceedings brought under or by virtue of the 1986 Act, the 1989 Act, the Utilities Act 2000 or any specified Act or instrument²⁶;
- or
- 937 (x) in pursuance of a Community obligation²⁷.

A person who discloses any information in contravention of these provisions is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both²⁸.

1 For the meaning of 'information' see PARA 715 note 3 ante.

2 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq post.

3 Ie the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq post.

4 Ie the Energy Act 2004 s 184(5) (see PARA 1278 post) or s 185(5) (see PARA 1279 post).

5 Utilities Act 2000 s 105(1) (amended by the Energy Act 2004 s 186(a)). Nothing in the Utilities Act 2000 s 105(1) (as so amended) is, however, to be construed either as limiting the matters which may be: (1) published under the Gas Act 1986 s 33DA (as added and amended) (see PARA 897 post) or 35 (as substituted and amended) (see PARA 793 post) or the Electricity Act 1989 s 42AA (as added) (see PARA 1139 post) or 48 (as amended) (see PARA 1045 post); (2) made public by the Gas and Electricity Markets Authority ('GEMA') as part of a notice under the Utilities Act 2000 s 26 (see PARA 728 ante); or (3) included in, or made public as part of, a report of the Authority, the Gas and Electricity Consumer Council or the Competition Commission under any provision of the Utilities Act 2000, the Gas Act 1986 Pt I (as amended) or the Electricity Act 1989 Pt I (as amended); or as applying to information which has been so published or has been made public as part of such a notice or such a report: Utilities Act 2000 s 105(8). Nor does s 105(1) (as amended) apply to a disclosure made in pursuance of the Energy Act 2004 s 140 (see PARA 1071 post): s 140(4).

As from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), head (1) supra is amended by the omission of the references to the Gas Act 1986 s 33DA (as added and amended) and the Electricity Act 1989 s 42AA (as added); and head (3) supra is amended by the omission of the reference to the Gas and Electricity Consumer Council: see the Consumers, Estate Agents and Redress Act 2007 ss 63(1), 64, Sch 7 para 20(c), Sch 8 (not in force). As from such a day, nothing in the Utilities Act 2000 s 105(8) (as so prospectively amended) applies to information within the Consumers, Estate Agents and Redress Act 2007 s 29(3) (application of disclosure regime in the Enterprise Act 2002 Pt 9 (as amended) to information obtained by the National Consumer Council): Utilities Act 2000 s 105(11A) (prospectively added by the Consumers, Estate Agents and Redress Act 2007 Sch 7 para 20(d), as from a day to be appointed under s 66(2); at the date at which this title states the law, no such day had been appointed and neither s 29 nor Sch 7 was in force).

6 Utilities Act 2000 s 105(2).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante. Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the Office of Fair Trading under the Competition Act 1998 Pt I (ss 1-60) (as amended) (see COMPETITION vol 18 (2009) PARA 115 et seq) is subject to the Enterprise Act 2002 Pt 9 (ss 237-247) (as amended) (information: see COMPETITION vol 18 (2009) PARA 326 et seq) and not to the Utilities Act 2000 s 105(1)-(10) (as amended) (see the text and notes 1-7 supra, 9-28 infra): s 105(11) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 43(1), (3)(c)).

9 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

10 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

11 Ie the Energy Act 2004 s 184 or s 185: see PARAS 1278-1279 post.

12 Utilities Act 2000 s 105(3)(a) (amended by the Energy Act 2004 s 186(b)). The Secretary of State may by order modify the Utilities Act 2000 s 105(3), (4), (5) or (6) (all as amended): s 105(7). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 105(12).

13 Ie under the Gas Act 1986 s 38(1A) (as added) (see PARA 798 post) or the Electricity Act 1989 s 28(2A) (as added) (see PARA 1214 post).

14 Utilities Act 2000 s 105(3)(b); and see note 12 supra.

15 For these purposes, 'licence holder' means the holder of a gas licence or an electricity licence: *ibid* s 105(10). For the meanings of 'gas licence' and 'electricity licence' see PARA 727 notes 3-4 ante.

16 *Ibid* s 105(3)(c); and see note 12 supra.

17 *Ibid* s 105(3)(d); and see note 12 supra. For these purposes, 'relevant activities', in relation to a licence holder, means activities he is authorised by his licence to carry on (including, in the case of a gas transporter, the activities mentioned in the Gas Act 1986 s 7(1)(b) and (c) (as substituted and amended) (see PARA 805 post)): Utilities Act 2000 s 105(10).

18 Ie a person or body mentioned in *ibid* s 105(5) (as amended). The persons and bodies specified for these purposes are: (1) a Minister of the Crown; (2) the Competition Commission; (3) the Office of Fair Trading; (4) the Office of Communications; (5) the Water Services Regulation Authority; (6) the Director General of Electricity Supply for Northern Ireland; (7) the Director General of Gas for Northern Ireland; (8) the Office of Rail Regulation; (9) the Civil Aviation Authority; (10) the Insolvency Practitioners Tribunal; (11) the Coal Authority; (12) a local weights and measures authority in Great Britain; and (13) as from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), the National Consumer Council: s 105(5) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 43(1), (3)(a); the Communications Act 2003 s 406(1), Sch 17 para 163(1), (2); the Water Act 2003 s 101(1), Sch 7 Pt 2 para 34(a); the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 2 para 19(s); prospectively amended by the Consumers, Estate Agents and Redress Act 2007 ss 63(1), 64, Sch 7 para 20(a), Sch 8, as from a day to be appointed under s 66(2); at the date at which this title states the law, no such day had been appointed). See also note 12 supra.

19 The Acts and instruments specified for the purposes of the Utilities Act 2000 s 105(4)(a) and (g) (see heads (i), (vii) in the text) are: (1) the Trade Descriptions Act 1968; (2) the Fair Trading Act 1973; (3) the Consumer Credit Act 1974; (4) the Estate Agents Act 1979; (5) the Competition Act 1980; (6) the National Audit Act 1983; (7) the Telecommunications Act 1984; (8) the Airports Act 1986; (9) the Insolvency Act 1986; (10) the Consumer Protection Act 1987; (11) the Control of Misleading Advertisements Regulations 1988, SI 1988/915; (12) the Water Act 1989, the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of the Water Industry Act 1991 s 206 or the Water Act 2003); (13) the Electricity (Northern Ireland) Order 1992, SI 1992/231; (14) the Railways Act 1993; (15) the Coal Industry Act 1994; (16) the Gas (Northern Ireland) Order 1996, SI 1996/275; (16) the Competition Act 1998; (17) the Transport Act 2000 Pt I (ss 1-107) (as amended); (18) the Enterprise Act 2002; (19) the Communications Act 2003; (20) the Railways Act 2005; and (21) as from a day to be appointed, the Consumers, Estate Agents and Redress Act 2007: Utilities Act 2000 s 105(6) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 43(1), (3)(b); the Water Act 2003 s 101(1), Sch 7 Pt 2 para 34(b); the Communications Act 2003 s 406(1), Sch 17 para 163(1), (3); the Railways Act 2005 s 59(1), Sch 12 para 16; and by the Transport Act 2000 (Consequential Amendments) Order 2001, SI 2001/4050, art 2, Schedule Pt IV para 25; prospectively amended by the Consumers, Estate Agents and Redress Act 2007 Sch 7 para 20(b), as from a day to be appointed under s 66(2); at the date at which this title states the law, no such day had been appointed). See also note 12 supra.

20 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

21 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

22 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

23 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 4 et seq.

24 Ie under the Financial Services and Markets Act 2000 s 97 (as amended) (investigations into a breach of listing rules etc: see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 434), s 167 (general investigations) or s 168 (investigations in particular cases) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 449).

25 le a recognised professional body for the purposes of the Insolvency Act 1986 s 391: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 14.

26 le any Act or instrument specified in the Utilities Act 2000 s 105(6) (as amended): see note 19 supra.

27 Ibid s 105(4)(a)-(h) (amended by the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002, SI 2002/1555, art 27). See also note 12 supra. The Utilities Act 2000 s 105(4) (as so amended) has effect, in relation to the disclosure of information by or on behalf of a public authority, as if the purposes for which the disclosure of information is authorised by that provision included each of the following: (1) the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere; (2) the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere; (3) the purposes of the initiation or bringing to an end of any such investigation or proceedings; (4) the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end: Anti-terrorism Crime and Security Act 2001 s 17(1), (2), Sch 4 Pt 1 para 52.

28 Utilities Act 2000 s 105(9).

UPDATE

767 General restrictions on disclosure of information

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 5, 12--Utilities Act 2000 s 105(1), (3)(a), (8) further amended: Energy Act 2008 Sch 5 para 15.

NOTE 5--Day appointed is 1 October 2008: SI 2008/2550.

NOTE 19--Head (11) omitted: Utilities Act 2000 s 105(6) (amended by SI 2008/1277).

TEXT AND NOTE 21--In head (ii) reference to Health and Safety Commission omitted: Utilities Act 2000 s 105(4)(b) (amended by SI 2008/960).

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(8) PLANNING AND ENVIRONMENTAL CONTROLS AND CIVIL CONTINGENCIES

(i) Planning

768. General provisions.

The statutory provisions governing land development generally¹, and the land of statutory undertakers and their rights to lay down, erect or maintain apparatus on, under or over land in particular, apply to gas transporters and holders of an electricity licence².

Notwithstanding the general provision that land is not to be regarded as operational land³ of a statutory undertaker if it was acquired by the undertaker after 6 December 1968 and no specific planning permission is or has been in force in respect of that land for development which would involve, or would have involved, the use of that land for the purpose of carrying on the undertaking of the undertaker⁴, land which was acquired by a public gas supplier as a result of a transfer under the provisions of the Gas Act 1986, and was immediately before that date operational land of the British Gas Corporation⁵ is to be treated as operational land of the relevant gas transporter whether or not any such planning permission then was or had been in force⁶. Similarly, land which was acquired by the holder of an electricity licence as a result of a transfer under the provisions of the Electricity Act 1989, and was immediately before that date operational land of the Electricity Boards or the Electricity Council⁷ is to be treated as operational land of the licence holder whether or not any such planning permission then was or had been in force⁸.

¹ I.e. the Town and Country Planning Act 1990 and in particular Pt XI (ss 262-283) (as amended): see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 1009 et seq.

² Gas transporters and holders of licences under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post) are deemed to be statutory undertakers, and their undertakings are statutory undertakings, for the purposes of the Town and Country Planning Act 1990: see s 262(3), (6), (7) (as amended); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 1009. For the meaning of 'gas transporter' see PARA 805 post.

³ 'Operational land' means land which is used for the purpose of carrying on the undertaking of a statutory undertaker, and land in which an interest is held for that purpose, not being land which, in respect of its nature or situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings: *ibid* s 263(1), (2). Land may be operational land although the undertakers have not begun, or have no present power, to use it for the purposes of their undertaking, and although it is not contiguous or adjacent to land which is; and whether land is comparable rather with land in general than with such land is a question of fact: *R v Minister of Fuel and Power, ex p Warwickshire County Council* [1957] 2 All ER 731, [1957] 1 WLR 861, DC. 'Land' generally includes buildings and other structures, land covered with water and any estate, interest, easement, servitude or right over land: see the Interpretation Act 1978 s 5, Sch 1.

⁴ I.e. the Town and Country Planning Act 1990 s 264(1), (2): see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 1011.

⁵ As to the British Gas Corporation see PARA 776 post.

⁶ See the Town and Country Planning Act 1990 s 264(4) (as amended); the Utilities Act 2000 s 76(7); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 1011.

7 As to the Electricity Boards and the Electricity Council see PARA 1033 post; and as to transfers under the Electricity Act 1989 see PARA 1034 post.

8 See the Town and Country Planning Act 1990 s 264(4) (as amended), applied to the holders of electricity licences by s 262(6), (7) (as amended); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARAS 1009, 1011.

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769. Permitted development and EIA development.

The classes of development for which planning permission is deemed to have been granted¹ include specified forms of development (1) by gas transporters²; or (2) by statutory undertakers for the generation, transmission or supply of electricity³, for the purposes of their undertakings⁴.

So far as the carrying out or construction of any surface works, boreholes or pipes associated with an underground gas storage⁵ which are approved by the Secretary of State⁶ constitutes development⁷, that development is to be taken to be authorised⁸ by him in making the storage authorisation order⁹. The bringing into use or operation of an underground gas storage is, to the same extent, to be taken to be similarly authorised¹⁰.

Certain development for the purposes of the gas and electricity industries requires an assessment of environmental impact¹¹. Such development is known as 'EIA development'¹².

¹ *Ie* for the purposes of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq.

² See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F (as amended) (permitted development by gas transporters); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 341. As to development not permitted by Sch 2 Pt 17, Class F (as amended) see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 343; and as to the special conditions subject to which such development is permitted see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 342. For the meaning of 'gas transporter' see PARA 805 post.

³ See *ibid* Sch 2 Pt 17 Class G (as amended) (permitted development in respect of electricity undertakings); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 344. As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G (as amended) see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 346; and as to the special conditions subject to which such development is permitted see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 345.

⁴ As to the general conditions subject to which such development is permitted see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 255; and as to directions restricting permitted development see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 258 et seq.

⁵ As to underground gas storages and storage authorisation orders see PARA 983 et seq post.

⁶ *Ie* in a storage authorisation order for the purposes of the Gas Act 1965 s 4(6) (as amended): s 4(6)(a).

⁷ *Ie* development for the purposes of the Town and Country Planning Act 1990: see PARA 768 note 1 ante.

⁸ *Ie* for the purposes of *ibid* s 90 (as amended) (deemed planning permission): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238.

⁹ Gas Act 1965 s 4(6)(a) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 12).

¹⁰ Gas Act 1986 s 4(6)(b) (as amended: see note 9 supra).

¹¹ See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 488 et seq; the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended); and PARA 844 et seq post; the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927 (as amended); and PARA 1254 et seq post.

12 See TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 488; and PARAS 845 note 11, 1254 post.

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(ii) Environmental Legislation

770-771 Environmental Legislation

Material relating to this part has been revised and published under the title ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vols 45, 46 (2010).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/2. GAS AND ELECTRICITY INDUSTRIES; IN GENERAL/(8) PLANNING AND ENVIRONMENTAL CONTROLS AND CIVIL CONTINGENCIES/(iii) Civil Contingencies/772. Civil contingencies; in general.

(iii) Civil Contingencies

772. Civil contingencies; in general.

The holders of certain gas and electricity licences¹ are category two responders² for the purposes of Part 1 of the Civil Contingencies Act 2004³.

Part 2 of that Act⁴ confers power on the Secretary of State⁵ to make emergency regulations if there is, among other things, an event or situation which threatens serious damage to human welfare in the United Kingdom⁶ or a part of the United Kingdom by disrupting supplies of energy or fuel⁷. Such regulations may make particular provision for protecting or restoring a supply of energy or fuel⁸.

The Secretary of State also has emergency and reserve powers under the Energy Act 1976 to control the production, supply, acquisition or use of natural gas⁹ and electricity, and, in the exercise of reserve powers, to regulate the price at which natural gas may be supplied¹⁰.

1 Ie a person holding (1) a transmission licence, a distribution licence, and an interconnector licence granted under the Electricity Act 1989 s 6 (as substituted and amended) (see PARA 1065 post); (2) a licence under the Gas Act 1986 s 7 (as substituted and amended) and s 7ZA (as added) (see PARAS 805-806 post); see the Civil Contingencies Act 2004 Sch 1 Pt 3 paras 19, 20.

2 As such, regulations may permit or require them to co-operate with the authorities responsible for emergency planning (the 'category one responders'), to provide those authorities with relevant information and to share information with them: see *ibid* ss 2(5)(h)(i), 6, 12. Provision is made for monitoring and enforcement of their duties: see ss 9, 10.

3 Ie the Civil Contingencies Act 2004 Pt 1 (ss 1-18). As to the purposes of the Civil Contingencies Act 2004 see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Ie *ibid* Pt 1 (ss 19-31).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 See the Civil Contingencies Act 2004 ss 19(1)(a), (2)(e), 20; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 See *ibid* ss 22(2)(d).

9 For the meaning of 'natural gas' see PARA 603 note 3 ante.

10 See PARA 603 et seq ante.

UPDATE

772 Civil contingencies; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(9) RESTRICTIONS ON RIGHTS OF ENTRY

773. Restriction on exercise of rights of entry.

The rights of entry¹ of gas operators² and electricity operators³ are regulated and restricted by the Rights of Entry (Gas and Electricity Boards) Act 1954. No right of entry to which that Act applies⁴ is exercisable in respect of any premises⁵ except (1) with consent given by or on behalf of the occupier⁶ of the premises; or (2) under the authority of a warrant granted under that Act⁷. These restrictions do not, however, apply when entry is required in a case of emergency⁸. No person is liable to a penalty under any enactment relating to obstruction of the exercise of a right or power of entry to which that Act applies, by reason only of his refusing admission to a person who seeks to exercise the right of entry without a warrant granted under the Act⁹.

1 'Right of entry' includes a power of entry: Rights of Entry (Gas and Electricity Boards) Act 1954 s 3(1).

2 For these purposes, 'gas operator' means a gas transporter, gas supplier or gas shipper within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq post): Rights of Entry (Gas and Electricity Boards) Act 1954 s 3(1) (definition substituted by the Gas Act 1995 s 16(1), Sch 4 para 5(4)(b); amended by virtue of the Utilities Act 2000 s 76(7)). For the meaning of 'gas transporter' for those purposes see PARA 805 post; and for the meanings of 'gas supplier' and 'gas shipper' for those purposes see PARA 807 post.

3 For these purposes, 'electricity operator' means an electricity distributor or an electricity supplier (within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq post); (definition substituted by the Utilities Act 2000 s 108, Sch 6 Pt III para 41(1), (5)(b)).

4 The Rights of Entry (Gas and Electricity Boards) Act 1954 applies to all rights of entry conferred by (1) the Gas Act 1986, regulations made under it or any other enactment relating to gas (see PARA 776 et seq post; and as to rights of entry see PARAS 867, 900-902 post); (2) the Electricity Act 1989 Sch 6 (as substituted) (see PARA 1107 et seq post); and (3) any local enactment relating to gas or electricity in so far as those rights are exercisable for the purposes of a gas operator or an electricity operator: Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(2) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 8(1), (2); amended by the Gas Act 1995 s 16(1), Sch 4 para 5(1); the Utilities Act 2000 s 108, Sch 6 Pt III para 41(1), (2)). 'Enactment' includes a local enactment; and 'local enactment' means a local or private Act, or an order made under, or confirmed by, an Act (whether a public general Act or a local or private Act): Rights of Entry (Gas and Electricity Boards) Act 1954 s 3(1).

5 For these purposes, 'premises' means a building or part of a building: Rights of Entry (Gas and Electricity Boards) Act 1954 s 3(1).

6 There is no statutory definition of 'occupier' for these purposes; but see PARA 1094 note 6 post.

7 Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(1). As to warrants to authorise entry see PARA 774 post.

8 Ibid s 1(1). References for these purposes to a case of emergency are references to a case in which a person lawfully requiring entry to the premises in question, in the exercise of a right of entry to which the Rights of Entry (Gas and Electricity Boards) Act 1954 applies (see note 4 supra), has reasonable cause to believe that circumstances exist which are likely to endanger life or property, and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy: s 3(3). A person lawfully requiring entry to premises in the exercise of a right of entry to which the 1954 Act applies is a person seeking admission to those premises by virtue of that right and in accordance with the requirements (if any) of the relevant enactment (s 3(2)(a)); and 'the relevant enactment' in relation to a right of entry is the enactment conferring the right, and references to the requirements of the relevant enactment are

references to any requirements of that enactment as to the giving of notices or the taking of any other step before or at the time of the exercise of the right (s 3(2)(b)).

9 Ibid s 1(3). As to obstruction of a person exercising a right of entry under the Gas Act 1986 Sch 2B (as added and amended) or under the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended), see PARAS 867, 900 post; and as to obstruction of a person exercising a right of entry under the Electricity Act 1989 Sch 6 (as substituted) see PARA 1107 post. As to entry under warrant see PARA 774 post.

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774. Entry under warrant.

Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing:

- 938 (1) that admission to premises¹ specified in the information is reasonably required by a gas operator² or an electricity operator³ or by an employee⁴ of a gas operator or an electricity operator;
- 939 (2) that the operator or any employee of the operator, as the case may be, would, apart from the statutory restriction on the exercise of rights of entry⁵, be entitled for that purpose to exercise in respect of the premises a right of entry⁶ to which the Rights of Entry (Gas and Electricity Boards) Act 1954 applies⁷; and
- 940 (3) that the requirements, if any, of the relevant enactment⁸ have been complied with,

then subject to the following provisions the justice may by warrant under his hand authorise the operator or any employee of the operator, as the case may be, to enter the premises, if need be by force⁹.

The power to issue a warrant is subject to the qualification that, if the relevant enactment does not require notice of an intended entry to be given to the occupier of the premises, the justice must not grant a warrant in respect of the right of entry in question unless he is satisfied:

- 941 (a) that admission to the premises for the purpose specified in the information was sought by a person lawfully requiring entry¹⁰ in the exercise of that right, and was so sought after not less than 24 hours' notice of the intended entry had been given to the occupier¹¹; or
- 942 (b) that admission to the premises for that purpose was sought in a case of emergency¹² and was refused by or on behalf of the occupier; or
- 943 (c) that the premises are unoccupied; or
- 944 (d) that an application for admission to the premises would defeat the object of the entry¹³.

Every warrant granted under the above provisions continues in force until either:

- 945 (i) the time when the purpose for which entry is required has been satisfied; or
- 946 (ii) the end of the period of 28 days beginning with the day on which the warrant was granted,

whichever is the earlier¹⁴.

Any person who, in the exercise of a right of entry under the authority of a warrant so granted, enters any premises which are unoccupied, or from which the occupier is temporarily absent, must leave them as effectually secured against trespassers as he found them¹⁵.

Where a warrant is granted in respect of a right of entry, then for the purposes of any enactment whereby an obligation is imposed to make good damage or to pay compensation, or to take any other step in consequence of the exercise of the right of entry, or a penalty is

imposed for obstructing the exercise of that right, any entry effected, or sought to be effected, under the authority of the warrant must be treated as an entry effected, or sought to be effected, in the exercise of that right of entry¹⁶.

1 For the meaning of 'premises' see PARA 773 note 5 ante.

2 For the meaning of 'gas operator' see PARA 773 note 2 ante.

3 For the meaning of 'electricity operator' see PARA 773 note 3 ante.

4 For these purposes, 'employee' means: (1) in relation to a gas operator, an officer, servant or agent of the operator and any servant or officer of such an agent; and (2) in relation to an electricity operator, an officer, servant or agent of the operator and any person authorised by such an agent: Rights of Entry (Gas and Electricity Boards) Act 1954 s 3(1) (definition substituted by the Gas Act 1995 s 16(1), Sch 4 para 5(4)(a); amended by the Utilities Act 2000 s 108, Sch 6 Pt III para 41(1), (5)(a)).

5 le apart from the Rights of Entry (Gas and Electricity Boards) Act 1954 s 1 (as amended): see PARA 773 ante.

6 For the meaning of 'right of entry' see PARA 773 note 1 ante.

7 As to the rights of entry to which the Rights of Entry (Gas and Electricity Boards) Act 1954 applies see PARA 773 note 4 ante.

8 For the meaning of 'the relevant enactment' see PARA 773 note 8 ante.

9 Rights of Entry (Gas and Electricity Boards) Act 1954 s 2(1) (amended by the Gas Act 1995 s 16(1), Sch 4 para 5(2)(c); the Utilities Act 2000 s 108, Sch 6 Pt III para 41(1), (3)).

10 For the meaning of references to a person lawfully requiring entry see PARA 773 note 8 ante.

11 Where head (a) in the text applies, then either the Gas Act 1986 s 46 (as amended) (see PARA 980 post) (if entry is required for the purposes of a gas operator) or the Electricity Act 1989 s 109 (see PARA 1307 post) (if entry is required for the purposes of an electricity operator), applies to the service of the required notice: Rights of Entry (Gas and Electricity Boards) Act 1954 s 2(3) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 8; amended by the Gas Act 1995 s 16(1), Sch 4 para 5(3); the Utilities Act 2000 Sch 6 Pt III para 41(1), (4)). There is no statutory definition of 'occupier' for these purposes; but see PARA 1094 note 6 post.

12 For the meaning of references to a case of emergency see PARA 773 note 8 ante.

13 Rights of Entry (Gas and Electricity Boards) Act 1954 s 2(2).

14 Ibid s 2(4) (substituted by the Electricity Act 1989 s 101).

15 Rights of Entry (Gas and Electricity Boards) Act 1954 s 2(5).

16 Ibid s 2(6).

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(10) LOCAL AUTHORITY POWERS RELATING TO DOMESTIC SUPPLY

775. Local authority powers; in general.

If any premises in the area of a district council, a London borough council or the Common Council of the City of London or of a county or county borough council in Wales are occupied as a dwelling¹ and the supply of gas or electricity to the premises is cut off or is likely, in the opinion of the council, to be cut off in consequence of the failure of the owner or former owner² to pay a sum payable by him in connection with that supply³, the council may, at the request in writing of the occupier of the premises, make such arrangements as it thinks fit with the person who provided the supply for it to be restored or, as the case may be, for it to be continued, to the premises⁴. Where under any arrangements so made in respect of any premises a council makes a payment:

- 947 (1) in respect of a sum which, at the time when the relevant supply to the premises was or became likely to be cut off, a person was liable to pay in connection with the supply to the person who provided it, the council is entitled to demand and recover from that person a sum equal to the payment; and
- 948 (2) in respect of the restoration of a supply to any premises or a payment for a supply to any premises, the council is entitled to demand and recover from the owner of the premises a sum equal to the payment reduced by any amount received by it⁵ in respect of the payment⁶.

A council by which a sum is so recoverable from a person is also entitled to recover from him interest on the sum, from the date of service of the demand⁷ for the sum, at such reasonable rate as the council may determine⁸.

Where a council is so entitled to recover from the owner of any premises a sum on account of a payment in respect of the restoration or continuation of a supply to the premises or a payment for a supply to the premises or interest on such a sum, the sum so recoverable, together with any interest accrued due is, until recovered, a charge on the premises concerned⁹. If the owner of the premises is required, under the terms on which a person occupies the premises, to pay for a supply of the kind to which that sum relates and the council has served notice on that person requiring him to pay to the council, instead of to the owner of the premises, the rent for the premises which is otherwise payable, or becomes payable, by him to the owner of the premises, it is the duty of that person to comply with the notice except so far as the council directs otherwise and the council may accordingly recover from him from time to time sums equal to the rent in question¹⁰.

London borough councils have additional powers with regard to domestic supplies of gas and electricity¹¹.

1 A house is occupied as a dwelling if it is a house in which people actually live or which is physically capable of being used for human habitation: see *Lewin v End* [1906] AC 299 at 304, HL, per Lord Atkinson.

2 'The owner', in relation to any premises, means a person who, apart from the Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (as amended) (see note 9 *infra*), is entitled on his own behalf or as a trustee or agent for another person to rent for the premises from the occupier of the premises; and 'former

owner' means a person who was so entitled to rent for the premises from the occupier or former occupier of the premises: s 33(5).

3 As to disconnection of gas supply see PARAS 857-858, 867 post; and as to the disconnection of electricity supply see PARAS 1095, 1097, 1103, 1105-1107 post.

4 Local Government (Miscellaneous Provisions) Act 1976 ss 33(1), 44(1) (s 33(1) amended by the Gas Act 1986 s 67(1), Sch 7 para 24; and by the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 1(5)). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

5 le in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (as amended): see note 9 infra.

6 Ibid s 33(2) (amended by the Gas Act 1986 Sch 7 para 24).

7 Such a demand must (1) be served on the recipient in writing; (2) give particulars of the payment to which the sum demanded relates; and (3) in the case of a demand for a sum on which interest is so payable, state the rate of the interest and that interest is payable from the date of service: Local Government (Miscellaneous Provisions) Act 1976 s 33(3)(a)-(c).

8 Ibid s 33(3) (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 21(b)).

9 Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (amended by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 47). Such a charge takes effect from the date when the council makes the payment and, for the purposes of enforcing a charge, the council has the same powers and remedies under the Law of Property Act 1925 and otherwise as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver: Local Government (Miscellaneous Provisions) Act 1976 s 33(4A)(a) (added by the Local Government and Housing Act 1989 Sch 11 para 47). The power to appoint a receiver is exercisable at any time after the expiry of one month from the date when the charge takes effect: Local Government (Miscellaneous Provisions) Act 1976 s 33(4A)(b) (as so added).

10 Ibid s 33(4).

11 See the Greater London Council (General Powers) Act 1972 s 19 (amended by the Local Government, Planning and Land Act 1980 ss 1(6), 194, Sch 6 para 14, Sch 34 Part VI; the London Local Authorities Act 1990 s 42, Sch 3). See further LONDON GOVERNMENT.

UPDATE

775 Local authority powers; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(1) GAS LEGISLATION/776. Historical background.

3. PARTICULAR PROVISIONS RELATING TO GAS

(1) GAS LEGISLATION

776. Historical background.

On 1 May 1949¹ there were established 12 area gas boards² and the Gas Council³, and the property, rights, liabilities and obligations of gas undertakers⁴ in Great Britain vested in the

boards⁵. Duties and powers in relation to gas supply were given to the boards⁶, and they received certain exclusive rights to supply gas through pipes⁷. The functions of the Gas Council were to advise the minister⁸ and to assist the area boards⁹. Gas consultative councils were established for the area of each board¹⁰. Certain local enactments ceased to have effect on that day¹¹.

On 1 January 1973¹² the area boards were dissolved and their property, rights, liabilities and obligations vested in the Gas Council which was renamed the British Gas Corporation¹³. A duty to supply gas was imposed on the corporation¹⁴, the provisions relating to exclusive rights of supply, tariffs and charges and gas quality were modified, and a modified gas supply code was incorporated. The gas consultative councils were replaced by the National Gas Consumers' Council and regional councils for particular areas of Great Britain¹⁵.

1 Ie the vesting date under the Gas Act 1948 s 17(1) (repealed): Gas (Vesting Date) Order 1949, SI 1949/392 (spent).

2 See the Gas Act 1948 s 1(1), Sch 1 (repealed).

3 See *ibid* s 2(1) (repealed).

4 The undertakers affected were (1) all statutory gas undertakers; (2) all non-statutory gas undertakers which in 1947 supplied gas the whole or main part of which was consumed by persons other than the undertaker, its holding and subsidiary companies and other subsidiaries of the holding company; and (3) certain companies which in 1947 had one or more subsidiaries falling within head (1) or head (2) *supra*: *ibid* s 15(1) (repealed).

5 *Ibid* s 17(1) (repealed).

6 *Ibid* s 1(2) (repealed).

7 *Ibid* s 52 (repealed).

8 Ie the Minister of Fuel and Power: *ibid* s 74(1) (repealed). The minister for the purposes of the Gas Act 1948 (repealed) was the Minister of Fuel and Power, whose style and title were altered to that of Minister of Power by the Minister of Fuel and Power (Change of Style and Title) Order 1957, SI 1957/48. His functions were transferred to the Minister of Technology by the Minister of Technology Order 1969, SI 1969/1498, and to the Secretary of State by the Secretary of State for Trade and Industry Order 1970, SI 1970/1537. Those functions were exercised by the Secretary of State for Trade and Industry, and then by the Secretary of State for Energy. Regulatory functions are now exercised by the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry): see PARA 601 note 1 *ante*.

9 Gas Act 1948 s 2(1) (repealed).

10 *Ibid* s 9 (repealed).

11 *Ibid* s 56(2) proviso (repealed). The enactments were those which incorporated or substantially corresponded to provisions of the Gasworks Clauses Acts 1847 and 1871 (repealed) or provided for the regulation of charges by the undertaker or were otherwise inconsistent with the Gas Act 1948, but special provisions for the protection of persons, not rendered redundant by the Act, were preserved: see eg *Hinckley UDC v West Midlands Gas Board* [1951] Ch 577, [1951] 1 All ER 788, CA.

12 Ie the appointed day under the Gas Act 1972 s 1(1) (repealed): see the Gas Act 1972 (Appointed Day) Order 1972, SI 1972/1440 (spent). As from the same day the Gas Act 1948 was repealed: Gas Act 1972 s 49(3), Sch 8 (repealed).

13 *Ibid* s 1(1) (repealed).

14 *Ibid* s 2(1) (repealed).

15 *Ibid* ss 9, 10 (repealed).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(1) GAS LEGISLATION/777. The Gas Act 1986 and subsequent legislation.

777. The Gas Act 1986 and subsequent legislation.

On 18 August 1986¹, provision was made for the appointment of the Director General of Gas Supply ('the director') for the purpose of regulating the gas supply industry². On 23 August 1986³, there was established a Gas Consumers' Council ('the council') and the National Gas Consumers' Council and the regional gas consumers' councils ceased to exist⁴. The exclusive privilege of the British Gas Corporation to supply gas through pipes was abolished⁵ and provision was made for a new structure in which persons might be authorised to supply gas to any premises within an authorised area⁶. Public gas suppliers⁷ were given various duties and powers in relation to the supply of gas⁸, including the duty to supply gas to certain premises⁹, some of which were incorporated in the Public Gas Supply Code¹⁰.

On 24 August 1986, all the property, rights and liabilities to which the British Gas Corporation was entitled or subject immediately before that date became those of the successor company¹¹, British Gas plc¹². Provision was made for an initial government holding in the successor company¹³ and for the government to invest in its securities¹⁴. The Secretary of State was given power to fix by order¹⁵ a target investment limit for such government shareholding¹⁶. Provision was also made for the financial structure of the successor company¹⁷. The British Gas Corporation was dissolved on 28 February 1990¹⁸.

The director's powers were enhanced by the Competition and Service (Utilities) Act 1992¹⁹ and the arrangements for authorising the supply of gas through pipes were modified by the Gas (Exempt Supplies) Act 1993²⁰.

The former exemption from rating of certain buildings and establishments relating to gas²¹ ceased to have effect as from 1 April 1990²².

The Gas Act 1995 made extensive amendments to the Gas Act 1986, in particular to the licensing regime. Separate licences were introduced for public gas transporters (now known as 'gas transporters')²³ and for gas suppliers and gas shippers²⁴. The Energy Act 2004 has since introduced licences for the operation of gas interconnectors²⁵. The 1995 Act introduced a new gas code, which replaces the former Public Gas Supply Code²⁶, and reframed the general statutory duties of the regulatory authorities placing greater emphasis on competition²⁷. New provision was made for requiring the owners of certain gas processing facilities to make them available to other persons²⁸.

Further changes, particularly to the regulatory regime, were made by the Utilities Act 2000 which abolished the office of the director²⁹ and also abolished the Gas Consumers' Council³⁰, replacing the former by the Gas and Electricity Markets Authority ('GEMA')³¹ and the latter by the Gas and Electricity Consumer Council³². The Authority and the Secretary of State now have a new principal objective, in carrying out their functions in both the gas and electricity sectors, to protect the interests of consumers, wherever appropriate by promoting effective competition³³. In carrying out their functions in relation to gas the regulatory authorities may now have regard to the interests of consumers in relation to other utilities³⁴ and must, as a result of amendments made by the Energy Act 2004, carry out those functions in the manner best calculated, among other things, to contribute to the achievement of sustainable development³⁵.

The Energy Act 2004 has made further amendments to the Gas Act 1986 and has also introduced a special administration regime for gas transportation companies facing actual or

threatened insolvency³⁶ and established a mechanism allowing energy market participants to appeal against GEMA's decisions on modifications to the codes that govern activities in the gas and electricity markets³⁷.

1 le the commencement date under the Gas Act 1986 s 68(5): see the Gas Act 1986 (Commencement No 1) Order 1986, SI 1986/1315, art 2(1).

2 See the Gas Act 1986 s 1, Sch 1 (repealed).

3 le the commencement date under the Gas Act 1986 s 68(5): see the Gas Act 1986 (Commencement No 1) Order 1986, SI 1986/1315, art 2(2).

4 See the Gas Act 1986 s 2 (repealed). The Secretary of State was given power to pay, with Treasury approval and out of money provided by Parliament, compensation for (1) loss of office or loss or diminution of pension rights to the former chairmen of the national and regional consumers' councils; (2) loss of employment or loss or diminution of remuneration or pension rights to former officers of any of those councils: see s 44(1)-(3). As to the Secretary of State see PARA 601 note 1 ante.

5 Ibid s 3 (repealed), s 68(2); Gas Act 1986 (Appointed Day) Order 1986, SI 1986/1316, art 2. Certain transitional provisions relating to offices and addresses, agreements etc, deposits, offences, arbitration and the application of other enactments to persons carrying on gas undertakings came into force on the appointed day: see the Gas Act 1986 s 67(3), Sch 8 Pt I paras 11-14, 16-17.

6 See *ibid* s 7 (as originally enacted).

7 'Public gas supplier' meant any person who held an authorisation under *ibid* s 7 (as originally enacted) except where that person was acting otherwise than for purposes connected with the supply of gas through pipes to premises in its authorised area: see s 7(1) (as originally enacted).

8 These duties were generally statutory, not contractual.

9 See the Gas Act 1986 s 10 (as originally enacted).

10 See *ibid* s 15, Sch 5 (repealed).

11 See *ibid* ss 49(1), (3), (4), 68(3); and the Gas Act 1986 (Transfer Date) Order 1986, SI 1986/1318, art 2. The successor company, and its successors, is thus not liable under the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (as added and amended: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 761 et seq) for contamination of land caused by private gas companies prior to the Gas Act 1948 (repealed): see *R (on the application of National Grid Gas plc (formerly Transco plc)) v Environment Agency* [2007] UKHL 30, [2007] 3 All ER 877, [2007] 1 WLR 1780. The successor company was to be treated, for all purposes of corporation tax and petroleum revenue tax, as if it were the same person as the British Gas Corporation; but it is not thereby to be regarded as a body falling within the Taxation of Chargeable Gains Act 1992 s 170(12) (bodies established for carrying on industries or undertakings under national ownership or control: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 187): Gas Act 1986 s 60(1), (2) (amended by the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 13; the Finance Act 1998, s 165, Sch 27, Pt V(3)).

On the transfer date, all the rights and liabilities to which the British Gas Corporation was entitled or subject immediately before that date under the terms of issue of British Gas stock became rights and liabilities of the Treasury, and as from that date, British Gas stock was deemed to have been created and issued under the National Loans Act 1968: Gas Act 1986 s 50(1), (2). See further s 50(6), (7). 'British Gas stock' means any stock created and issued under the Gas Act 1972 s 21 (repealed) or under the Gas Act 1948 (repealed): Gas Act 1986 s 50(8). Certain transitional provisions came into force on the transfer date: see Sch 8 Pt II (paras 18-41).

12 See *ibid* s 49(2); and the Gas Act 1986 (Nominated Company) Order 1986, SI 1986/1317, art 2.

13 See the Gas Act 1986 s 51 (ss 51, 52 amended by the Finance Act 1988 s 148, Sch 14 Pt XI). The Treasury or the Secretary of State might appoint nominees for this purpose: Gas Act 1986 s 53(1)(a), (2). Any annual payment secured by any debentures issued in pursuance of s 51 (as so amended) was treated, with respect to accounting periods ending before 31 March 1996, for all purposes of corporation tax as if it were a charge on the income of the successor company (s 60(3) (as originally enacted)); with respect to accounting periods ending after that date, any debentures issued in pursuance of s 51 (as so amended) are to be treated, for the purposes of the Income and Corporation Taxes Act 1988 Pt VI (ss 208-254) (as amended) (company distributions) and the Finance Act 1996 Pt IV Ch II (ss 80-105) (as amended) (loan relationships), as having been issued for new consideration equal to the principal sum payable under the debenture (Gas Act 1986 s 60(3) (substituted by the Finance Act 1996 s 104, Sch 14 para 4)).

14 See the Gas Act 1986 s 52 (as amended: see note 13 supra). The Treasury or the Secretary of State might appoint nominees for this purpose: s 53(1)(b), (2).

15 Any power conferred on the Secretary of State by the Gas Act 1986 to make orders is exercisable by statutory instrument, subject, except in the case of an order appointing a day or an order under s 23 (as substituted and amended) (see PARA 812 post), s 30A (as added) (see PARA 973 post), s 33BC (as added and amended) (see PARA 895 post), s 41A (as added) (see PARA 871 post), s 41C (as added and amended) (see PARA 819 post), s 49(2) (see note 12 supra) or s 57(2) (repealed) (see note 18 infra), to annulment in pursuance of a resolution of either House of Parliament: s 64(1), (2) (amended by the Gas Act 1995 ss 11(7), 17(5), Sch 6; the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 21).

16 See the Gas Act 1986 s 54; and the Gas Act 1986 (Government Shareholding) Order 1987, SI 1987/866, setting a limit of 2.680% of the voting rights exercisable in all circumstances at general meetings of the company.

17 See the Gas Act 1986 s 55 (financial structure); s 56 (temporary restrictions on successor company's borrowings etc if its articles of association confer certain powers on the Secretary of the State). Provision was also made for the application of the Trustee Investments Act 1961 in relation to investment in the successor company: see the Gas Act 1986 s 59.

18 See *ibid* s 57 (repealed); and the British Gas Corporation (Dissolution) Order 1990, SI 1990/147, art 2.

19 See the Competition and Service (Utilities) Act 1992 ss 11-13 (adding the Gas Act 1986 ss 33A, 33B, 33C (all now amended) and s 33D); the Competition and Service (Utilities) Act 1992 s 17 (adding the Gas Act 1986 s 15A (now amended)); the Competition and Service (Utilities) Act 1992 s 18 (adding the Gas Act 1986 s 32A (repealed)); the Competition and Service (Utilities) Act 1992 s 37 (adding the Gas Act 1986 s 8A (now amended)); and the Competition and Service (Utilities) Act 1992 s 48 (amending the Gas Act 1986 s 28).

20 See the Gas (Exempt Supplies) Act 1993 s 3 (substituting the Gas Act 1986 s 36(1), (2) (now amended)); and PARA 794 post.

21 See the General Rate Act 1967 s 33 (as substituted) and s 33A (as added) (both repealed).

22 See the Local Government Finance Act 1988 s 149, Sch 13 Pt I; and the British Gas plc (Rateable Values) Order 1994, SI 1994/3283 (now revoked). See now the Gas Industry (Rateable Values) (England) Order 2000, SI 2000/946; and the BG plc (Rateable Value) (Wales) Order 2000, SI 2000/352.

23 See the Gas Act 1995 s 5 (substituting the Gas Act 1986 s 7 (now as amended)). See further PARA 805 post. For the meaning of 'gas transporter' see PARA 805 post.

24 See the Gas Act 1995 s 6(1) (adding the Gas Act 1986 s 7A (now as amended)). See further PARA 807 post. For the meanings of 'gas supplier' and 'gas shipper' see PARA 807 post.

25 See the Energy Act 2004 s 149(1), (6) (adding the Gas Act 1986 s 7ZA). See further PARA 806 post. For the meaning of 'gas interconnector' see PARA 792 note 4 post.

26 See the Gas Act 1995 s 9(2), Sch 2 (adding the Gas Act 1986 Sch 2B (now as amended)). As to the gas code see PARA 857 et seq post.

27 See the Gas Act 1995 s 1 (substituting the Gas Act 1986 s 4). Section 4 has been replaced by s 4AA (now as amended), which was added by the Utilities Act 2000 s 9. See further PARA 789 post.

28 See the Gas Act 1995 s 12 (now as amended); and PARA 834 post.

29 See the Utilities Act 2000 s 1(3).

30 See *ibid* s 2(3).

31 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

32 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

33 See, in relation to gas, the Utilities Act 2000 s 9 (adding the Gas Act 1986 s 4AA(1)); and PARA 789 post.

34 See the Gas Act 1986 s 4AA(4) (as added and amended); and PARA 789 post.

35 See *ibid* s 4AA(5)(ba) (added by the Energy Act 2004 s 83(a)); and PARA 789 post.

36 See the Energy Act 2004 Pt 3 Ch 3 (ss 154-171); and PARA 743 et seq ante.

37 See *ibid* ss 173-176; and PARA 733 et seq ante.

UPDATE

777 The Gas Act 1986 and subsequent legislation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 13--Gas Act 1986 s 51 amended: SI 2009/1941.

NOTE 15--Gas Act 1986 s 64(2) further amended: Energy Act 2008 Sch 5 para 2.

NOTE 17--Gas Act 1986 s 55 amended: SI 2009/1941.

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778. Subordinate legislation.

The Gas Acts 1948 and 1972¹ conferred upon the relevant minister² power to deal with various matters by regulations or orders³. Regulations made before 23 August 1986⁴ ('the appointed day') and still effective on that date continued to have effect as if made under the relevant provision of the Gas Act 1986⁵.

The Secretary of State⁶ may by order make such consequential modifications⁷ of any provision contained in any Act (whether public general or local) passed, or in subordinate legislation made, before the appointed day as appear to him necessary or expedient in respect of any reference therein to the British Gas Corporation, to a person carrying on a gas undertaking or to such an undertaking, or to any enactment repealed by the Gas Act 1986⁸.

Regulations made under any provision of Part I⁹ of the Gas Act 1986:

949 (1) may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating, except in relation to court proceedings, any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision:

47

65. (a) as to the mode of proof of any matter;

66. (b) as to parties and their representation;

67. (c) for the right to appear before and be heard by the Secretary of State, the Gas and Electricity Markets Authority ('GEMA')¹⁰ and other authorities; and

68. (d) as to awarding costs or expenses of proceedings for the determination of such questions, determining the amount thereof and the enforcement of awards thereof¹¹;

48

950 (2) which prescribe a period within which things are to be done may provide for extending the period so prescribed¹²;

951 (3) may:

49

69. (a) provide for anything falling to be determined under the regulations to be determined by the Authority, or by such other person as may be prescribed by the regulations, and in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be so prescribed;

70. (b) make different provision for different areas or in relation to different cases or different circumstances;

71. (c) provide for such exceptions, limitations and conditions and make such supplementary, incidental or transitional provision, as the Secretary of State or, as the case may be, the Authority, considers necessary or expedient¹³;

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952 (4) may provide that any person contravening the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁴.

Any power to make regulations which is conferred by Part I of the Gas Act 1986¹⁵ on the Secretary of State or the Authority is exercisable by statutory instrument¹⁶ subject, in the case of regulations made by the Secretary of State and unless otherwise provided, to annulment in pursuance of a resolution of either House of Parliament¹⁷.

1 As to the Gas Acts 1948 and 1972 (both repealed) see PARA 776 ante.

2 See PARA 776 note 8 ante.

3 Under the Gas Act 1972, all regulations, rules or orders made under the Gas Act 1948 and in force immediately before 1 January 1973 (the appointed day under the Gas Act 1972 (repealed)) and all local enactments then applicable to the Gas Council or an area board had effect as from that date as if references in them to the Gas Council or an area board or any reference in them, however worded and whether expressed or implied, to their business or any part of it, or to an area or any part of an area supplied with gas by an area board, were replaced by references to the British Gas Corporation or to the corresponding part of its business, or to the corresponding area supplied with gas by the corporation: see Sch 6 para 19 (repealed). As to the dissolution of the corporation see PARA 777 ante.

4 I.e. the appointed day under the Gas Act 1986 s 68(2): see the Gas Act 1986 (Appointed Day) Order 1986, SI 1986/1316.

5 See the Interpretation Act 1978 s 17(2)(b); the Gas Act 1986 s 67(3), Sch 8 paras 3, 4, 6.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 'Modifications' includes additions, alterations and omissions and cognate expressions are to be construed accordingly: Gas Act 1986 s 66.

8 Ibid s 67(2). As to the power to make orders generally see PARA 777 note 15 ante.

9 I.e. ibid Pt I (ss 4AA-48) (as amended): see PARA 777 ante, PARA 789 et seq post.

10 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

11 Gas Act 1986 s 47(1) (amended by the Competition and Service (Utilities) Act 1992 s 56(6), Sch 1 para 9(1), (2); and by virtue of the Utilities Act 2000 s 3(2)).

12 Gas Act 1986 s 47(2). 'Prescribed' means prescribed by regulations made, unless the context otherwise requires, by the Secretary of State: s 48(1) (definition amended by the Gas Act 1995 s 10(1), Sch 3 para 54(1)(g)).

13 Gas Act 1986 s 47(3) (amended by the Competition and Service (Utilities) Act 1992 Sch 1 para 9(3); the Gas Act 1995 s 10(1), Sch 3 para 53(1); and by virtue of the Utilities Act 2000 s 3(2)).

14 Gas Act 1986 s 47(4). As to offences see further PARA 977 post. As to the standard scale see PARA 613 note 11 ante.

15 I.e. by ibid Pt I (as amended).

16 Ibid s 47(7) (s 47(7), (8) substituted by the Utilities Act 2000 s 100).

17 Gas Act 1986 s 47(8) (as substituted: see note 16 supra). As to the exercise of the power to make regulations see eg the Gas (Prepayment Meter) Regulations 2006, SI 2006/2011; and PARA 858 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/(i) Works and Buildings/779. Safety and health at gas works.

(2) COGNATE LEGISLATION

(i) Works and Buildings

779. Safety and health at gas works.

Certain operational premises of gas suppliers are factories for the purposes of the factories legislation. These include works for the manufacture of gas from coal or oil and for the reformation of natural gas to the calorific value of coal gas, and premises used either for the storage of gas in a gasholder having a storage capacity of not less than 140 cubic metres or for the odourisation of natural gas at coastal reception stations¹.

The general purposes of Part I of the Health and Safety at Work etc Act 1974² include protecting the public from personal injury, fire, explosions and other dangers arising from the transmission, distribution, supply or use of gas³.

Water-sealed gasholders with a storage capacity of not less than 140 cubic metres⁴ must be of sound construction and properly maintained⁵; they must be thoroughly examined externally by a competent person at least once in every two years and a record containing the prescribed particulars of the examination must be entered in or attached to the appropriate register⁶. When any lift of a gasholder has been in use for more than 20 years, the internal state of the sheeting must be examined by a competent person at least once in every ten years⁷. No gasholder may be repaired or demolished except under the direct supervision of a competent person⁸.

1 See the Factories Act 1961 s 175(1)(a), (c), (2)(n) (amended by the Factories Act 1961 etc (Metrication) Regulations 1983, SI 1983/978, regs 3(1), 4(1), Sch 1). In *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 All ER 665, CA, it was held that coal gas was an article within earlier statutory provisions, so that premises in which persons were employed in manual labour for the purpose of making it constituted a factory, and this view was approved in *Longhurst v Guildford, Godalming and District Water Board* [1963] AC 265, [1961] 3 All ER 545, HL.

2 I.e. the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq.

3 Offshore Safety Act 1992 s 2(1)(c). For these purposes, 'gas' means any substance which is or, if it were in a gaseous state, would be gas within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 802 post): Offshore Safety Act 1992 s 2(4).

The Health and Safety at Work etc Act 1974 Pt I (as amended) has effect as if the Pipe-lines Act 1962 s 58A (as added) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 560) and the Gas Act 1986 s 22A(1)(c) (as added and amended) (see PARA 843 post), Sch 2B para 17 (as added and amended) (see PARA 865 post) were existing statutory provisions within the meaning of that Part and were specified in the Health and Safety at Work etc Act 1974 Sch 1 col 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302): see the Gas Act 1995 s 16(1), Sch 4 para 10(1). Without prejudice to the generality of the Health and Safety at Work etc Act 1974 s 15(1) (as amended) (health and safety regulations), regulations under s 15 (as amended) may repeal or modify any of the provisions mentioned in the Gas Act 1995 Sch 4 para 10(1): Sch 4 para 10(2). Nothing in Sch 4 para 10(1) affects the operation of the Health and Safety at Work etc Act 1974 s 18 (as amended) (enforcement of relevant statutory provisions: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 370 et seq) in relation to any time before such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes: Gas Act 1995 Sch 4 para 10(3).

Any regulations made or having effect as if made under the Gas Act 1972 s 31 (repealed) which were effective on the appointed day, and did not make such provision as was mentioned in s 31(2)-(4) or s 42(2) (repealed), had effect as if made under the Health and Safety at Work etc Act 1974 s 15 (as amended) for the general purpose of protecting the public from personal injury, fire, explosions and other dangers arising from the transmission or distribution of gas through pipes, or from the use of gas supplied through pipes; and subject to the Gas Act 1986 s 67(3), Sch 8 para 6(3), (4), the provisions of the Health and Safety at Work etc Act 1974 Pt I (as amended) and the provisions of the Gas Act 1986 apply accordingly: Sch 8 para 6(1), (2) (Sch 8 para 6(2) amended by the Offshore Safety Act 1992 s 3(3)(c)). For these purposes 'gas' has the same meaning as in the Gas Act 1986 Pt I (as amended) (see PARA 802 post): Sch 8 para 6(2A) (added by the Offshore Safety Act 1992 s 3(3)(d)). The Health and Safety at Work etc Act 1974 s 1(2) (as amended: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302) has effect as if any regulations to which the Gas Act 1986 Sch 8 para 6 (as so amended) applies were in force under an enactment specified in the Health and Safety at Work etc Act 1974 Sch 1 col 3 (as amended); and s 20 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376) has effect as if anything done before the appointed day in contravention of any regulations to which the Gas Act 1986 Sch 8 para 6 (as so amended) applies had been done on or after that day: Sch 8 para 6(3), (4). The 'appointed day' is 23 August 1986: see s 3, 66, 68(2); and the Gas Act 1986 (Appointed Day) Order 1986, SI 1986/1316, art 2. 'Contravention', in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions are to be construed accordingly: Gas Act 1986 s 66.

4 Gasholders of smaller capacity are not affected: see the Factories Act 1961 s 39(7) (amended by the Factories Act 1961 etc (Metrication) Regulations 1983, SI 1983/978, regs 3(1), 4(1), Sch 1).

5 Factories Act 1961 s 39(1). See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 513.

6 Ibid s 39(2). For the prescribed particulars see the Gasholders (Record of Examinations) Order 1938, SR & O 1938/598. As to the register see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 392.

7 Factories Act 1961 s 39(3). See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 513.

8 See ibid s 39(6); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 513.

UPDATE

779 Safety and health at gas works

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/(i) Works and Buildings/780. Building regulations.

780. Building regulations.

Nothing in the statutory provisions relating to building regulations¹ and nothing in such regulations applies in relation to a building belonging to gas transporters² or other statutory undertakers and held or used by them for the purposes of their undertaking, unless it is a house or a building used as offices or showrooms³. Such regulations may apply to various aspects of building construction including the ventilation of buildings, and also to gas stoves and other gas fittings in buildings to the extent that such regulations are required for health and safety purposes and fuel and water conservation⁴. They may also impose continuing requirements in relation to fuel, power and emissions⁵.

1 le the Building Act 1984 Pt I (ss 1-46) (as amended); see BUILDING vol 4(2) (2002 Reissue) PARA 306 et seq.

2 A gas transporter is deemed to be a statutory undertaker, and his undertaking a statutory undertaking, for the purposes of the Building Act 1984: Gas Act 1995 s 16(1), Sch 4 paras 1, (2)(1)(xxxv) (amended by virtue of the Utilities Act 2000 s 76(7)). For the meaning of 'gas transporter' see PARA 805 post.

3 Building Act 1984 s 4(1)(b) (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I; prospectively repealed by the Sustainable and Secure Buildings Act 2004 ss 5(a), 11(2), Schedule, as from a day to be appointed under s 11(3); at the date at which this title states the law, no such day had been appointed). Local authorities may also dispense with or relax any requirement of the building regulations in relation to any particular type of building matter: see the Building Regulations 2000, 2000/2531, reg 11(1) (as amended); and BUILDING.

4 See the Building Act 1984 s 1, Sch 1 (as amended); the Building Regulations 2000, SI 2000/2531 (as amended); and BUILDING.

5 See the Building Act 1984 s 2A (added by the Sustainable and Secure Buildings Act 2004 s 4(1)); and BUILDING. As to requirements for the energy performance of buildings generally see also PARAS 655-657 ante; and as to energy efficiency and conservation in relation to residential accommodation see PARA 658 ante.

UPDATE

780 Building regulations

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/ (ii) Gas Appliances/A. INSTALLATION OF APPLIANCES/781. Installation of appliances.

(ii) Gas Appliances

A. INSTALLATION OF APPLIANCES

781. Installation of appliances.

The statutory regulations governing buildings and works and fittings apply to the installation in buildings of combustion appliances, including those which burn gas¹, and chimneys, flue pipes, hearths and fireplace recesses for use in connection with them².

The general requirements imposed on persons intending to carry out building work to give certain notices³ and to deposit full plans⁴ do not apply to the installation of a heat-producing gas appliance if the appliance is to be installed by a person, or an employee of a person, who is competent⁵ to do so⁶. Nor do they apply to the installation of a heating or hot water service system connected to a heat-producing gas appliance, or associated controls, if the installation is to be carried out by a person registered by CORGI Services Ltd in respect of that type of work⁷. Specific regulations have been made relating to the safe installation and use of gas appliances⁸.

1 See the Building Regulations 2000, SI 2000/2531, regs 4, 6, Sch 1 Pt J (as respectively amended and substituted); and BUILDING.

2 See *ibid* Sch 1 Pt J (substituted by SI 2001/3335, reg 2(1), (12), Schedule); and BUILDING.

3 *Ie* *ibid* reg 12 (as amended): see BUILDING.

4 *Ie* *ibid* reg 14 (as amended): see BUILDING.

5 *Ie* a person, or an employee of a person, who is a member of a class of persons approved in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3: see PARA 915 post.

6 See the Building Regulations 2000, SI 2000/2531, reg 12(5), Sch 2A para 1 (as substituted); and BUILDING.

7 See *ibid* Sch 2A para 2 (as substituted); and BUILDING.

8 See the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451; and PARA 911 et seq post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/ (ii) Gas Appliances/B. SAFETY OF HEATING AND COOKING APPLIANCES/782. Safety of heating and cooking appliances; in general.

B. SAFETY OF HEATING AND COOKING APPLIANCES

782. Safety of heating and cooking appliances; in general.

In the exercise of his statutory powers under the Consumer Protection Act 1987 to make regulations in respect of certain goods for the purpose of securing that they are safe or, if unsafe, not generally available and that appropriate information is provided¹, and also as the designated minister in relation to European Community measures relating to safety as regards appliances burning gaseous fuels², the Secretary of State³ has made the Gas Appliances (Safety) Regulations 1995⁴. Those regulations do not apply to the supply of certain secondhand appliances⁵ which must meet the standards of earlier regulations⁶. Subject to that, no manufacturer or his authorised representative established in the Community is to supply⁷:

- 953 (1) an appliance⁸ or a fitting⁹ which does not comply with the essential requirements¹⁰;
- 954 (2) an appliance or a fitting in respect of which there is not in force at that time:
51
 - 72. (a) either an EC type-examination certificate¹¹ and an EC declaration of conformity to type¹²; or
 - 73. (b) an EC type-examination certificate and either an EC declaration of conformity (guarantee of product or production quality)¹³ or an EC declaration of conformity (EC verification)¹⁴ and either an EC declaration of conformity issued by a notified body¹⁵ or a fitting certificate¹⁶; or
 - 74. (c) an EC declaration of conformity (EC unit verification)¹⁷ and an EC certificate of conformity¹⁸ issued by a notified body¹⁹,
- 52
 - 955 or a corresponding declaration issued by a manufacturer or his authorised representative established in the Community, or a corresponding certificate issued under the law of another member state²⁰.

Nor is any person to supply:

- 956 (i) an appliance which, when normally used, is not safe²¹;
- 957 (ii) an appliance to which the CE marking has not been affixed²² or a fitting without a fitting certificate which has been issued²³.

The above provisions do not apply in any case in which a person placing an appliance or fitting on the market reasonably believes that it will not be put into service in the United Kingdom or in any other member state²⁴.

¹ See the Consumer Protection Act 1987 s 11 (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 539.

2 See the European Communities Act 1972 s 2(2); and EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) on the approximation of the laws of member states relating to appliances burning gaseous fuels (as amended) ('the Directive').

3 As to the Secretary of State see PARA 601 note 1 ante.

4 See the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, which came into force generally on 18 July 1995: reg 1(3). For transitional provisions see regs 1(2), (3), 4(2)-(4). Subject to reg 29 (offences relating to domestic animals and to property: see PARA 786 post), the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, are to be treated for all purposes as if they were safety regulations within the meaning of the Consumer Protection Act 1987 s 45(1) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 539): Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 32. The Gas Appliances (Safety) Regulations 1995, SI 1995/1629, implement the Directive referred to in note 2 supra.

5 Subject to *ibid* reg 4(2)-(5), the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, do not apply to (1) any appliance (for the meaning of which see note 8 *infra*) which does not bear the CE marking (as to which see note 23 *infra*) or any fitting (for the meaning of which see note 9 *infra*) in respect of which a fitting certificate has not been issued, and which in either case, was supplied for the first time in the Community before 1 January 1992; (2) any fitting, whenever manufactured, supplied for incorporation in appliances which do not bear the CE marking and were supplied for the first time in the Community before 1 January 1996: reg 4(1). Nor do they have effect in relation to the supply by any person of an appliance or fitting which (a) has at any time been put into service by another person; and (b) is supplied by a person who supplies appliances or fittings in the course of any business whether after repairing or reconditioning them or not: reg 4(5). 'Fitting certificate', in relation to a fitting, means a certificate to the effect that it conforms with the provisions of the Directive which apply to it: reg 2(1). As to the Directive see note 2 *supra*. For these purposes, 'the Community' means the European Community and other member states; 'member state' means a state which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the protocol signed at Brussels on 17 March 1993: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 2(1).

6 Secondhand appliances and fittings to which the 1995 regulations do not apply continue to be governed by the Gas Cooking Appliances (Safety) Regulations 1989, SI 1989/149 and the Heating Appliances (Fireguards) (Safety) Regulations 1991, SI 1991/2693 (otherwise revoked): see the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 1(3). See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 613.

7 For these purposes, 'supply', in relation to an appliance or fitting: (1) includes offering to supply, agreeing to supply, exposing for supply and possessing for supply; and (2) except in reg 4(5) (see note 5 *supra*) or in relation to an appliance which has previously been put into service by any person, includes its first putting into service in the United Kingdom by the manufacturer or by the importer into the United Kingdom: reg 2(1). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

8 For these purposes, 'appliance' means an appliance burning gaseous fuel, ie any fuel which is in a gaseous state at a temperature of 15°C at a pressure of 1 bar, used for cooking, heating, hot-water production, refrigeration, lighting or washing and having, where applicable, a normal water temperature not exceeding 105°C and includes forced draught burners and heating bodies to be equipped with such burners but does not include an appliance specifically designed for use in an industrial process carried out on industrial premises: *ibid* reg 2(1).

9 For these purposes, 'fitting' means a safety device, a controlling device or a regulating device, and includes a sub-assembly of an appliance, but does not include a forced draught burner or heating body to be equipped with such a burner which is separately marketed for trade use and is designed to be incorporated into an appliance or assembled to constitute an appliance: *ibid* reg 2(1).

10 See *ibid* reg 7(1). 'Essential requirements' means the requirements in EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) Annex I set out in the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, Sch 3: reg 2(1).

Subject to reg 3(2), an appliance or a fitting is to be taken to satisfy the essential requirements (1) if it satisfies a national standard which implements the relevant harmonised standard; or (2) where there is no relevant harmonised standard, if it satisfies a national standard of which the text is communicated to the European Commission pursuant to EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) art 5(2) and which, pursuant to that provision, is notified by the Commission to the member states as being presumed to conform to the essential requirements: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 3(1)(a). Regulation 3(1)(a) has effect in any case only where: (a) the national standard in question relates to all matters relevant to the essential requirements; and (b) there are no reasonable grounds for suspecting that the appliance or fitting does not satisfy the essential requirements: reg 3(2). 'Harmonised standard', in relation to appliances and fittings, means a technical specification: (i) which is adopted by one or both of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation upon a remit from the Commission in accordance with EEC Council Directive 83/189 (OJ L109, 26.4.83, p 8) (as amended) (now

repealed and replaced: see European Parliament and EC Council Directive 98/34 (OJ L204, 21.7.98, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations; and (ii) of which the reference number is published in the Official Journal in pursuance of EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) art 5(1)(a): Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 3(3)(a).

11 'EC type-examination certificate' means a certificate issued by a notified body under *ibid* reg 10(4) (see PARA 784 post) or, as the case may be, issued under a corresponding provision of the law of another member state: reg 2(1). 'Notified body' means a body which is approved by the Secretary of State and whose name and identification number is notified by him to the Commission and to other member states in accordance with reg 5(1) (see PARA 783 post): reg 2(1). In the expression 'a notified body' in regs 24(3)(b) and 24(1)(a) (see PARA 783 post), 'all other notified bodies' in regs 10(6), 12(2)(b), 13(2)(b), 14(6)(b)(ii), 15(2)(b), 'another notified body' in regs 11(2)(b) and 14(1), 'any other notified body' in regs 10(6) and 11(1) and 'relevant notified body' in Sch 2 (specimen form of CE marking), 'notified body' also means a body which is approved for the purposes of the Directive by another member state and whose name and identification number is notified to the European Commission and other member states pursuant to EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) art 9(1): Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 2(1).

12 *le* made in accordance with *ibid* reg 23. Where an EC type-examination certificate has been issued in respect of a type and the manufacturer or his authorised representative established in the Community is satisfied (1) that an appliance or a fitting has been manufactured in conformity with that certificate; and (2) that the requirements of reg 7 are satisfied in relation to the appliance or fitting, then subject to reg 24 (surveillance by notified bodies: see PARA 783 post), he may, in the case of an appliance, issue an EC declaration of conformity to type, and in the case of a fitting, supply a fitting certificate: reg 23(1). An EC declaration of conformity to type may relate to more than one appliance or fitting and must be retained by the manufacturer or his authorised representative established in the Community: reg 23(2). If the manufacturer or his authorised representative established in the Community issues an EC declaration of conformity to type he must, in the case of an appliance, affix the CE marking in accordance with reg 25: reg 23(3). 'Fitting certificate', in relation to a fitting, means a certificate to the effect that it conforms with the provisions of the Directive which apply to it: reg 2(1). For the meaning of 'CE marking' see note 22 *infra*.

13 *le* made in accordance with *ibid* reg 16. Where a manufacturer has implemented a quality system which has been approved under reg 14 or under a corresponding provision of the law of another member state and the manufacturer or his authorised representative established in the Community is satisfied that an appliance or a fitting has been manufactured in conformity with an approved type, then in the case of an appliance, he may issue (and if he does so must retain) a declaration that the appliance conforms with the relevant EC type-examination certificate and satisfies the relevant essential requirements (an 'EC declaration of conformity (guarantee of product or production quality)'); and if he does so, he must affix the CE marking in accordance with reg 25: reg 16(a). In the case of a fitting, he must supply a fitting certificate: reg 16(b).

14 *le* made in accordance with *ibid* reg 17. Where an EC type-examination certificate has been issued in respect of a type and the manufacturer or his authorised representative established in the Community is satisfied that an appliance or fitting has been manufactured in accordance with an approved type and that the requirements of the Directive that apply to it are satisfied in relation to an appliance or fitting, then, subject to reg 19 or reg 20, (1) in the case of an appliance, he may issue an EC declaration of conformity to type (EC verification), and if he does so, must affix the CE marking in accordance with reg 25; (2) in the case of a fitting, must supply a fitting certificate: reg 17(1). An EC declaration of conformity to type (EC verification) may relate to more than one appliance and must be retained by the manufacturer, or as the case may be, his authorised representative established in the Community: reg 17(2).

15 *le* issued under *ibid* reg 19 (EC verification (individual appliances and fittings)) or reg 20 (EC verification by batch (statistical method)): see PARA 784 post.

16 *le* a fitting certificate issued under *ibid* reg 25(4). In the case of a fitting, the manufacturer or his authorised representative established in the Community must, in accordance with regs 1-25(3), issue a certificate (which may relate to a number of identical fittings and is called a 'fitting certificate') by way of confirmation that the fitting to which the certificate relates conforms with the provisions of the 1995 Regulations which relate to it; and a fitting certificate must describe the characteristics of the fitting and the manner in which the fitting is to be incorporated into an appliance, or in which it and other fittings are to be assembled, in order to comply with the essential requirements: reg 25(4). It is the duty of the manufacturer or his authorised representative established in the Community to supply a copy of the certificate with the fitting: reg 25(4).

17 *le* made in accordance with *ibid* reg 18. Where a manufacturer of an appliance or his authorised representative established in the Community is satisfied that the requirements of the Directive that apply to it are satisfied in relation to the appliance he may issue (and if he does so must retain) an EC declaration of conformity (EC unit verification): reg 18(1). If the manufacturer or his authorised representative established in the Community issues an EC declaration of conformity to type (EC unit verification), he must affix the CE marking in accordance with reg 25 (see note 22 *infra*) but subject to reg 21 (see note 19 *infra*): reg 18(2).

18 'EC certificate of conformity' means a certificate of conformity issued under reg 19 or reg 20 (see note 15 supra) or reg 21 (see note 19 infra): reg 2(1). If a notified body is minded to refuse to issue an EC certificate of conformity under any of regs 19, 20 and 21, it must give the applicant the opportunity of making representations within a reasonable period as to why it should not be refused: reg 22(1). Where a notified body, having considered any representations made in accordance with reg 22(1), refuses an EC certificate of conformity, it must, in writing, inform the applicant of its decision and the grounds for its decision: reg 22(2).

19 le under ibid reg 21. Where a manufacturer or his authorised representative established in the Community desires that an EC certificate of conformity is to be issued by a notified body under reg 21, he must: (1) inform the notified body of his desire; (2) provide the design documentation to the notified body; and (3) either (a) submit the appliance to the notified body; or (b) if the notified body so decides, make provision for the notified body to carry out its functions under reg 21 at the place where the appliance is installed; and must undertake to pay the appropriate fee to the notified body: reg 21(1). The notified body must examine the appliance and carry out tests to establish whether it satisfies the essential requirements and the provisions of the 1995 Regulations which apply to it: reg 21(2). If, having carried out the examination and tests, the notified body is satisfied that an EC certificate of conformity should be issued, it must, on payment of the appropriate fee, issue an EC certificate of conformity, which must be retained by the manufacturer or his authorised representative established in the Community, and must affix or cause to be affixed its identification number to the approved appliance: reg 21(3).

20 Ibid reg 8.

21 Ibid reg 7(2). For these purposes, 'normally used' in relation to use means use (1) when correctly installed and regularly serviced in accordance with the manufacturer's instructions referred to in EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) Annex II para 1(2) (set out in the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, Sch 3); (2) within the normal variations of gas quality and pressure; and (3) in accordance with its intended purpose or in a way which can reasonably be foreseen: reg 7(2). 'Safe' has the same meaning as in the Consumer Protection Act 1987 s 19(1) (as amended) except that the references in that provision to 'risk' are to be construed as including references to any risk of (a) injury or impairment to the health or safety of any domestic animal; and (b) damage to any property: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 2(1).

22 'CE marking' means the CE conformity marking referred to in ibid reg 25, consisting of the initials 'CE' taking the form of the specimen given in Sch 2: reg 2(1). In accordance with regs 1-24, there must be affixed by the manufacturer or his authorised representative established in the Community, to each appliance (or on a data plate securely affixed to the appliance) in a visible, easily legible and indelible form (1) the CE marking by way of confirmation (a) that the appliance conforms with a type in respect of which an EC type-examination certificate is in force in accordance with the 1995 Regulations; or (b) that an EC certificate of conformity has been issued by it in accordance with those regulations in respect of the appliance; (2) the name (or, if it enables him to be identified, the trade name, trade mark or other identification symbol) of (a) the manufacturer of the appliance, if he is established in the Community; or (b) his authorised representative established in the Community, if he is not so established; (3) the trade name of the appliance; (4) the type of any electrical supply to be used in connection with the appliance; (5) the appliance category; and (6) the last two digits of the year in which the CE marking was affixed: reg 25(1). No person must affix to an appliance any markings likely to deceive third parties as to the meaning and form of the CE marking affixed in accordance with the 1995 Regulations or which reduces the visibility or legibility of the CE marking so affixed: reg 25(2). A data plate must be so designed that it cannot be reused: reg 25(3).

Subject to reg 26(2), where the appliance is the subject of Community Directives other than the Directive referred to in note 2 supra ('the Directive'), in addition to the Directive, which provide among other things for the affixing of the CE marking, the CE marking affixed in relation to the Directive must indicate that the appliance conforms to the provisions of those other Community Directives: reg 26(1). Where any of those Community Directives allows the manufacturer, during a transitional period, to choose which arrangements apply, the CE marking must indicate conformity only to the Community Directives applied by the manufacturer; and in this case, particulars of the Community Directives applied, as published in the Official Journal, must be given in the documents, notices or instructions required by the Community Directives and accompanying such appliances: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 26(2).

23 Ibid reg 7(3).

24 Ibid reg 9.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/ (ii) Gas Appliances/B. SAFETY OF HEATING AND COOKING APPLIANCES/783. Notified bodies.

783. Notified bodies.

The Secretary of State¹ may approve one or more bodies (known as 'notified bodies')² to perform functions under the Gas Appliances (Safety) Regulations 1995³. Any such approval may be given for an unlimited period or for a specified period and may be given subject to conditions, and the Secretary of State may withdraw an approval if the body ceases to satisfy or comply with any such condition⁴. A notified body may:

- 958 (1) carry out or secure the carrying out of examinations and tests and issue EC type-examination certificates in respect of models of appliances and fittings⁵;
- 959 (2) carry out or secure the carrying out of examinations and evaluations and approve quality systems⁶;
- 960 (3) carry out or secure the carrying out of examinations and issue EC certificates of conformity of appliances and fittings⁷;
- 961 (4) carry out or secure the carrying out of examinations and issue EC certificates of conformity in respect of batches of appliances and fittings⁸;
- 962 (5) require an applicant to supply further specimens of the model to which an application for EC type-examination⁹ relates; and
- 963 (6) do such other things as may be required or permitted under those regulations¹⁰.

They may require an applicant to pay fees in connection with the performance of certain of their functions¹¹, and must carry out surveillance as provided for in the 1995 Regulations¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'notified body' see PARA 782 note 11 ante.

3 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 5(1).

4 Ibid reg 5(2).

5 Ie under ibid reg 10: see PARA 784 post. For the meaning of 'EC type-examination certificate' see PARA 782 note 11 ante; for the meaning of 'appliance' see PARA 782 note 8 ante; and for the meaning of 'fitting' see PARA 782 note 9 ante.

6 Ie under ibid reg 14: see PARA 785 post. 'Quality system' means a system of which the purpose is to ensure that appliances conform with the type as described in the EC type-examination certificate and satisfy the essential requirements which apply to them: reg 2(1).

7 Ie under ibid regs 19, 21: see PARA 782 note 19 ante, PARA 784 post.

8 Ie under ibid reg 20: see PARA 784 post.

9 Ie an application under ibid reg 10: see PARA 784 post.

10 Ibid reg 5(3).

11 A notified body may require a fee to be paid by the applicant in connection with the performance of functions under ibid regs 10, 14, 19, 20, 21 (see PARA 782 ante, PARA 784 post) and reg 24 (see note 12 infra) ('the appropriate fee') and the fee in every case must not exceed the sum of: (1) the costs of the notified body

of and in connection with the functions carried out or to be carried out by it under the 1995 Regulations ('the relevant service'); and (2) an amount on account of profit which is reasonable in the circumstances having regard to (a) the character and extent of the work done or to be done by the notified body in providing the relevant service; and (b) the commercial rate normally charged on account of profit for that work or similar work: reg 6.

12 Subject to the following provisions, where a manufacturer or his authorised representative established in the Community issues an EC declaration of conformity to type or a fitting certificate under *ibid* reg 23 (see PARA 782 note 12 ante) he must: (1) appoint a notified body for the purposes of EC surveillance under the Directive; and (2) undertake to pay from time to time the appropriate fee for work done by a notified body under reg 24; and the notified body must carry out checks under this provision: reg 24(1). Where a quality system was approved under reg 14 (see PARA 785 post), the notified body which approved the quality system must be the body to carry out EC surveillance under this provision: reg 24(2). In carrying out EC surveillance under reg 24, the notified body, (a) in the case of surveillance under reg 24(1), must, at intervals of not more than one year, carry out sufficient random examinations and checks in order to ensure that appliances or fittings manufactured by the manufacturer conform to the relevant EC type-examination certificate and the relevant essential requirements; and (b) in the case of surveillance under reg 24(2), must, at intervals of not more than two years, carry out checks in order to ensure that the manufacturer is maintaining and applying the quality system and may, from time to time as it thinks fit, carry out visits at the places of manufacture, inspection, testing and storage and carry out, or have carried out, tests on appliances or fittings to check whether the manufacturer is maintaining and applying the quality system; and must, in each case, provide the manufacturer with a report on its findings: reg 24(3). A manufacturer must, upon request made by it (if it is not the notified body which made the report) provide to the notified body which issues the EC type-examination certificate a copy of any report made to him under reg 24(3) and must permit inspection of the original thereof: reg 24(4). For the purpose of assisting the notified body to carry out EC surveillance under reg 24(2) above, the manufacturer must, in respect of each appliance or fitting, keep available for inspection by the notified body all necessary information, including the documentation of the quality system, the design documentation of the appliance or fitting and the quality records: reg 24(5). For the purposes of reg 24(1)-(5), a duly authorised officer of the notified body responsible for EC surveillance may, on production if requested of his credentials, at all reasonable times enter any premises used for the purpose of manufacture, inspection, testing or storage of any appliance or fitting by or on behalf of the manufacturer: reg 24(6). If the notified body is not satisfied that the appliances or fittings tested by it satisfy the requirements of the relevant EC type-examination certificate or of the 1995 Regulations, it must give to the manufacturer a report advising him of the steps necessary to remedy the non-compliance: reg 24(7). If it is the notified body which issued the EC type-examination certificate, the notified body must consider whether it should exercise its powers under reg 13 (see PARA 784 post) or if it is not the notified body which issued the EC type-examination certificate, it must notify the notified body which issued it: reg 24(7)(a). If, however, it is the notified body which approved the quality system, it must consider whether it should exercise its powers under reg 15 (see PARA 785 post) or if it is not the notified body which approved the quality system, it must notify the notified body which issued it: reg 24(7)(b). Upon receipt of a notification under reg 24(7), it is the duty of a notified body to consider whether it should exercise its powers under reg 13 or reg 15: reg 24(8). A manufacturer must, on demand, pay to the notified body the appropriate fee for work done by it under reg 24: reg 24(9).

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784. EC type-examination and EC verification.

Where an application to a notified body¹ for EC type-examination is made under the Gas Appliances (Safety) Regulations 1995² by the manufacturer or by his authorised representative established in the Community ('the applicant'), the application must be in writing and must include:

- 964 (1) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address;
- 965 (2) a declaration that an application for EC type-examination in respect of the appliance³ or fitting⁴ has not been made to any other notified body; and
- 966 (3) the design documentation⁵.

The applicant must supply to the notified body:

- 967 (a) an appliance or fitting which, so far as concerns its characteristics relevant to any type of risk relevant to the essential requirements⁶, is representative of the production envisaged ('the type'); and
- 968 (b) such further appliances or fittings as the notified body may reasonably require for these purposes;

and must undertake to pay the appropriate fee to the notified body⁷.

On an application so made to it the notified body must examine the design documentation and check that the type⁸ has been manufactured in conformity with that documentation; and must carry out, or have carried out, examinations and tests to check whether the type satisfies the essential requirements⁹. Where the notified body, after carrying out its duties under the above provision, is satisfied that the type complies with the essential requirements which apply to it, the notified body must, on payment of the appropriate fee, issue to the applicant an EC type-examination certificate¹⁰ in respect of that type¹¹. The notified body must forthwith inform all other notified bodies of each EC type-examination certificate issued by it and of particulars of additions and amendments relating to documents already issued, and, on request made by it, must send to any other notified body a copy of any EC type-examination certificate that it has issued and, if any other notified body satisfies the notified body that there is good reason why they should be made available to it, copies of the annexes to the certificate and reports on the examinations and tests which the notified body has carried out¹². Where an EC type-examination certificate so issued is in force in respect of an approved type and the manufacturer or his authorised representative established in the Community proposes to make modifications or additions to the approved type which affect its conformity with the essential requirements or with the prescribed conditions for use of the appliance, the manufacturer or such representative may¹³ make an application in writing to the notified body which issued the certificate for approval of modifications or additions to the approved type; and the above provisions¹⁴ have effect in relation to such an application as they have effect in relation to an application for an EC type-examination¹⁵.

No person must make an application for EC type-examination under the above provisions in respect of a type at any time when there is pending in respect of that type an application for EC type-examination made by any person to any other notified body¹⁶. Where an application for EC type-examination is so made to a notified body in respect of a type and, to the knowledge of the notified body, an application to another notified body for an EC type-examination certificate in respect of that type is pending, the notified body must not consider, or must not further consider, the application until the other application has been determined or withdrawn¹⁷.

If a notified body is minded to refuse to issue an EC type-examination certificate, it must give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused¹⁸. Where the notified body, after considering any representations made in accordance with that invitation, refuses to issue an EC type-examination certificate or to extend its period of validity, it must, in writing, inform the applicant and the Secretary of State of its decision and the grounds for its decision and inform all other notified bodies of the decision¹⁹.

If it appears to a notified body either that there has been a breach of any condition subject to which the body issued an EC type-examination certificate, and that the person to whom it was issued is unable or unwilling to effect a sufficient remedy, or that appliances or fittings which conform with the type in respect of which an EC type-examination certificate has been issued do not satisfy the essential requirements, the notified body may withdraw the certificate after giving the person to whom it was issued the opportunity of making representations within a reasonable period as to why it should not be withdrawn²⁰. Where a notified body, having considered any representations so made, withdraws an EC type-examination certificate, it must, in writing, inform the person to whom it was issued and the Secretary of State of the withdrawal of the certificate and of its reasons for the withdrawal and inform all other notified bodies of its withdrawal²¹.

Where a manufacturer or his authorised representative established in the Community submits an appliance or fitting to a notified body for verification²² together with an undertaking to pay the appropriate fee, the notified body must examine the appliance or fitting and carry out tests to establish whether it satisfies the provisions of the 1995 Regulations which apply to it and, in the case of an appliance, whether it conforms with the relevant EC type-examination certificate²³. If, having carried out the examination, the notified body is satisfied that an EC certificate of conformity should be issued, it must, on payment of the appropriate fee, issue an EC certificate of conformity (which may relate to one or more appliance or fitting and must be retained by the manufacturer or his authorised agent established in the Community) and in the case of an appliance must affix or cause to be affixed its identification number on each appliance²⁴.

Where a manufacturer or his authorised representative established in the Community submits a batch²⁵ of appliances or fittings to a notified body for verification²⁶ together with an undertaking to pay the appropriate fee, the approved body must carry out an examination and tests of appliances or fittings in the batch²⁷ to establish whether items in the batch conform with the relevant EC type-examination certificate and, in the case of an appliance, satisfy the provisions of the 1995 Regulations which apply to it²⁸. If, having carried out the examination, the notified body is satisfied that an EC certificate of conformity should be issued it must, on payment of the appropriate fee, issue an EC certificate of conformity which must identify any appliance or fitting in the batch with which the notified body is not satisfied²⁹ and must be retained by the manufacturer or his authorised representative established in the Community; and must, in the case of an appliance, affix or cause to be affixed its identification number³⁰. Where the notified body issues an EC certificate of conformity in respect of a batch, the manufacturer or his authorised agent established in the Community:

- 969 (i) may supply any appliance or fitting in the batch other than one within head
- (ii) below; and

970 (ii) must not supply any appliance or fitting which is identified in the EC certificate of conformity as one with which the notified body was not satisfied³¹.

Where the notified body declines to issue an EC certificate of conformity in respect of a batch, the notified body must take all reasonable steps to ensure that no appliance or fitting in the batch is supplied by any person; and no person must supply any appliance or fitting which was comprised in the batch³². If, having regard to the objectives of the relevant European Directive³³, it appears to the notified body that the number of batches of appliances or fittings to which an EC type-examination certificate applies and in respect of which it has declined to issue an EC certificate of conformity is unsatisfactory, it may suspend verification in respect of appliances or fittings to which that EC type-examination certificate applies³⁴.

1 For the meaning of 'notified body' see PARA 782 note 11 ante; and as to such bodies see PARA 783 ante.

2 le under the Gas Appliances (Safety) Regulations 1995, SI 1995/1629: see PARAS 782-783 ante; the text and notes 3-34 infra; and PARA 785 et seq post.

3 For the meaning of 'appliance' see PARA 782 note 8 ante.

4 For the meaning of 'fitting' see PARA 782 note 9 ante.

5 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 10(1). 'Design documentation' means the documentation referred to in EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) Annex IV set out in the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, Sch 1: reg 2(1).

6 For the meaning of 'essential requirements' see PARA 782 note 10 ante.

7 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 10(2). As to the appropriate fee see reg 6, cited in PARA 783 note 11 ante.

8 'Type' has the meaning assigned to it in *ibid* reg 10(2)(a) (see head (a) in the text) and 'approved type' means approved by a notified body under reg 10 or approved under a corresponding provision of the law of another member state: reg 2(1).

9 *Ibid* reg 10(3).

10 An EC type-examination certificate must identify the type to which it relates and: (1) must state the conclusions of the EC type-examination carried out by the notified body; (2) must indicate any conditions to be satisfied for its continued validity; (3) must be accompanied by the data and descriptions necessary for identification of the approved appliance or fitting; and (4) if relevant to its compliance with the essential requirements, must be accompanied by a description of its functioning; and there must be annexed to the certificate all relevant drawings and diagrams: *ibid* reg 10(5).

11 *Ibid* reg 10(4).

12 *Ibid* reg 10(6).

13 le instead of making an application under *ibid* reg 10(1).

14 le *ibid* reg 10(2)-(6): see the text and notes 6-12 *supra*.

15 *Ibid* reg 10(7).

16 *Ibid* reg 11(1).

17 *Ibid* reg 11(2).

18 *Ibid* reg 12(1).

19 *Ibid* reg 12(2).

20 *Ibid* reg 13(1).

21 *Ibid* reg 13(2).

22 Ie under ibid reg 19: see the text and notes 23-24 infra.

23 Ibid reg 19(1).

24 Ibid reg 19(2). As to refusal to issue a certificate of conformity see reg 22, cited in PARA 782 note 18 ante.

25 For these purposes, 'batch' means a number of appliances or fittings all of which are of the same model, have the same design characteristics and have been manufactured under the same conditions: ibid reg 20(8).

26 Ie under ibid reg 20: see the text and notes 27-34 infra.

27 Ie in accordance with ibid reg 20(2). The notified body must examine and carry out tests on appliances or fittings in the batch by reference to a sampling plan designed to ensure (1) a standard quality level corresponding to a 95% probability of acceptance with a range of non-conformity between 0.5% and 1.5%; and (2) a limit quality corresponding to a 5% probability of acceptance with a percentage of non-conformity between 5% and 10%: reg 20(2).

28 Ibid reg 20(1).

29 Ie having regard to ibid reg 20(1), (2).

30 Ibid reg 20(3). A notified body may authorise a manufacturer to affix its identification number during the manufacturing process: reg 20(4). As to refusal to issue a certificate of conformity see reg 22, cited in PARA 782 note 18 ante.

31 Ibid reg 20(5).

32 Ibid reg 20(6).

33 Ie the Directive referred to in PARA 782 note 2 ante.

34 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 20(7).

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785. Quality system approval.

Where an application for approval of a quality system¹ relating to production quality or a quality system relating to product quality is made to a notified body², whether the relevant EC type-examination certificate³ was issued by it or by another notified body, the application must be made in writing and must be accompanied by an undertaking by the manufacturer:

- 971 (1) to carry out the obligations arising from the approved quality system;
- 972 (2) to maintain the approved quality system to ensure its continuing suitability and effectiveness; and
- 973 (3) to pay the appropriate fee⁴;

and such systems must be designed to secure that appliances⁵ and fittings⁶ comply with the essential requirements⁷ which apply to them⁸. The manufacturer must make available to the notified body:

- 974 (a) a copy of the EC type-examination certificate;
- 975 (b) all relevant information including in particular the documentation of the quality system⁹; and
- 976 (c) the design documentation¹⁰ of the appliances or fittings¹¹.

On an application so made to it the notified body must take all necessary steps to examine and evaluate the quality system¹². If the notified body is minded to refuse to approve the quality system, it must give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused¹³. Where the notified body, after considering any representations so made to it, refuses to approve a quality system, it must, in writing, inform the Secretary of State¹⁴ of its decision and the grounds for its decision and inform all other notified bodies of the decision¹⁵. The notified body must, in writing, inform the manufacturer of the results of the examination, and of the reasons for the decision, and, if it is satisfied that the quality system satisfies the relevant provisions of the applicable European Directive¹⁶, must, on payment of the appropriate fee, notify the applicant of its approval of the quality system and inform all other notified bodies of its decision¹⁷. Where an approval of a quality system under the above provisions is in force and the manufacturer proposes to make modifications or additions to the approved quality system, the manufacturer may¹⁸ may make an application in writing to the notified body which gave the approval for approval of modifications or additions to the quality system; and the above provisions have effect in relation to such an application as they have effect in relation to an application for approval of a quality system¹⁹.

If it appears to a notified body which approved a quality system under the above provisions that the person to whom it was issued has failed to implement the approved system and is unable or unwilling to effect a sufficient remedy, the notified body may withdraw the approval after giving the person to whom it was issued the opportunity of making representations within a reasonable period as to why it should not be withdrawn²⁰. Where the notified body, having considered any representations so made, withdraws a quality system approval, it must, in writing, inform the person to whom it was issued and the Secretary of State of the withdrawal

of the approval and of its reasons for the withdrawal, and inform all other notified bodies of its withdrawal²¹.

- 1 For the meaning of 'quality system' see PARA 783 note 6 ante.
- 2 For the meaning of 'notified body' see PARA 782 note 11 ante; and as to such bodies see PARA 783 ante.
- 3 For the meaning of 'EC type-examination certificate' see PARA 782 note 11 ante; and as to applications for such certificates see PARA 784 ante.
- 4 As to the appropriate fee see the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 6, cited in PARA 783 note 11 ante.
- 5 For the meaning of 'appliance' see PARA 782 note 8 ante.
- 6 For the meaning of 'fitting' see PARA 782 note 9 ante.
- 7 For the meaning of 'essential requirements' see PARA 782 note 10 ante.
- 8 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 14(1).
- 9 The documentation of the quality system must be systematic and must permit a clear interpretation to be made of the manufacturer's quality programme, plans, manuals and records and must include, in particular, descriptions of (1) the manufacturer's quality objectives relating to production of the appliances or fittings; (2) the manufacturer's management structures and the responsibilities of managers within that structure which are relevant to the quality of production; (3) in the case of an application under head (1) in the text, the manufacturing process, quality control and quality assurance techniques and systems employed in production of the appliances or fittings, and the nature and frequency of examinations and tests carried out before, during and after the manufacture of appliances or fittings; (4) in the case of an application under head (2) in the text, the nature of examinations and tests carried out after the manufacture of each appliance or fitting; (5) the method employed to monitor attainment of the quality objectives referred to in head (1) supra; and (6) the method employed to monitor the effectiveness of the examinations and tests referred to in head (4) supra: *ibid* reg 14(3).
- 10 For the meaning of 'design documentation' see PARA 784 note 5 ante.
- 11 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 14(2).
- 12 *Ibid* reg 14(4).
- 13 *Ibid* reg 14(5)(a).
- 14 As to the Secretary of State see PARA 601 note 1 ante.
- 15 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 14(5)(b).
- 16 *Ie* the relevant provisions of EEC Council Directive 90/396 (OJ L196, 26.7.90, p 15) Annex II (as amended).
- 17 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 14(6).
- 18 *Ie* instead of making an application under *ibid* reg 14(1).
- 19 *Ibid* reg 14(7).
- 20 *Ibid* reg 15(1).
- 21 *Ibid* reg 15(2).

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786. Enforcement.

Except in the case of an appliance¹ or fitting² which in the opinion of the enforcement authority³ is likely to jeopardise the safety or health of any person, where an enforcement authority has reasonable grounds for suspecting that:

977 (1) the affixing of the CE marking⁴ to an appliance to which the Gas Appliances (Safety) Regulations 1995⁵ apply; or

978 (2) in the case of a fitting to which those regulations apply, the issue of a fitting certificate⁶,

involves a contravention of those regulations or any part of them, it may serve a notice (a 'compliance notice')⁷ on the manufacturer of that appliance or fitting or his authorised representative established in the Community⁸.

Every authority and council on whom a duty is imposed by virtue of the relevant provision of the Consumer Protection Act 1987⁹ must give immediate notice to the Secretary of State¹⁰ of:

979 (a) any compliance notice served by it in respect of any appliance or fitting to which the 1995 Regulations apply;

980 (b) any suspension notice¹¹ served by it in respect of any appliance or fitting to which those regulations apply;

981 (c) any application made by it for an order for forfeiture of such an appliance or fitting; and

982 (d) any other thing done in respect of any appliance or fitting for the purposes of, or in connection with, the relevant enforcement provisions¹² of that Act¹³.

Any person who without reasonable excuse contravenes or fails to comply with the prohibition on supplying an appliance or a fitting which does not satisfy the essential requirements or which, when normally used, is not safe¹⁴, in so far as it applies to injury or impairment to the health or safety of any domestic animal or damage to any property, is guilty of an offence and punishable on summary conviction with imprisonment for not more than three months or with a fine of not more than level 5 on the standard scale¹⁵. Where the commission by any person of such an offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person¹⁶. Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is to be deemed guilty of the offence¹⁷.

A magistrates' court in England and Wales may try an information in respect of an offence committed under the above provision¹⁸ or under the provision of the Consumer Protection Act 1987 relating to offences against safety regulations¹⁹ in relation to a contravention of the 1995 Regulations, if the information is laid within 12 months from the time when the offence is

committed²⁰. Without prejudice to that provision, in so far as those regulations apply in relation to:

- 983 (i) appliances or fittings designed for use or operation, whether exclusively or not, by persons at work; and
- 984 (ii) appliances or fittings designed for use, otherwise than at work, in non-domestic premises made available to persons as a place where they may use the appliances or fittings provided for their use there,

the Health and Safety Executive²¹ may make arrangements for the enforcement of the 1995 Regulations and the specified provisions of the Health and Safety at Work etc Act 1974²² apply as if those regulations were health and safety regulations and, accordingly, relevant statutory provisions within the meaning of the 1974 Act²³, any reference therein to an enforcing authority were a reference to the Health and Safety Executive and any reference therein to any provision of the 1974 Act were a reference to that provision as, and so far as, it is so applied²⁴. The Health and Safety Executive must, where action has been taken by it to prohibit or restrict the supply of any appliance which bears the CE marking or of any fitting in respect of which a fitting certificate has been issued, forthwith inform the Secretary of State of the action taken, and the reason for it, with a view to this information being passed by him to the European Commission²⁵.

A person who supplies an appliance which does not bear the CE marking or a fitting which is not accompanied by a fitting certificate, must, on his being required at a reasonable time to give such information, give to an enforcement authority, to the Health and Safety Executive or to any of its officers, all the information which he has about the date when the appliance or fitting was first supplied in the Community and the basis on which the appliance is not so marked or the fitting is not accompanied by a fitting certificate²⁶.

1 For the meaning of 'appliance' see PARA 782 note 8 ante.

2 For the meaning of 'fitting' see PARA 782 note 9 ante.

3 As to enforcement authorities for these purposes see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549 note 1.

4 For the meaning of 'CE marking' see PARA 782 note 22 ante.

5 I.e. the Gas Appliances (Safety) Regulations 1995, SI 1995/1629: see PARA 782 et seq ante. As to the application of those regulations see PARA 782 ante.

6 For the meaning of 'fitting certificate' see PARA 782 note 12 ante.

7 The notice must (1) specify the description of the appliance or fitting to which the notice relates; (2) state that the enforcement authority suspects that affixing of the CE marking to the appliance, or in the case of a fitting the issue of a fitting certificate, involves a contravention of a provision or provisions of the 1995 Regulations and the reasons for that suspicion; (3) specify the provision or provisions referred to in head (2) supra; (4) require that person (a) to secure that any appliance or fitting to which the notice relates conforms as regards the provisions concerning the CE marking, or issue of a fitting certificate, and to end the infringement within such period as may be specified by the notice; or (b) to provide evidence within that period to the satisfaction of the enforcement authority that all the provisions of the 1995 Regulations have been complied with; and (5) warn that person that if the non-conformity continues (or if satisfactory evidence has not been produced under head (4)(b) supra) within the period specified in the notice, further action may be taken under those regulations in respect of that appliance or fitting or an appliance or fitting of the same type supplied by that person: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 27(2), Sch 4 para 1. The notice may include directions as to the measures to be taken by that person to secure conformity of that appliance or fitting with the provisions of the 1995 Regulations including different ways of securing conformity: Sch 4 para 2.

8 Ibid reg 27(1). In such a case the Consumer Protection Act 1987 s 13 (as amended) (prohibition notices and notices to warn: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 544, 545), s 14 (suspension notices: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549) or s 16 (forfeiture:

see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 553) or the Health and Safety at Work etc Act 1974 s 21 (improvement notices: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 377) or s 22 (as amended) (prohibition notices: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 378) is not to be applied until such a notice has been so served and the person upon whom it has been served has failed to comply with its requirements: Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 27(1).

9 Ie by virtue of the Consumer Protection Act 1987 s 27: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 555.

10 As to the Secretary of State see PARA 601 note 1 ante.

11 As to suspension notices see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549.

12 Ie the Consumer Protection Act 1987 ss 14-16: see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 549 et seq.

13 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 28.

14 Ie a person who contravenes or fails to comply with ibid reg 7(1) or (2): see PARA 782 ante.

15 Ibid reg 29(1). As to the standard scale see PARA 613 note 11 ante.

16 Ibid reg 29(2).

17 Ibid reg 29(3). Where the affairs of a body corporate are managed by its members, reg 29(3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 29(4).

18 Ie under ibid reg 29: see the text and notes 14-17 supra.

19 Ie under the Consumer Protection Act 1987 s 12 (offences against safety regulations): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 540.

20 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 30(1).

21 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

22 The provisions referred to for these purposes are the Health and Safety at Work etc Act 1974 s 18(6) (which relates to Scotland); s 18(7)(b) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375); ss 19-26 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375 et seq) (save for s 23(3), (4) and (6) (as amended)); s 33(1)(e)-(h), (o), (2), (2A), (3) (as amended) (save for the words 'Subject to any provision made by virtue of section 15(6)(d) or (e) or by virtue of paragraph 2(2) of Schedule 3') and s 33(4)(e) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 852-854); s 34(3), (4) and (5) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 855); ss 35-39 (save for s 36(3)) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 856 et seq) and s 42 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 857): see the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 30(5). The Health and Safety at Work etc Act 1974 s 34(3) has effect with the substitution for the words 'six months' of the words '12 months': Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 30(3).

23 For the meaning of 'relevant statutory provision' for those purposes see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

24 Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 30(3), (4). This is subject to reg 31 (see the text and note 26 infra) and the provisions of the Consumer Protection Act 1987 Pt IV (ss 27-35) (enforcement: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 354 et seq): Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 30(3). Any criminal proceedings for a contravention of the 1995 Regulations brought by virtue of reg 30(3)-(5) must be brought under the Consumer Protection Act 1987 s 12 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 540) or, where appropriate, under s 12 taken with the Gas Appliances (Safety) Regulations 1995, SI 1995/1629, reg 29(1): reg 30(6).

25 Ibid reg 30(7).

26 Ibid reg 31.

UPDATE

786 Enforcement

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/ (iii) Street Lighting/787. Street lighting.

(iii) Street Lighting

787. Street lighting.

The Secretary of State or the Welsh Ministers¹ and every local highway authority have power to provide lighting for the purposes of any highway or proposed highway² for which they are or will be the highway authority, and may for that purpose contract with any persons for the supply of gas and construct and maintain such lamps, posts and other works as they consider necessary³. These powers may be delegated, by agreement, to a lighting authority⁴. Likewise, a lighting authority may, with the consent of the highway authority⁵, exercise its own similar powers⁶. There are now very few locations where there is gas, as opposed to electric, street lighting⁷.

1 The Secretary of State for Transport in England and the Welsh Ministers in Wales: see the Highways Act 1980 s 329(1); the Transfer of Functions (Transport) Order 1981, SI 1981/238; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to street lighting generally see HIGHWAYS, STREETS AND BRIDGES; and as to the Welsh Ministers see PARA 601 note 1 ante.

2 For the meanings of 'highway', 'local highway authority' and 'proposed highway' see the Highways Act 1980 ss 328, 329(1) (as amended); and HIGHWAYS, STREETS AND BRIDGES.

3 Ibid s 97(1).

4 See ibid s 98. 'Lighting authority' means a council or other body authorised to provide lighting under the Public Health Act 1875 s 161 (as amended) or the Parish Councils Act 1957 s 3 (as amended) or any corresponding local enactment: Highways Act 1980 ss 301(3), 329(1).

5 See ibid s 301(1).

6 See the Public Health Act 1875 s 161 (as amended); the Parish Councils Act 1957 s 3 (as amended); and HIGHWAYS, STREETS AND BRIDGES.

7 Eg, at the date at which this title states the law, in some locations in Bournemouth and Nottingham and in a limited number of locations in London.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(2) COGNATE LEGISLATION/(iv) Compressed and Liquid Gases/788. Safety provisions.

(iv) Compressed and Liquid Gases

788. Safety provisions.

Whenever a conveyor of flammable gas through a fixed pipe distribution system, or a filler, importer or supplier (other than by means of retail trade) of a refillable container containing liquefied petroleum gas¹ receives notification of any death or any major injury² which has arisen out of or in connection with the gas distributed, filled, imported or supplied, as the case may be, by that person, he must forthwith notify the Health and Safety Executive³ of the incident, and must within 14 days send a report of it to the Executive on a form approved⁴ for these purposes⁵.

The Dangerous Substances and Explosive Atmospheres Regulations 2002⁶ impose duties on employers with respect to dangerous and explosive substances generally⁷. Particular provision has been made with regard to liquid methane⁸ and with regard to any substance in a gaseous state which consists wholly or mainly of methane⁹.

Any person who designs, manufactures, imports or supplies pressure systems must ensure that certain conditions with respect to design, construction and verification thereof are complied with¹⁰. The placing on the market and use at work of transportable pressure equipment is also subject to regulations¹¹, as is the placing on the market of pressure equipment and assemblies with a maximum allowable pressure greater than 0.5 bar¹².

Regulations have also been made for safety precautions to be observed in the use of compressed gas propulsion systems on road vehicles¹³; and regulations made under the merchant shipping legislation¹⁴ require self-propelled cargo ships constructed or adapted and used for the carriage in bulk of certain liquefied gases to comply with international safety standards¹⁵.

The maximum sulphur content of gas oil placed on the market is prescribed by regulations¹⁶.

1 For these purposes, 'liquefied petroleum gas' means commercial butane (that is, a hydrocarbon mixture consisting predominantly of butane, butylene or any mixture thereof) or commercial propane (that is, a hydrocarbon mixture consisting predominantly of propane, propylene or any mixture thereof) or any mixture of commercial butane and commercial propane: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(4).

2 For the meaning of 'major injury' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 For the meaning of 'approved' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399.

5 See the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 410.

6 Ie the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 655.

7 For exclusions relating to certain gas appliances and fittings see ibid reg 3(2)(b), (c); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 655.

- 8 See the Petroleum (Liquid Methane) Order 1957, SI 1957/859.
- 9 See the Gas Safety (Management) Regulations 1996, SI 1996/551; and PARA 903 et seq post.
- 10 See the Pressure Systems Safety Regulations 2000, SI 2000/128 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 544 et seq.
- 11 See the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 555 et seq.
- 12 See the Pressure Equipment Regulations 1999, SI 1999/2001; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 558 et seq.
- 13 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 40, Schs 4, 5 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 316.
- 14 See the Merchant Shipping Act 1995 ss 85-87 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 591-592, 656.
- 15 See the Merchant Shipping (Gas Carriers) Regulations 1994, SI 1994/2464 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 599.
- 16 See the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007, SI 2007/79.

UPDATE

788 Safety provisions

NOTE 11--SI 2007/1573 replaced: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/789. The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA').

(3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY

789. The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA').

The principal objective of the Secretary of State¹ and the Gas and Electricity Markets Authority ('GEMA')² in carrying out their respective functions under Part I of the Gas Act 1986³ is to protect the interests of consumers⁴ in relation to gas⁵ conveyed through pipes, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas⁶ so conveyed⁷. The Secretary of State and the Authority must carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to:

- 985 (1) the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain⁸ for gas conveyed through pipes are met; and
- 986 (2) the need to secure that licence holders⁹ are able to finance the activities which are the subject of obligations imposed by or under that Part of the 1986 Act or by or under the Utilities Act 2000¹⁰.

In performing that duty, the Secretary of State or the Authority must have regard to the interests of:

- 987 (a) individuals who are disabled or chronically sick;
- 988 (b) individuals of pensionable age¹¹;
- 989 (c) individuals with low incomes; and
- 990 (d) individuals residing in rural areas;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer¹².

The Secretary of State and the Authority may, in carrying out any function under Part I of the 1986 Act¹³, have regard to:

- 991 (i) the interests of consumers in relation to electricity conveyed by distribution systems or transmission systems within the meaning of the Electricity Act 1989¹⁴; and
- 992 (ii) any interests of consumers in relation to communications services and electronic communications apparatus or in relation to water services or sewerage services within the meaning of the Water Industry Act 1991¹⁵,

which are affected by the carrying out of that function¹⁶; and the Secretary of State and the Authority must¹⁷ carry out their respective functions under Part I of the 1986 Act¹⁸ in the manner which he or it considers is best calculated:

- 993 (A) to promote efficiency and economy on the part of persons authorised by licences or exemptions¹⁹ to carry on any activity, and the efficient use of gas conveyed through pipes;
- 994 (B) to protect the public from dangers arising from the conveyance of gas through pipes or from the use of gas conveyed through pipes;
- 995 (C) to contribute to the achievement of sustainable development; and
- 996 (D) to secure a diverse and viable long-term energy supply²⁰.

So far as not otherwise required to do so by heads (A) to (D) above, they must have regard, in carrying out those functions, to the effect on the environment of activities connected with the conveyance of gas through pipes²¹.

In carrying out their respective functions²² in accordance with the above provisions, the Secretary of State and the Authority must each have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed²³ and to any other principles appearing to him or, as the case may be, to it to represent the best regulatory practice²⁴.

The above provisions do not apply in relation to the issuing²⁵ by the Secretary of State of guidance on social and environmental matters²⁶. Nor do they apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading²⁷, of certain functions²⁸ with respect to competition²⁹. Furthermore, the duties imposed by the above provisions do not affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Gas Act 1986 or another enactment, by virtue of any Community obligation or otherwise³⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 Ie under the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see the text and notes 4-30 infra; and PARA 790 et seq post. For these purposes, and for the purposes of s 4AB (as added) (see PARA 790 post) and s 4A (as added and substituted) (see PARA 791 post), references to functions of the Secretary of State or the Authority under Pt I (as amended) include a reference to functions under the Utilities Act 2000 which relate to gas conveyed through pipes: Gas Act 1986 s 4AA(7) (s 4AA added (in substitution for s 4) by the Utilities Act 2000 s 9). As to the meaning of 'gas' see note 5 infra.

References in the Gas Act 1986 ss 4AA, 4AB and 4A (as added and amended) to functions of the Authority under Pt I (as amended) also include references to any functions of the Authority under the Utilities Act 2000 s 5A (as added) (duty of Authority to carry out impact assessment: see PARA 714 ante) that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under the Gas Act 1986 Pt I (as amended): Utilities Act 2000 s 5A(11) (added by the Sustainable Energy Act 2003 s 6).

Any reference in the Gas Act 1986 Pt I (as amended) to functions of the Authority under Pt I (as amended), or to functions assigned to it by or under Pt I (as amended), includes a reference to functions exercisable by the Authority by virtue of s 36A(2) or (3) (each as substituted) (functions with respect to competition: see PARA 795 post): s 36A(10) (added by the Gas Act 1995 s 10(1), Sch 3 para 43; amended by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 17(1), (8); and by virtue of the Utilities Act 2000 s 3(2)).

4 For these purposes, 'consumers' includes both existing and future consumers: Gas Act 1986 s 4AA(6) (as added: see note 3 supra).

5 For the meaning of 'gas' see PARA 802 post.

6 For the meaning of references to the supply of gas see PARA 802 post.

7 Gas Act 1986 s 4AA(1) (as added: see note 3 supra).

8 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

9 For the purposes of the Gas Act 1986 Pt I (as amended), unless the context otherwise requires, 'licence' means a licence under s 7 (as substituted and amended) (see PARA 805 post), s 7ZA (as added) (see PARA 806 post) or s 7A (as added and amended) (see PARA 807 post) and 'licence holder' is to be construed accordingly: s 4AA(8) (as added: see note 3 supra), s 48(1) (definitions in s 48(1) substituted by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 19(d); amended by the Energy Act 2004 s 149(1), (8)(a)).

10 Gas Act 1986 s 4AA(2) (as substituted: see note 3 supra).

11 A person is of pensionable age for the purposes of ibid Pt I (as amended) if (1) he has attained pensionable age (within the meaning given by the rules in the Pensions Act 1995 Sch 4 para 1 (as amended): see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 562); or (2) in the case of a man born before 6 April 1955, he is the same age as a woman who has attained pensionable age (within the meaning so given): Gas Act 1986 s 48(2B) (added by the Gas Act 1995 s 10(1), Sch 3 para 54(4)).

12 Gas Act 1986 s 4AA(3) (as substituted: see note 3 supra).

13 See note 3 supra.

14 For the meanings of 'distribution system' and 'transmission system' see PARA 1041 notes 5-6 post.

15 For these purposes, 'sewerage services' includes the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions: Water Industry Act 1991 s 219(1) (definition applied by the Gas Act 1986 s 4AA(4) (as added and amended: see note 3 supra, note 16 infra)). As to water undertakers and the services provided by them see WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq; and as to sewerage undertakers and the services provided by them see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

16 Gas Act 1986 s 4AA(4) (as added (see note 3 supra); amended by the Communications Act 2003 s 406(1), Sch 17 para 81; the Energy Act 2004 s 179(2), (3)(d)).

17 Ie subject to the Gas Act 1986 s 4AA(2) (as added: see note 3 supra): see the text and notes 8-10 supra.

18 See note 3 supra.

19 In the Gas Act 1986 Pt I (as amended), unless the context otherwise requires, 'exemption' means an exemption granted under s 6A (as added and amended) (see PARA 804 post): s 4AA(8) (as added: see note 3 supra), s 48(1) (definition in s 48(1) added by the Utilities Act 2000 s 108 Sch 6 Pt I paras 1, 19(b)).

20 Gas Act 1986 s 4AA(5)(a)-(c) (as added (see note 3 supra); amended by the Energy Act 2004 s 83(b)).

21 Gas Act 1986 s 4AA(5) (as added: see note 3 supra).

22 Ie under ibid Pt I (as amended); and see note 3 supra.

23 Ibid s 4AA(5A)(a) (s 4AA(5A) added by the Energy Act 2004 s 178).

24 Gas Act 1986 s 4AA(5A)(b) (as added: see note 23 supra).

25 Ie under ibid s 4AB (as added): see PARA 790 post.

26 Ibid s 4B(1) (s 4B added by the Utilities Act 2000 s 12).

27 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

28 Ie functions under the Gas Act 1986 s 36A(3) (as substituted): see PARA 795 post.

29 See ibid s 4B(2) (as added: see note 26 supra), which also disapplies s 4AB (as added) and s 4A (as substituted) (see PARAS 790-791 post) in the circumstances set out in the text. The Authority may nevertheless, when exercising any function under s 36A(3) (as substituted), have regard to any matter in respect of which a duty is imposed by ss 4AA-4A (as added and amended) if it is a matter to which the Office of Fair Trading could have regard when exercising that function: s 4B(3) (as so added; amended by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (2)).

30 Ibid s 4B(4) (as added: see note 26 supra).

As to the application of ss 4AA, 4B (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante.

UPDATE

789 The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA')

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

TEXT AND NOTES 4, 7, 10, 20, 21--Gas Act 1986 s 4AA(1), (2), (5), (6) amended: Energy Act 2008 ss 83(1), 102(3), Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/790. Guidance on social and environmental matters.

790. Guidance on social and environmental matters.

The Secretary of State¹ must from time to time issue guidance about the making by the Gas and Electricity Markets Authority ('GEMA')² of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance³; and the Authority must, in carrying out its functions under Part I of the Gas Act 1986⁴, have regard to any guidance so issued⁵. Before issuing such guidance the Secretary of State must consult:

- 997 (1) the Authority;
- 998 (2) the Gas and Electricity Consumer Council⁶;
- 999 (3) licence holders⁷; and
- 1000 (4) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance⁸.

A draft of any guidance proposed to be issued under these provisions must be laid before each House of Parliament⁹ and guidance must not be issued under them until after the period of 40 days¹⁰ beginning with:

- 1001 (a) the day on which the draft is laid before each House of Parliament; or
- 1002 (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days¹¹.

If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it¹².

The Secretary of State must arrange for any guidance issued under these provisions to be published in such manner as he considers appropriate¹³.

The duties imposed by the above provisions do not affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Gas Act 1986 or another enactment, by virtue of any Community obligation or otherwise¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 Gas Act 1986 s 4AB(1) (s 4AB added by the Utilities Act 2000 s 10).

4 I.e. its functions under ibid Pt I (ss 4AA-48) (as amended): see PARA 789 ante, the text and notes 5-13 infra; and PARA 791 post. As to the construction of this reference to functions under Pt I (as amended) see PARA 789 note 3 ante.

5 Ibid s 4AB(2) (as added: see note 3 supra). Section 4AB (as so added) does not, however, apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading, of functions under s 36A(3) (as substituted) (functions

with respect to competition: see PARA 795 post): see s 4B(2) (added by the Utilities Act 2000 s 12). See further the Gas Act 1986 s 4B(3) (as added and amended), cited in PARA 789 note 29 ante.

6 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

7 For the meaning of 'licence holder' see PARA 789 note 9 ante.

8 Gas Act 1986 s 4AB(3) (as added (see note 3 supra); prospectively amended by the Consumers, Estate Agents and Redress Act 2007 s 63(1), Sch 7 paras 4, 5, as from a day to be appointed under s 66(2), so as to refer in head (2) in the text to the National Consumer Council instead of to the Gas and Electricity Consumer Council; at the date at which this title states the law, that amendment was not in force).

9 Gas Act 1986 s 4AB(4) (as added: see note 3 supra).

10 In reckoning any period of 40 days for the purposes of *ibid* s 4AB(5) or (6) (as added), no account is to be taken of any time during which (1) Parliament is dissolved or prorogued; or (2) both Houses are adjourned for more than four days: s 4AB(7) (as added: see note 3 supra).

11 *Ibid* s 4AB(5) (as added: see note 3 supra).

12 *Ibid* s 4AB(6) (as added: see note 3 supra).

13 *Ibid* s 4AB(8) (as added: see note 3 supra).

14 *Ibid* s 4B(4) (as added: see note 5 supra).

As to the application of ss 4AB, 4B (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante.

UPDATE

790 Guidance on social and environmental matters

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

NOTE 8--Amendment in force 1 October 2008: SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/791. Health and safety.

791. Health and safety.

The Secretary of State¹ and the Gas and Electricity Markets Authority ('GEMA')² must consult the Health and Safety Commission³ about all gas safety issues⁴ which may be relevant to the carrying out of any of their respective functions under Part I⁵ of the Gas Act 1986⁶; and the Secretary of State and the Authority must, in carrying out their respective functions under Part I of that Act, take into account any advice given by the Health and Safety Commission about any gas safety issue, whether or not in response to such consultation⁷.

The above provisions do not, however, apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading⁸, of certain functions⁹ with respect to competition¹⁰. Nor do the duties imposed by the above provisions affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Gas Act 1986 or another enactment, by virtue of any Community obligation or otherwise¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 For these purposes, a gas safety issue is anything concerning the conveyance of gas through pipes, or the use of gas conveyed through pipes, which may affect the health and safety of (1) members of the public; or (2) persons employed in connection with the conveyance of gas through pipes or the supply of gas conveyed through pipes: Gas Act 1986 s 4A(3) (s 4A added by the Gas Act 1995 s 2; substituted by the Utilities Act 2000 s 11). For the meanings of 'gas' and of references to the supply of gas see PARA 802 post.

5 I.e. functions under the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARAS 789-790 ante; the text and notes 1-4 supra, 6-7 infra; and PARA 792 et seq post. As to the construction for these purposes of references to functions under Pt I (as amended) see PARA 789 note 3 ante.

6 Ibid s 4A(1) (as substituted: see note 4 supra).

7 Ibid s 4A(2) (as substituted: see note 4 supra).

8 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

9 I.e. functions under the Gas Act 1986 s 36A(3) (as substituted): see PARA 795 post.

10 See ibid s 4B(2) (added by the Utilities Act 2000 s 12). See further the Gas Act 1986 s 4B(3) (as added and amended), cited in PARA 789 note 29 ante.

11 Ibid s 4B(4) (as added: see note 10 supra).

As to the application of ss 4A, 4B (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante.

UPDATE

791 Health and safety

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

TEXT AND NOTES 1-7--References to Health and Safety Commission now to Health and Safety Executive: 1986 Act s 4A(1), (2) (amended by SI 2008/960).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/792. General functions of the Gas and Electricity Markets Authority with regard to gas.

792. General functions of the Gas and Electricity Markets Authority with regard to gas.

It is the duty of the Gas and Electricity Markets Authority ('GEMA')¹, so far as it appears to it practicable from time to time, to keep under review the carrying on both within and outside Great Britain² of:

- 1003 (1) the following activities³, that is the activities of any person who:
- 53
- 75. (a) otherwise than by means of a gas interconnector⁴ conveys gas through pipes to any premises, or to a pipeline system operated by a gas transporter⁵;
 - 76. (b) participates in the operation of a gas interconnector;
 - 77. (c) supplies to any premises gas which has been conveyed to those premises through pipes; or
 - 78. (d) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by that transporter; and
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- 1004 (2) activities ancillary to such activities, including in particular the storage⁶ of gas, the provision and reading of meters and the provision of prepayment facilities⁷.

It is also the duty of the Authority, so far as it appears to it practicable from time to time, to collect information⁸ with respect to the carrying on of such activities as are mentioned in heads (1) and (2) above, and the persons by whom such activities are carried on, with a view to its becoming aware of, and ascertaining the circumstances relating to, matters with respect to which its functions are exercisable⁹.

The Secretary of State¹⁰ may give general directions¹¹ indicating:

- 1005 (i) considerations to which the Authority should have particular regard in determining the order of priority in which matters are to be brought under review in the performance of its duty under the above provisions¹²; and
- 1006 (ii) considerations to which, in cases where it appears to the Authority that any of its functions are exercisable, it should have particular regard in determining whether to exercise those functions¹³.

Additionally, it is the duty of the Authority, where either it considers it expedient or it is requested by the Secretary of State or the Office of Fair Trading¹⁴ to do so, to give information, advice and assistance to the Secretary of State or the Office of Fair Trading with respect to any matter in respect of which any function of the Authority or of the Secretary of State is exercisable¹⁵.

The Authority has power to make agreements with the Health and Safety Commission¹⁶ for the Authority to perform on behalf of that Commission or of the Health and Safety Executive¹⁷, with or without payment, any of the functions of that Commission or, as the case may be, of that Executive¹⁸.

It has been held that the Authority is an expert body with a wide discretion to carry out industry-wide investigations¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 In such activities as are mentioned in the Gas Act 1986 s 5(1) (as substituted and amended): see PARA 803 post.

4 For the purposes of ibid Pt I (ss 4AA-48) (as amended), 'gas interconnector' means so much of any pipeline system as (1) is situated at a place within the jurisdiction of Great Britain; and (2) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory: s 5(8) (added by the Energy Act 2004 s 149(1), (3)); Gas Act 1986 s 48(1) (definition added by the Energy Act 2004 s 149(1), (11)). For these purposes, a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post); and 'pipeline system' includes the pipes and any associated apparatus comprised in that system: Gas Act 1986 s 5(9), (10) (as so added). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. For the meaning of 'gas' see PARA 802 post.

5 For the meaning of 'gas transporter' see PARA 805 post.

6 For the purposes of the Gas Act 1986 Pt I (as amended), unless the context otherwise requires, 'storage', in relation to gas, means storage in, or in a facility which is connected (directly or indirectly) to, a pipeline system operated by a gas transporter: s 48(1) (definition amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

7 Gas Act 1986 s 34(1) (amended by the Gas Act 1995 s 10(1), Sch 3 para 40(1); and by virtue of the Utilities Act 2000 s 3(2)).

8 For the purposes of the Gas Act 1986 Pt I (as amended), unless the context otherwise requires, 'information' includes accounts, estimates and returns: s 48(1).

9 Ibid s 34(2) (s 34(2)-(5) amended by virtue of the Utilities Act 2000 s 3(2)).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 The annual report of GEMA must set out any directions so given by the Secretary of State: see PARA 713 ante.

12 In under the Gas Act 1986 s 34(1) or (2) (each as amended).

13 Ibid s 34(3) (as amended: see note 9 supra).

14 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

15 Gas Act 1986 s 34(4) (as amended (see note 9 supra); also amended by the Gas Act 1995 s 10(1), Sch 3 para 40(3); the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (8)).

16 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

17 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

18 Gas Act 1986 s 34(5) (added by the Gas Act 1995 s 10(1), Sch 3 para 40(4); and as amended (see note 9 supra)).

19 See *R (on the application of Exoteric Gas Solutions Ltd) v Gas and Electricity Market Authority (Ofgem)* [2003] EWHC 2072 (Admin), [2003] All ER (D) 357 (Oct).

UPDATE

792 General functions of the Gas and Electricity Markets Authority with regard to gas

TEXT AND NOTES 16-18--1986 Act s 34(5) substituted: SI 2008/960.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/793. Publication of advice and information about consumer matters.

793. Publication of advice and information about consumer matters.

If it appears to the Gas and Electricity Markets Authority ('GEMA')¹ that the publication of any advice and information² would promote the interests of consumers³ in relation to gas⁴ conveyed through pipes, the Authority may publish that advice or information in such manner as it thinks fit⁵. In so publishing advice or information the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body⁶. Before deciding to publish under these provisions any advice or information relating to a particular individual or body of persons the Authority must consult that individual or body⁷. However, nothing in the general statutory restrictions on disclosure of information set out in the Utilities Act 2000⁸ is to be construed either as limiting the matters which may be published under the above provisions or as applying to information which has been so published⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'information' see PARA 792 note 8 ante.

3 For these purposes, 'consumers' includes both existing and future consumers: Gas Act 1986 s 35(4) (s 35 substituted by the Utilities Act 2000 s 6(1)).

4 For the meaning of 'gas' see PARA 802 post.

5 Gas Act 1986 s 35(1) (as substituted: see note 3 supra). Where the Authority is required by any provision of Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante, PARA 794 et seq post) to publish a notice or any other document, the Authority must send a copy of the document to the Gas and Electricity Consumer Council: s 41I (added by the Utilities Act 2000 s 18(5)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

The Office of Fair Trading must consult the Authority before publishing under the Enterprise Act 2002 s 6 any information or advice which may be published by the Authority under the Gas Act 1986 s 35 (as substituted and amended): s 35(3A) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (9)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

6 Gas Act 1986 s 35(2) (as substituted: see note 3 supra).

7 Ibid s 35(3) (as substituted: see note 3 supra).

8 Ie the Utilities Act 2000 s 105 (as amended): see PARA 767 ante.

9 See ibid s 105(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/794.
Keeping of register.

794. Keeping of register.

The Gas and Electricity Markets Authority ('GEMA')¹ must keep a register of exemptions granted² to particular persons, of licences granted to gas transporters, suppliers and shippers and for the operation of gas interconnectors³, of final and provisional orders⁴ and of penalties imposed⁵, at such premises and in such form as it may determine⁶. The Authority must⁷ cause to be entered in the register the provisions of:

- 1007 (1) every exemption granted⁸ to a particular person and every revocation of such exemption;
- 1008 (2) every revocation of an exemption granted⁹ to persons of a particular class and every direction withdrawing such a class exemption from any person¹⁰;
- 1009 (3) every licence¹¹ and every modification or revocation of, and every direction or consent given or determination made under, such a licence;
- 1010 (4) every final or provisional order, every revocation of such an order and every notice that it is precluded from, or not required to make, such a notice¹²; and
- 1011 (5) every notice¹³ stating that it has imposed a penalty¹⁴.

The Authority may, however, enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of:

- 1012 (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- 1013 (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body¹⁵;

and if it appears to the Secretary of State¹⁶ that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Authority not to enter that provision in the register¹⁷.

The register must be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Secretary of State¹⁸. Any person may, on payment of such fee as may be prescribed by an order so made, require the Authority to supply to him a copy of or extract from any part of the register, certified by the Authority to be a true copy or extract¹⁹. Any sums received by the Authority under these provisions must be paid into the Consolidated Fund²⁰.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 I.e. exemptions granted under the Gas Act 1986 s 6A (as added and amended): see PARA 804 post. For the meaning of 'exemption' see PARA 789 note 19 ante.

3 le licences under *ibid* s 7 (as substituted and amended) (see PARA 805 post), s 7ZA (as added) (see PARA 806 post) or s 7A (as added and amended) (see PARA 807 post).

4 For these purposes, 'final order' and 'provisional order' have the same meanings as in *ibid* s 28 (as amended) (see PARA 968 post): s 36(7).

5 le penalties imposed under *ibid* s 30A(1) (as added): see PARA 973 post.

6 *Ibid* s 36(1) (s 36(1), (2) substituted by the Gas (Exempt Supplies) Act 1993 s 3 and amended by virtue of the Utilities Act 2000 s 3(2); the Gas Act 1986 s 36(1) amended by the Gas Act 1995 s 10(1), Sch 3 para 42(1) (b); the Utilities Act 2000 s 95(4)(a); and the Energy Act 2004 s 149(1), (8)(b)). Until a day to be appointed under the Utilities Act 2000 s 110(2), the Gas Act 1986 s 36(1) (as so substituted and amended) also requires notifications and directions under Sch 2A para 5 (as added and amended (prospectively repealed)) (see PARA 804 post) to be included in the register: see s 36(1) (as so substituted and amended; further amended, so as to add this requirement, by the Gas Act 1995 s 10(1), Sch 3 para 42(1)(a); prospectively further amended, so as to remove this requirement, by the Utilities Act 2000 s 108, Sch 8, as from a day to be so appointed; at the date at which this title states the law, no such day had been appointed).

7 le subject to the Gas Act 1986 s 36(2A) (as added) and to any direction given under s 36(3) (as amended).

8 le under *ibid* s 6A (as added and amended): see PARA 804 post.

9 See note 8 *supra*.

10 le every direction under the Gas Act 1986 s 6A(7) (as added): see PARA 804 post.

11 le every such licence as is mentioned in note 3 *supra*.

12 le every notice under the Gas Act 1986 s 28(6) (as amended): see PARA 968 post.

13 le every notice under *ibid* s 30A(5) (as added): see PARA 973 post.

14 See *ibid* s 36(2) (as substituted and amended (see note 6 *supra*); further amended by the Gas Act 1995 s 10(1), Sch 3 para 42(2); the Utilities Act 2000 ss 95(4)(b), 108, Sch 6 Pt I paras 1, 16, Sch 8; the Energy Act 2004 ss 149(1), (8)(b), 183(2)). Until a day to be appointed under the Utilities Act 2000 s 110(2), the Gas Act 1986 s 36(2) (as so substituted and amended) also requires the provisions of every notification or direction under Sch 2A para 5 (as added and amended (prospectively repealed)) (see PARA 804 post) to be included in the register: see s 36(2) (as so substituted and amended; further amended, so as to add this requirement, by the Gas Act 1995 s 10(1), Sch 3 para 42(2)(a); prospectively further amended, so as to remove this requirement, by the Utilities Act 2000 s 108, Sch 8, as from a day to be so appointed; at the date at which this title states the law, no such day had been appointed).

15 Gas Act 1986 s 36(2A) (added by the Energy Act 2004 s 183(1)).

16 As to the Secretary of State see PARA 601 note 1 *ante*.

17 Gas Act 1986 s 36(3) (s 36(3), (5), (6) amended by virtue of the Utilities Act 2000 s 3(2)).

18 Gas Act 1986 s 36(4). As to the power to make orders generally see PARA 777 note 15 *ante*. The register must be open to public inspection between 10 am and 4 pm except on Saturdays, Sundays and official holidays on which the office of the Authority is closed: Gas (Register) Order 1988, SI 1988/159, art 2 (arts 2, 3 amended by virtue of the Utilities Act 2000 s 3(2)).

19 Gas Act 1986 s 36(5) (as amended: see note 17 *supra*). The fee for the supply of a copy of, or extract from, any part of the register certified by the Authority to be a true copy or extract is £1 for the first five sheets (or fewer) copied and 10p for each additional sheet copied: Gas (Register) Order 1988, SI 1988/159, art 3 (as amended: see note 18 *supra*).

20 Gas Act 1986 s 36(6) (as amended: see note 17 *supra*). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 *et seq*; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/795.
Functions with respect to competition.

795. Functions with respect to competition.

Certain functions of the Office of Fair Trading (the 'OFT')¹ under Part 4 of the Enterprise Act 2002², so far as relating to commercial activities connected with the carrying on of:

- 1014 (1) the following activities³, that is the activities of any person who:
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79. (a) otherwise than by means of a gas interconnector⁴ conveys gas through pipes to any premises, or to a pipeline system operated by a gas transporter⁵;
80. (b) participates in the operation of a gas interconnector;
81. (c) supplies to any premises gas which has been conveyed to those premises through pipes; or
82. (d) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by that transporter; and
- 56
- 1015 (2) activities ancillary to such activities, including in particular the storage of gas⁶, the provision and reading of meters and the provision of prepayment facilities,

are concurrent functions of the Gas and Electricity Markets Authority ('GEMA')⁷ and the OFT⁸. Before the OFT or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of the above provisions, it must consult the other⁹; and neither the OFT nor the Authority must exercise in relation to any matter functions which are exercisable concurrently by virtue of the above provisions if functions which are so exercisable have been exercised in relation to that matter by the other¹⁰.

It is the duty of the Authority, for the purpose of assisting the Competition Commission¹¹ in carrying out an investigation on a reference made to the Commission by the Authority by virtue of the above provisions, to give to the Commission:

- 1016 (i) any information¹² which is in its possession and which relates to matters falling within the scope of the investigation and is either requested by the Commission for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- 1017 (ii) any other assistance which the Commission may require and which it is within the Authority's power to give, in relation to any such matters,

and the Commission must, for the purposes of carrying out any such investigation, take into account any information so given to it for that purpose¹³.

The Authority is also entitled to exercise, concurrently with the OFT, certain functions of the OFT under Part I of the Competition Act 1998¹⁴ so far as relating to:

- 1018 (A) agreements, decisions or concerted practices preventing, restricting or distorting competition¹⁵;

- 1019 (B) conduct of a kind which amounts to the abuse of a dominant position in a market¹⁶;
- 1020 (C) agreements, decisions or concerted practices preventing, restricting or distorting competition which contravene European Community law¹⁷; or
- 1021 (D) conduct which amounts to abuse of a dominant position of a kind which contravenes European Community law¹⁸,

which relate to the carrying on of activities described in heads (1) and (2) above¹⁹.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

2 The functions under the Enterprise Act 2002 Pt 4 (ss 131-184) (as amended) (market investigations), other than functions under s 166 (register of undertakings and orders) and s 171 (advice and information): see COMPETITION vol 18 (2009) PARA 311.

3 The activities to which the Gas Act 1986 s 36A(2) (as added) applies. Section 36A(2A) (as added), s 36A(3) (as substituted) applies to (1) such activities as are mentioned in the Gas Act 1986 s 5(1) (as substituted and amended) (see head (1) in the text; and PARA 803 post); and (2) ancillary activities as described in head (2) in the text: see s 36A(4) (s 36A added by the Gas Act 1995 s 10(1), Sch 3 para 43; the Gas Act 1986 s 36A(4) amended by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 17(1), (3)).

If any question arises as to whether the Gas Act 1986 s 36A(2) (as added) or s 36A(3) (as substituted) applies to any particular case, that question must be referred to and determined by the Secretary of State; and no objection is to be taken to anything done under the Enterprise Act 2002 Pt 4 (as amended) or the Competition Act 1998 Pt I (ss 1-60) (as amended), other than ss 31D(1)-(6), 38(1)-(6) and 51 (as amended) by or in relation to the Authority on the ground that it should have been done by or in relation to the Office of Fair Trading: Gas Act 1986 s 36A(7) (as so added; amended by the Competition Act 1998 s 54(2), Sch 10 para 3(8); the Enterprise Act 2002 ss 168(9), 278(1), Sch 9 Pt 2 para 17(1), (5), Sch 25 para 15(1), (10)(d); the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 1(1), (2)(c); and by virtue of the Utilities Act 2000 s 3(2)).

4 For the meaning of 'gas interconnector' see PARA 792 note 4 ante.

5 For the meaning of 'gas transporter' see PARA 805 post.

6 For the meaning of 'storage' see PARA 792 note 6 ante; and for the meaning of 'gas' see PARA 802 post.

7 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 See the Gas Act 1986 s 36A(2), (2A) (s 36A(2) substituted, and s 36A(2A) added, by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 17(1), (2)). The Enterprise Act 2002 s 117 (as amended) (offences of supplying false or misleading information) as applied by s 180 (as amended) has effect so far as relating to functions exercisable by the Authority by virtue of the Gas Act 1986 s 36A(2) (as so substituted) as if the references in the Enterprise Act 2002 s 117(1)(a) (as amended) and s 117(2) to the Office of Fair Trading included references to the Authority: Gas Act 1986 s 36A(8) (substituted by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 17(1), (6)).

So far as necessary for the purposes of, or in connection with, the Gas Act 1986 s 36A(2), (2A) (as respectively so substituted and amended), references in the Enterprise Act 2002 Pt 4 (as amended) to the Office of Fair Trading (including references in provisions of that Act applied by that Part) are to be construed as including references to the Authority (except in ss 166 and 171 and in any other provision of that Act where the context otherwise requires: Gas Act 1986 s 36A(2B) (added by the Enterprise Act 2002 s 168(9) Sch 9 Pt 2 para 17(1), (2)).

9 Gas Act 1986 s 36A(5) (s 36A(5) substituted, and s 36A(5A) added, by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 17(1), (4)).

10 Gas Act 1986 s 36A(5A) (as added: see note 9 supra).

11 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12.

12 For the meaning of 'information' see PARA 792 note 8 ante.

13 Gas Act 1986 s 36A(6) (as added (see note 3 supra); amended by the Competition Act 1998 ss 54(2), 74(3), Sch 10 para 3(7), Sch 14 Pt I; by virtue of the Utilities Act 2000 s 3(2); and by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)).

14 le functions under the Competition Act 1998 Pt I (ss 1-60) (as amended) (see COMPETITION), other than functions under s 31D(1)-(6) (as added) (guidance by the OFT), 38(1)-(6) (as amended) (the appropriate level of a penalty) and s 51 (as amended) (OFT's rules)).

15 le agreements, decisions or concerted practices of the kind mentioned in ibid s 2(1): see COMPETITION vol 18 (2009) PARA 116.

16 le conduct of the kind mentioned in ibid s 18(1): see COMPETITION vol 18 (2009) PARA 125.

17 le agreements, decisions or concerted practices of the kind mentioned in the EC treaty art 81(1).

18 le conduct which amounts to abuse of the kind mentioned in the EC Treaty art 82.

19 See the Gas Act 1986 s 36A(3) (substituted by the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2). See also note 3 supra. So far as necessary for the purposes of, or in connection with, the provisions of the Gas Act 1986 s 36A(3) (as so substituted), references in the Competition Act 1998 Pt I (as amended) to the Office of Fair Trading are to be read as including a reference to the Authority, except in s 31D(1)-(6) (as added), s 38(1)-(6), (as amended), s 51 (as amended), 52(6), (8) (as amended) (advice and information) and s 54 (as amended) (regulators) and in any other provision of that Act where the context otherwise requires: Gas Act 1986 s 36A(3A) (added by the Competition Act 1998 s 54(2), Sch 10 para 3(5); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (10)(c); the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 1(1), (2)(b); and by virtue of the Utilities Act 2000 s 3(2)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/796. Functions with respect to gas measuring equipment etc.

796. Functions with respect to gas measuring equipment etc.

If and to the extent that the Secretary of State¹ so directs, his functions under the provision of the Weights and Measures Act 1985 regarding the testing of standards and equipment², so far as relating to:

- 1022 (1) any article used or proposed to be used as a standard of a unit of measurement in relation to gas³;
- 1023 (2) any measuring equipment, or other metrological equipment, for use in relation to gas; or
- 1024 (3) any article for use in connection with any such equipment,

are to be exercisable by the Gas and Electricity Markets Authority ('GEMA')⁴ concurrently with the Secretary of State; and references in that provision to the Secretary of State are to be construed accordingly⁵.

Any sums received by the Authority by virtue of the above provision are to be paid into the Consolidated Fund⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie under the Weights and Measures Act 1985 s 6: see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 65.

3 For the meaning of 'gas' see PARA 802 post.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Gas Act 1986 s 36B(1) (s 36B added by the Gas Act 1995 s 10(1), Sch 3 para 44; amended by virtue of the Utilities Act 2000 s 3(2)).

6 Gas Act 1986 s 36B(2) (as added and amended: see note 5 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/797. Maximum prices for reselling gas.

797. Maximum prices for reselling gas.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time direct that the maximum prices at which gas² supplied by authorised suppliers³ may be resold:

- 1025 (1) is to be such as may be specified in the direction; or
- 1026 (2) is to be calculated by such method and by reference to such matters as may be so specified;

and must publish such directions in such manner as in its opinion will secure adequate publicity for them⁴.

Such a direction may:

- 1027 (a) require any person who resells gas supplied by an authorised supplier to furnish the purchaser with such information⁵ as may be specified or described in the direction; and
- 1028 (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale is to be such as may be specified in the direction, or is to be reduced by such amount or such percentage as may be so specified⁶.

Different directions may be so given as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances⁷.

If any person resells any gas supplied by an authorised supplier at a price exceeding the maximum price determined by or under such a direction and applicable to the resale, then the amount of the excess and, if the direction so provides, interest on that amount at a rate specified or described in the direction, is recoverable by the purchaser⁸.

Nothing in the above provisions applies in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'gas' see PARA 802 post.

3 For the purposes of the Gas Act 1986 Pt I (ss 4AA-48) (as amended), unless the context otherwise requires, 'authorised supplier' means a person authorised by a licence or exemption to supply to any premises gas which has been conveyed to those premises through pipes: s 48(1) (definition added by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 19(a)). For the meaning of 'licence' see PARA 789 note 9 ante; for the meaning of 'exemption' see PARA 789 note 19 ante; and for the meaning of references to the supply of gas see PARA 802 post.

4 Gas Act 1986 s 37(1) (s 37 substituted by the Gas Act 1995 s 10(1), Sch 3 para 45; the Gas Act 1986 s 37(1) amended by the Utilities Act 2000 s 102(a); and by virtue of s 3(2)). As to publication by the Authority see PARA 793 note 5 ante.

5 For the meaning of 'information' see PARA 792 note 8 ante.

6 Gas Act 1986 s 37(2) (as substituted (see note 4 supra); s 37(2), (4) amended by the Utilities Act 2000 s 102(b)).

7 Gas Act 1986 s 37(3) (as substituted: see note 4 supra).

8 Ibid s 37(4) (as substituted and amended: see notes 4, 6 supra).

9 Ibid s 37(5) (as substituted: see note 4 supra).

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Power to require information.

798. Power to require information.

Where it appears to Gas and Electricity Markets Authority ('GEMA')¹ that a licence holder² may be contravening³, or may have contravened, any relevant condition or requirement⁴, or may be failing, or may have failed, to achieve any prescribed standard of performance⁵, the Authority may, for any purpose connected with the exercise of its relevant enforcement functions⁶ in relation to that matter, by notice in writing:

- 1029 (1) require any person to produce to the Authority or to any person appointed by it for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- 1030 (2) require any person carrying on any business to furnish to the Authority such information⁷ as may be specified or described in the notice, and may specify the time, manner and form in which any such information is to be furnished⁸.

Where a licence has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Authority, having regard to the general duties imposed on it⁹, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Authority may, with the consent of the Secretary of State, by notice signed by it:

- 1031 (a) require the licence holder to produce, at a time and place specified in the notice, to the Authority, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- 1032 (b) require the licence holder to furnish to the Authority, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished¹⁰.

No person may, however, be compelled for any such purpose as is mentioned in the above provisions¹¹ to produce any documents or records which he could not be compelled to produce in civil proceedings before the court¹² or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings¹³.

A person who, without reasonable excuse, fails to do anything duly required of him by a notice under the above provisions¹⁴ is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁵; and a person who intentionally alters, suppresses or destroys any document or record which he has been required by any such notice to produce is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine¹⁶. If a person makes default in complying with such a notice, the court may make such order as it thinks fit, on the application of the Authority, for requiring the default to be made good and any such order may provide that all

the costs or expenses of and incidental to the application are to be borne by the person in default or by any officers of a company or other association who are responsible for its default¹⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 789 note 9 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 779 note 3 ante.

4 For these purposes, 'relevant condition' and 'relevant requirement' have the same meanings as in the Gas Act 1986 s 28 (as amended) (see PARA 968 notes 4-5 post): s 38(5).

5 Ie any standard of performance prescribed under ibid s 33A (as added and amended) (see PARA 874 post) or s 33AA (as added) (see PARA 875 post). For the purposes of Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante, PARA 799 et seq post), 'prescribed' means prescribed by regulations made, unless the context otherwise requires, by the Secretary of State: s 48(1) (definition amended by the Gas Act 1995 s 10(1), Sch 3 para 54(1)(g)). As to the Secretary of State see PARA 601 note 1 ante.

6 Ie for any purpose connected with the exercise of its functions under the Gas Act 1986 s 28 (as amended) (see PARA 968 post) or s 30A-30F (as added and amended) (see PARA 972 et seq post).

7 For the meaning of 'information' see PARA 792 note 8 ante.

8 Gas Act 1986 s 38(1) (amended by the Gas Act 1995 ss 10(1), 17(5), Sch 3 para 46(1), Sch 6; the Utilities Act 2000 s 95(5)).

9 Ie the duties imposed by the Gas Act 1986 s 4AA (as added and amended) (see PARA 789 ante), s 4AB (as added) (see PARA 790 ante) or s 4A (as added) (see PARA 791 ante).

10 Ibid s 38(1A) (s 38(1A), (1B) added by the Gas Act 1995 s 10(1), Sch 3 para 46(2); the Gas Act 1986 s 38(1A) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 17(a); and by virtue of s 3(2)).

11 Ie any such purpose as is mentioned in the Gas Act 1986 s 38(1) (as amended) or s 38(1A) (as added and amended).

12 'The court' means the High Court: ibid s 30(9)(a) (applied by s 38(5)).

13 Ibid s 38(1B) (as added: see note 10 supra).

14 Ie under ibid s 38(1) (as amended) or s 38(1A) (as added and amended).

15 Ibid s 38(2) (s 38(2), (4) amended by the Gas Act 1995 s 10(1), Sch 3 para 46(3)). As to the standard scale see PARA 613 note 11 ante.

16 Gas Act 1986 s 38(3) (amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 17(b)). As to the statutory maximum see PARA 689 note 2 ante.

17 Gas Act 1986 s 38(4) (as amended (see note 15 supra); also amended by virtue of the Utilities Act 2000 s 3(2)).

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Duty to give reasons for decisions.

799. Duty to give reasons for decisions.

As soon as reasonably practicable after making any of the following decisions, namely:

- 1033 (1) the revocation of a licence¹;
- 1034 (2) the modification² of the conditions of a licence;
- 1035 (3) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of the specified statutory provisions³;
- 1036 (4) the determination of a question referred to the Gas and Electricity Markets Authority ('GEMA')⁴ or the Secretary of State⁵ in pursuance of a condition included in a licence⁶;
- 1037 (5) the determination of a dispute referred⁷ to the Authority;
- 1038 (6) the making of a final order⁸, the making or confirmation of a provisional order⁹ or the revocation of a final order or of a provisional order which has been confirmed,

the Authority or the Secretary of State must publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested¹⁰. In preparing such a notice the Authority or the Secretary of State must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, corporate or unincorporate, where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body¹¹. The Authority must send a copy of a notice published in respect of a decision mentioned in heads (1) to (4) or in head (6) above to the licence holder¹² to whose licence, or to whom, the decision relates¹³.

The above provisions do not apply to a decision resulting in any provision which the Secretary of State has directed¹⁴ the Authority not to enter in the register of licences and other matters which is required¹⁵ to be kept¹⁶.

1 For the meaning of 'licence' see PARA 789 note 9 ante.

2 For the meaning of 'modifications' see PARA 778 note 7 ante.

3 Ie by virtue of the Gas Act 1986 s 7B(5)(a)(i) or (ii) (as added and amended): see PARA 809 post.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Ie by virtue of the Gas Act 1986 s 7B(5)(a)(iii) (as added and amended): see PARA 809 post.

7 Ie under ibid s 27A(1) (as added and amended): see PARA 965 post.

8 For these purposes, 'final order' has the same meaning as in ibid s 28 (as amended) (see PARA 968 post): s 38A(6) (38A added by the Gas Act 1986 s 10(1), Sch 3 para 47; substituted by the Utilities Act 2000 s 87).

9 For these purposes, 'provisional order' has the same meaning as in the Gas Act 1986 s 28 (as amended) (see PARA 968 post): s 38A(6) (as added and substituted: see note 8 supra).

10 Ibid s 38A(1), (2) (as added and substituted: see note 8 supra). As to publication by the Authority see PARA 793 note 5 ante.

11 Ibid s 38A(4) (as added and substituted: see note 8 supra).

12 For the meaning of 'licence holder' see PARA 789 note 9 ante.

13 Gas Act 1986 s 38A(3) (as added and substituted: see note 8 supra).

14 Ie under ibid s 36(3) (as amended): see PARA 794 ante.

15 Ie under ibid s 36 (as amended): see PARA 794 ante.

16 Ibid s 38A(5) (as added and substituted: see note 8 supra).

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800. Other statutory powers and duties of the Secretary of State.

The Secretary of State¹ has a number of other statutory powers and duties for the purpose of carrying out his general functions and duties relating to gas². He may, for example:

- 1039 (1) grant exemptions from the statutory prohibition³ on unlicensed activities relating to gas⁴;
- 1040 (2) make regulations in respect of entry on premises⁵;
- 1041 (3) modify or remove the specified⁶ kilowatt hour limits⁷;
- 1042 (4) make safety regulations concerning gas under the statutory provisions relating to health and safety at work⁸;
- 1043 (5) specify other gaseous substances which may fall within the statutory definition of 'gas'⁹;
- 1044 (6) institute certain criminal proceedings¹⁰;
- 1045 (7) exercise transitional powers to grant interconnector licences under the Energy Act 2004¹¹;
- 1046 (8) issue a direction to the Authority not to impose a modification condition on any transfer of a licence¹² or not to make a modification in the conditions of a licence¹³;
- 1047 (9) direct the Competition Commission¹⁴ not to proceed with a reference to it or not to give effect to a variation of a reference¹⁵;
- 1048 (10) direct the Authority not to publish certain commercially sensitive material¹⁶;
- 1049 (11) by order, alter the activities requiring a licence¹⁷;
- 1050 (12) enforce certain duties regarding third-party access to gas processing facilities and gas storage facilities by taking civil proceedings for an injunction or other appropriate relief¹⁸;
- 1051 (13) authorise the compulsory acquisition of land by gas transporters¹⁹;
- 1052 (14) give his consent to pipeline works²⁰;
- 1053 (15) make an order containing a scheme for the adjustment of charges for gas to help disadvantaged groups of customers²¹;
- 1054 (16) by order impose on gas transporters or suppliers an obligation to achieve, within a specified period and in accordance with the order, a carbon emissions reduction target to be determined by the Authority²²;
- 1055 (17) give the required consents for the liquefaction or disposal of natural gas²³;
- 1056 (18) authorise the underground storage of gas by gas transporters²⁴.

The Secretary of State must:

- 1057 (a) make regulations providing for gas transporters to pay compensation for damage caused by them during street works²⁵;
- 1058 (b) in certain circumstances, direct a gas transporter to prepare an environmental statement²⁶ and must, if requested to do so by the gas transporter, make an environmental determination²⁷ or give an opinion as to the content of an environmental statement²⁸.

He is given prospective powers to make regulations concerning billing disputes²⁹ and his consent is required for the exercise of certain powers by the Authority, in particular its powers to make regulations³⁰.

The Secretary of State's specific powers and duties relating to gas are discussed in more detail below³¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Secretary of State's general functions and duties relating to gas see PARA 789 ante. See also PARA 706 et seq ante.

3 Ie exemption from the Gas Act 1986 s 5(1)(a), (b) or (c) (as substituted and amended): see PARA 803 post.

4 See ibid s 6A (as added and amended); and PARA 804 post.

5 See ibid s 18 (as amended); the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended); and PARAS 900-902 post.

6 Ie specified in the Gas Act 1986 s 10(8) (as substituted and amended) (see PARA 837 post) or s 10(12) (as so substituted and amended), Sch 2A para 4 (as added; prospectively repealed) (see PARA 804 post) or Sch 2B paras 4, 8 or 16 (as added and amended) (see PARAS 857, 859, 864 post).

7 See ibid s 8A (as added and amended); and PARA 836 note 6 post.

8 The statutory provisions referred to are those of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq. As to health and safety regulations relating to gas see PARA 903 et seq post.

9 See PARA 802 post.

10 See eg paras 803, 855, 976, 977 post.

11 See PARA 806 post.

12 See PARA 811 post.

13 See PARA 812 post.

14 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 post), s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

15 See PARA 813 post.

16 See eg PARAS 815, 823 post.

17 See PARA 819 post.

18 See PARAS 834, 1032 post.

19 See PARA 841 post.

20 See PARA 853 post.

21 See PARA 871 post.

22 See PARA 895 post.

23 See PARAS 981-982 post.

24 See PARA 983 et seq post.

- 25 See PARA 842 post.
- 26 See PARA 845 post.
- 27 See PARA 846 post.
- 28 See PARA 848 post.
- 29 See PARA 872 post.
- 30 See eg PARAS 875, 899, 949 post.
- 31 See PARA 803 et seq post.

UPDATE

800 Other statutory powers and duties of the Secretary of State

TEXT AND NOTES--Add head (19) require a gas transporter to pay the cost of the provision of special police services in or around a gas facility: see POLICE vol 36(1) (2007 Reissue) PARA 193.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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801. Other statutory powers and duties of the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ has a number of other statutory powers and duties for the purpose of carrying out its general functions and duties relating to gas². For example, the Authority:

- 1059 (1) is responsible for the licensing of gas transporters, gas suppliers and gas shippers³;
- 1060 (2) has power to make regulations under a number of provisions of the Gas Act 1986, usually conditional on the Secretary of State's⁴ consent⁵;
- 1061 (3) may set quality standards for gas⁶ and appoint meter examiners⁷;
- 1062 (4) may give directions as to the use by third parties of gas pipeline systems and gas storage and import facilities and as to the construction of, and increases in the capacity of, pipelines⁸;
- 1063 (5) may modify the conditions of licences⁹;
- 1064 (6) may determine certain disputes¹⁰;
- 1065 (7) may order licence holders¹¹ to comply with certain statutory provisions¹² and impose penalties on them¹³;
- 1066 (8) must refer certain consumer complaints to the Gas and Electricity Consumer Council¹⁴;
- 1067 (9) may prescribe overall standards of performance and determine standards of performance for individual cases¹⁵ and may determine targets for reductions in carbon emissions¹⁶;
- 1068 (10) has powers to collect information with respect to levels of performance in relation to such standards¹⁷; and
- 1069 (11) may institute certain criminal proceedings¹⁸.

The Authority's specific powers and duties relating to gas are discussed in more detail below¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Authority's general functions and duties relating to gas see PARA 789 et seq ante.

3 See PARA 805 et seq post.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 See eg paras 838, 869, 858 post.

6 See the Gas Act 1986 s 16 (as added); and PARA 899 post.

7 See ibid s 17(6) (as substituted and amended); and PARA 948 post.

8 See PARAS 826 et seq, 831, 1030-1031 post.

9 See PARA 812 et seq post.

- 10 See PARAS 885 et seq, 965 post.
- 11 For the meaning of 'licence holder' see PARA 789 note 9 ante.
- 12 See the Gas Act 1986 ss 28-30 (as amended); and PARAS 968-971 post.
- 13 See ibid ss 30A-30F (as added); and PARA 972 et seq post.
- 14 See ibid s 32(9) (as substituted); and PARA 966 post. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.
- 15 See PARA 874 et seq post.
- 16 See PARA 895 post.
- 17 See PARA 896 post.
- 18 See eg PARA 803 post.
- 19 See PARA 803 et seq post.

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(4) REGULATION OF THE SUPPLY OF GAS

(i) Licensing of Activities relating to Gas

802. Meanings of 'gas' and of references to the supply of gas.

In Part I of the Gas Act 1986¹, 'gas' means any substance in a gaseous state which consists wholly or mainly of methane, ethane, propane, butane, hydrogen or carbon monoxide, or a mixture of two or more of those gases or a combustible mixture of one or more of those gases and air². It also means any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013.25 millibars and is specified in an order made by the Secretary of State³.

References in that Part of the 1986 Act to the supply of gas do not, in general⁴, include references to the supply of gas, directly or indirectly, to a gas transporter⁵, gas supplier⁶ or gas shipper⁷.

Special statutory provisions apply for various purposes to specific gases⁸, to gases of different qualities⁹ or derivations¹⁰, and to gas used for specific purposes¹¹.

1 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 803 et seq post.

2 Ibid s 48(1)(a).

3 Ibid s 48(1)(b). As to the Secretary of State see PARA 601 note 1 ante; and as to the power to make orders generally see PARA 777 note 15 ante.

4 Ie except in the Gas Act 1986 s 18 (as amended) (safety regulations): see PARA 900 post.

5 For the meaning of 'gas transporter' see PARA 805 post.

6 For the meaning of 'gas supplier' see PARA 807 post.

7 Gas Act 1986 s 48(2) (amended by the Gas Act 1995 s 10(1), Sch 3 para 54(3); the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

8 See PARA 788 ante.

9 As to the power to prescribe standards of pressure and purity see the Gas Act 1986 s 16 (as added); and PARA 899 post.

10 The Energy Act 1976 s 12 (as amended) (see PARA 982 post), applies to all natural gas of the United Kingdom and s 14 (as amended) (see PARAS 1216-1217 post) applies to natural gas of all derivations. For the meaning of 'natural gas' for those purposes see PARA 603 note 3 ante; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante.

11 For the purpose of the construction and use of mechanically propelled vehicles, 'gas' means any fuel which is wholly gaseous at 17.5°C under a pressure of 1.013 bar absolute: Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3(2), Table.

UPDATE

802 Meanings of 'gas' and of references to the supply of gas

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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803. Prohibition on unlicensed activities.

Subject to certain exceptions¹, a person who:

- 1070 (1) otherwise than by means of a gas interconnector², conveys gas³ through pipes⁴ to any premises, or to a pipeline system⁵ operated by a gas transporter⁶;
- 1071 (2) participates in the operation of a gas interconnector⁷;
- 1072 (3) supplies⁸ to any premises gas which has been conveyed to those premises through pipes; or
- 1073 (4) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by that transporter,

is guilty of an offence unless he is authorised to do so by a licence⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine¹⁰. No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or on behalf of the Secretary of State¹¹ or the Gas and Electricity Markets Authority ('GEMA')¹².

1 The subject to the Gas Act 1986 s 6A (as added and amended): see PARA 804 post. At the date at which this title states the law, s 5(1) (as substituted and amended) (see the text and notes 2-9 infra) is also subject to s 5(2), Sch 2A (as respectively substituted and added; prospectively repealed by the Utilities Act 2000 ss 75, 108, Sch 8, as from a day to be appointed under s 110(2); at the date at which this title states the law, no such day had been appointed). See further PARA 804 post.

2 For the meaning of 'gas interconnector' see PARA 792 note 4 ante.

3 For the meaning of 'gas' see PARA 802 ante.

4 Any reference in the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante; the text and notes 1-3 supra, 5-12 infra; and PARA 804 et seq post) to the conveyance by any person of gas through pipes to any premises is a reference to the conveyance by him of gas through pipes to those premises with a view to the gas being supplied to those premises by any person, or being used in those premises by the holder of a licence under s 7A(2) (as added and amended) (see PARA 807 post): s 5(5) (s 5 substituted by the Gas Act 1995 s 3(1)).

5 For the meaning of 'pipeline system' for these purposes see PARA 792 note 4 ante.

6 For the meaning of 'gas transporter' see PARA 805 post.

7 A reference in the Gas Act 1986 Pt I (as amended) to participating in the operation of a gas interconnector is a reference to (1) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or (2) making such an interconnector available for use for the conveyance of gas; and for the purposes of head (2) supra a person is not to be regarded as making something available just because he consents to its being made available by another: s 5(6), (7) (added by the Energy Act 2004 s 149(1), (3)).

8 For the meaning of references to the supply of gas see PARA 802 ante.

9 Gas Act 1986 s 5(1) (as substituted (see note 4 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 3; the Energy Act 2004, s 149(1), (2); prospectively amended, so as to remove the reference to the Gas Act 1986 Sch 2A (as added and amended and prospectively repealed: see note 1 supra) by the Utilities Act 2000 s 108, Sch 8, as from a day to be appointed under s 110(2); at the date at which this title states the law, no such day had been appointed). For the meaning of 'licence' see PARA 789 note 9 ante.

10 Gas Act 1986 s 5(3) (as substituted: see note 4 supra).

11 As to the Secretary of State see PARA 601 note 1 ante.

12 Gas Act 1986 s 5(4) (as substituted (see note 4 supra); amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

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804. Exemptions from prohibition on unlicensed activities.

The Secretary of State¹ may by order² grant exemption from any of the statutory prohibitions on unlicensed activities³:

- 1074 (1) either to a person or to persons of a class;
- 1075 (2) either generally or to such extent as may be specified in the order; and
- 1076 (3) either unconditionally or subject to such conditions as may be so specified⁴.

An exemption may be granted indefinitely, or for a period specified in, or determined by or under, the exemption⁵.

Before making such an order the Secretary of State must give notice⁶:

- 1077 (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
- 1078 (b) stating the reasons why he proposes to make the order in the terms proposed; and
- 1079 (c) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations with respect to the proposals may be made,

and must consider any representations which are duly made in respect of the proposals and not withdrawn⁷. The notice so required must be given by serving a copy of it on the Gas and Electricity Markets Authority ('GEMA')⁸ and the Gas and Electricity Consumer Council⁹ and by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order¹⁰.

Notice of an exemption granted to a person must be given by serving a copy of the exemption on him and by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it¹¹; and notice of an exemption granted to persons of a class must be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class and other persons who may be affected by it¹².

The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions:

- 1080 (i) at the person's request;
- 1081 (ii) in accordance with any provision of the order by which the exemption was granted; or
- 1082 (iii) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect¹³;

and the Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions either in accordance with any provision of the order by which the exemption was granted or if it appears to him inappropriate that the exemption should continue to have effect¹⁴.

The Secretary of State may also by direction withdraw an exemption granted to persons of a class from any person of that class:

- 1083 (A) at the person's request;
- 1084 (B) in accordance with any provision of the order by which the exemption was granted; or
- 1085 (C) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person¹⁵.

Before making such an order revoking an exemption, or making such a direction withdrawing an exemption, unless it is at the person in question's request¹⁶, the Secretary of State must consult the Authority and give notice of his proposal to do so, with reasons, and of a period within which representations may be made to him¹⁷.

In addition to the exemptions granted under the above provisions¹⁸, there are, at the date at which this title states the law, statutory exceptions with respect to the conveyance or supply of gas by landlords etc¹⁹, the conveyance or supply of gas to associated companies²⁰, the conveyance or supply of propane or butane²¹, the conveyance of gas for supply to large consumers²² and the supply of gas to very large consumers²³; but the provisions setting out these exceptions are prospectively repealed by the Utilities Act 2000²⁴, as from a day to be appointed under that Act²⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the power to make orders generally see PARA 777 note 15 ante.

3 The exemption from the Gas Act 1986 s 5(1)(a), (aa), (b) or (c) (as substituted and amended): see PARA 803 ante at heads (1)-(4) in the text.

4 Ibid s 6A(1) (s 6A added by the Gas (Exempt Supplies) Act 1993 s 2 and substituted by the Gas Act 1995 s 4; the Gas Act 1986 s 6A(1) amended by the Utilities Act 2000 ss 86(1), 108, Sch 8; and by the Energy Act 2004 s 149(1), (4)).

Without prejudice to the generality of the Gas Act 1986 s 6A(1)(c) (as substituted) (see head (3) in the text), conditions included by virtue of that head in an exemption may require any person carrying on any activity in pursuance of the exemption (1) to comply with any direction given by the Secretary of State or the Gas and Electricity Markets Authority ('GEMA') as to such matters as are specified in the exemption or are of a description so specified; (2) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and (3) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified: s 6A(4) (as so substituted; amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Gas Act 1986 s 6A(3) (substituted by the Utilities Act 2000 s 86(3)). A number of exemption orders have been made under these powers, as follows:

11 (1) the Gas Act 1986 (Exemptions) (No 1) Order 1996, SI 1996/449 (amended by virtue of the Utilities Act 2000 ss 3(2), 76(7)), which provides for exemptions (which came into force on 1 March 1996 and, unless previously revoked in accordance with the Gas Act 1986 (Exemptions) (No 1) Order 1996, SI 1996/449, art 22, are to continue in force until 1 March 2011 and are then to expire: see art 1(2)) in respect of (a) the conveyance of gas previously supplied (see arts 3-4 (as amended)); (b) the conveyance of gas produced by a supplier as a by-product (see arts 5-6 (as amended)); (c) a consumer's shipping exemption (see arts 7-8 (as amended)); (d) a supplier's

shipping exemption (see arts 9-10 (as amended)); (e) an exemption for a gas transporter on failure of the shipper (see art 11 (as amended)); (f) an emergency shipper's exemption (see arts 12-13 (as amended)); (g) an exemption for the conveyance of gas in cases of secondary metering (see arts 14-17 (as amended)); and (h) a bottled gas exemption (see arts 18-20);

- 12 (2) the Gas Act 1986 (Exemptions) (No 2) Order 1996, SI 1996/471 (as so amended), which grants certain exemptions to terminal operators;
- 13 (3) the Gas Act 1986 (Exemptions) (No 4) Order 1996, SI 1996/2795 (as so amended; also amended by SI 2000/3206) which grants exemptions, until 1 March 2011, in respect of the conveyance of gas through pipes from the specified premises to a pipeline system operated by a gas transporter;
- 14 (4) the Gas Act 1986 (Exemption) Order 1997, SI 1997/2427, which grants an exemption until 1 March 2011, unless previously revoked, to Premier Transco in respect of the conveyance of gas, in pursuance of arrangements made by the relevant transporter, from a relevant offtake point to the Stranraer pipeline system;
- 15 (5) the Gas Act 1986 (Exemption) Order 1998, SI 1998/1779 (amended as noted to head (1) supra) which grants to Interconnector (UK) Ltd an exemption in respect of the conveyance of gas through a specified interconnector to a pipeline system operated by a gas transporter;
- 16 (6) the Gas Act 1986 (Exemptions) Order 1999, SI 1999/2639 (as so amended) which grants exemptions to 'relevant transporters' (ie to any person, not being the holder of a licence under the Gas Act 1986 s 7 (as substituted and amended) in respect of such conveyance, who conveys gas through pipes from a relevant storage facility for a distance not exceeding 16.093 kilometres to a pipeline system operated by a gas transporter: see the Gas Act 1986 (Exemptions) Order 1999, SI 1999/2639 art 2 (as so amended)) in relation to relevant transport (construed in accordance with the definition of 'relevant transporter' set out supra (see arts 3-6 (as so amended)) and also grants exemptions in respect of the conveyance and supply of gas to a relevant storage facility (ie any facility used wholly or mainly for the purpose of storing gas, excluding a facility used for storing gas in natural porous strata underground: see art 2) (see art 7 (as so amended));
- 17 (7) the Gas Act 1986 (Exemptions) (No 2) Order 1999, SI 1999/3089, which grants exemptions in respect of relevant transport (which is defined in identical terms to those set out in the definition in head (6) supra) and in respect of the conveyance and supply of gas to the gas processing facility at the Lindholm Compressor Site, Vulcan Way, Bawtry Road, Hatfield Woodhouse, Doncaster DN7 6TE;
- 18 (8) the Gas Act 1986 (Exemption) Order 2005, SI 2005/16, which grants exemptions in respect of the conveyance of gas from, and the conveyance and supply of gas to, an LNG import facility;
- 19 (9) the Gas Act 1986 (Exemption) (No 2) Order 2005, SI 2005/280, which grants an exemption in respect of certain shipping arrangements; and
- 20 (10) the Gas Act 1986 (Exemption from the Requirement for an Interconnector Licence) Order 2006, SI 2006/2000, which grants an exemption to any person who participates in the operation of an exempt gas interconnector (ie a gas interconnector that does not subsist (whether in whole or in part) for the purpose of the conveyance of gas (whether in both directions or in only one) between a gas transportation system situated in Great Britain and a gas transportation system situated in another country or territory: see art 2).

6 In the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante; the text and notes 1-5 supra, 7-25 infra; and PARA 805 et seq post) unless the context otherwise requires, 'notice' means notice in writing: s 48(1). As to the service of notice see PARA 980 post.

7 Ibid s 6A(1A) (s 6A(1A), (1B) added by the Utilities Act 2000 s 86(2)).

8 See note 4 supra.

9 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

10 Gas Act 1986 s 6A(1B) (as added: see note 7 supra).

11 Ibid s 6A(2A) (added by the Utilities Act 2000 s 86(3)).

12 Gas Act 1986 s 6A(2) (substituted by the Utilities Act 2000 s 86(3)).

13 Gas Act 1986 s 6A(5) (s 6A(5) substituted, and s 6A(6)-(9) added, by the Utilities Act 2000 s 86(4)).

14 Gas Act 1986 s 6A(6) (as added: see note 13 supra).

15 Ibid s 6A(7) (as added: see note 13 supra).

16 Ie before (1) making an order under ibid s 6A(5)(b) or (c) (as substituted) or s 6A(6) (as added); or (2) giving a direction under s 6A(7)(b) or (c) (as added).

17 Ibid s 6A(8) (as added: see note 13 supra). The notice under s 6A(8) (as so added) must be given (1) where the Secretary of State is proposing to make an order under s 6A(5)(b) or (c) (as substituted), by serving a copy of it on the person to whom the exemption was granted; (2) where he is proposing to make an order under s 6A(6) (as added), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and (3) where he is proposing to give a direction under s 6A(7)(b) or (c) (as added), by serving a copy of it on the person from whom he proposes to withdraw the exemption: s 6A(9) (as so added).

18 See note 5 supra.

19 The Gas Act 1986 s 5(1) (as substituted and amended) (see PARA 803 ante) is not contravened by a person (1) conveying within a building or part of a building in which he has an interest; or (2) supplying for use in such a building or part of a building, gas supplied to the building by a person authorised to supply it by or under s 6A (as added and amended) (see the text and notes 1-17 supra) or s 7A (as added and amended) (see PARA 807 post) or Sch 2A (as so added): s 5(2), Sch 2A para 1 (s 5(2) substituted, and Sch 2A added, by the Gas Act 1995 s 3(1), (2), Sch 1; prospectively repealed (see the text and notes 24-25 infra)).

20 The Gas Act 1986 s 5(1) (as substituted and amended) is not contravened by a company conveying or supplying gas to any premises occupied by a subsidiary or holding company of the company, or by a subsidiary of a holding company of the company: Sch 2A para 2 (as added (see note 19 supra); prospectively repealed (see the text and notes 24-25 infra)). 'Holding company' and 'subsidiary' have the meanings given by the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25); Gas Act 1986 s 48(1) (definitions amended by the Companies Act 1989 s 144(4), Sch 18 para 44).

21 The Gas Act 1986 s 5(1) (as substituted and amended) is not contravened by a person conveying or supplying to any premises gas which consists wholly or mainly of propane or butane: Sch 2A para 3(1) (as added (see note 19 supra); prospectively repealed (see the text and notes 24-25 infra)). In the case of a supply, however, this does not apply unless (1) the contract for the supply contains provisions empowering a person authorised by the supplier to enter the premises where in his opinion it is necessary to do so for the purpose of averting danger to life or property; (2) those provisions are in terms approved for these purposes by the Secretary of State; and (3) the gas is conveyed to the premises otherwise than by a gas transporter: Sch 2A para 3(2) (as so added; amended by virtue of the Utilities Act 2000 s 76(7); and prospectively repealed (see the text and notes 24-25 infra)).

22 The Gas Act 1986 s 5(1) (as substituted and amended) is not contravened by a person conveying gas to any premises at any time if they are supplied with gas at a rate which, at any time within the period of 12 months immediately preceding that time, he reasonably expected to exceed (1) at any time up to 31 December 1999, 75,000 therms a year; (2) at any time after that date, 2,196,000 kilowatt hours: Sch 2A para 4 (as added (see note 19 supra); amended by virtue of s 48(2A)(a) (added by the Gas Act 1995 s 10(1), Sch 3 para 54(4)); and prospectively repealed (see the text and notes 24-25 infra)). As to the power to modify or remove the limits set out in heads (1)-(2) supra see the Gas Act 1986 s 8A (as added and amended); and PARA 836 note 6 post.

23 Where a person (a 'supplier') notifies the Gas and Electricity Markets Authority ('GEMA'): (1) that he proposes to undertake a supply of gas to any premises at a rate in excess of 58,000,000 kilowatt hours a year ('the required rate'); or (2) that, in such circumstances as may be described in the notification, he would undertake a supply of gas to any premises, at a rate in excess of the required rate, for such period as may be so described, then the Gas Act 1986 s 5(1) (as substituted and amended) is not contravened by a supply of gas to the premises (or, as the case may require, a supply of gas to the premises in the circumstances and for the period described in the notification) unless, within six weeks of receiving the notification, the Authority notifies the supplier either (a) that he is of the opinion that the rate of supply to those premises would be unlikely to exceed the required rate; or (b) that he is unable to form an opinion as to whether the rate of supply to those premises would or would not be likely to exceed the required rate: Sch 2A para 5(1), (2) (as added (see note 19 supra); amended by virtue of s 48(2A)(a) (as added: see note 22 supra) and of the Utilities Act 2000 s 3(2); and

prospectively repealed (see the text and notes 24-25 *infra*)). Where a supplier has given the Authority a notification under head (1) *supra* and: (i) the rate of supply to the premises to which the notification relates fails to exceed the required rate for three successive periods of 12 months; (ii) the supplier fails to furnish the Authority with such information as he may require for the purpose of determining whether the condition in head (i) *supra* is fulfilled; or (iii) the supplier fails to afford to the Authority such facilities as he may require for the purpose of verifying any information furnished in pursuance of such a requirement as is mentioned in head (ii) *supra*, the Authority may direct that the supplier's notification is to be treated as invalid for the purposes of head (1) *supra* except as regards gas previously supplied: Gas Act 1986 Sch 2A para 5(3) (as so added and amended; prospectively repealed (see the text and notes 24-25 *infra*)). As soon as practicable after receiving a notification under head (1) or head (2) *supra*, giving a notification under heads (a)-(b) *supra* or giving a direction under heads (i)-(iii) *supra*, the Authority must send a copy of the notification or direction to the Health and Safety Executive: Sch 2A para 5(4) (as so added and amended; prospectively repealed (see the text and notes 24-25 *infra*)). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq.*

24 See the Utilities Act 2000 ss 75, 108, Sch 8. At the date at which this title states the law, those repeals were not in force.

25 *Idem* as from a day to be appointed under *ibid* s 110(2). At the date at which this title states the law, no such day had been appointed.

UPDATE

804 Exemptions from prohibition on unlicensed activities

NOTE 20--In definition of 'holding company' reference to Companies Act s 736 now to Companies Act 2006 s 1159: Gas Act 1986 s 48(1) (definition amended by SI 2009/1841).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/805. Licensing of gas transporters.

805. Licensing of gas transporters.

In Part I of the Gas Act 1986¹, 'gas transporter' means the holder of a licence under the following provisions except where the holder is acting otherwise than for purposes connected with:

- 1086 (1) the carrying on of activities authorised by the licence;
- 1087 (2) the conveyance of gas through pipes² which are situated in an authorised area³ of his or are situated in an area which was an authorised area of his, or an authorised area of a previous holder of the licence, and were so situated at a time when it was such an area⁴.

The Gas and Electricity Markets Authority ('GEMA')⁵ may grant a licence authorising any person to do either or both of the following, namely:

- 1088 (a) to convey gas through pipes to any premises in an authorised area of his, that is to say, any area specified in the licence⁶ as it has effect for the time being;
- 1089 (b) to convey gas through pipes either to any pipeline system operated by another gas transporter, or to any pipeline system so operated which is specified in the licence⁷ or an extension of the licence⁸;

but a licence must not be granted under these provisions to a person who is the holder of a licence for the operation of a gas interconnector⁹ or a licence¹⁰ as a gas supplier or gas shipper¹¹.

The Authority may, with the consent of the licence holder, direct that any licence under these provisions is to have effect:

- 1090 (i) as if any area or pipeline system specified in the direction¹² were specified in the licence;
- 1091 (ii) in the case of a licence under head (a) above, as if it were also a licence under head (b) above and any pipeline system specified in the direction were specified in the licence; or
- 1092 (iii) in the case of a licence under head (b) above, as if it were also a licence under head (a) above and any area specified in the direction were specified in the licence¹³.

The Authority may also, with the consent of the licence holder, direct that any licence under these provisions is to have effect as if any area or pipeline system specified in the direction were not specified in the licence¹⁴.

Before granting such a licence, the Authority must give notice¹⁵:

- 1093 (A) stating that it proposes to grant the licence;
- 1094 (B) stating the reasons why it proposes to grant the licence; and

- 1095 (c) specifying the time from the date of publication of the notice, not being less than two months, within which representations or objections with respect to the proposed licence may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁶. The notice must be given by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence and by sending a copy of the notice to the Secretary of State¹⁷, to the Health and Safety Executive¹⁸ and to any gas transporter whose area includes the whole or any part of the area proposed to be specified in the licence¹⁹.

As soon as practicable after the granting of such a licence, the gas transporter must publish, in such manner as the Authority considers appropriate for bringing it to the attention of persons who are likely to do business with the transporter, a notice stating that the licence has been granted and explaining that, as a result, it might be necessary for those persons to be licensed²⁰ as gas suppliers or gas shippers²¹.

1 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante; the text and notes 2-21 infra; and PARA 806 et seq post.

2 For the meaning of 'gas' see PARA 802 ante; and as to the meaning of references to gas conveyed through pipes see PARA 803 note 4 ante.

3 In the Gas Act 1986 Pt I (as amended), unless the context otherwise requires, 'authorised area', in relation to a gas transporter, has the meaning given by s 7(2) (as substituted and amended) (see the text and notes 5-8 infra): s 48(1) (definition amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

4 Gas Act 1986 s 7(1)(a), (b) (s 7 substituted by the Gas Act 1995 s 5; the Gas Act 1986 s 7(1) amended by the Utilities Act 2000 s 76(1), (2)). Until a day to be appointed under the Energy Act 2004 s 198(2), 'gas transporter' also excludes the holder of a licence who is acting otherwise than for purposes connected with the conveyance through pipes of gas which is in the course of being conveyed to or from a country or territory outside Great Britain: see the Gas Act 1986 s 7(1)(c) (as so substituted and amended; prospectively repealed by the Energy Act 2004 s 197(9), Sch 23 Pt 1, as from such a day; at the date at which this title states the law, no such day had been appointed).

The effect of the Utilities Act 2000 s 76 was to end the previous exclusivity of the authorised areas of persons holding gas transportation licences: see s 76(1). References in any enactment in force immediately before the commencement of s 76 (ie 1 October 2001: see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule) to a public gas transporter or to the holder of a licence under the Gas Act 1986 s 7 (as substituted) have effect after that commencement as if they were references to a gas transporter: Utilities Act 2000 s 76(7).

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 For these purposes, references to an area specified in a licence or direction include references to an area included in an area so specified: Gas Act 1986 s 7(10)(b) (as substituted: see note 4 supra).

7 For these purposes, references to a pipeline system specified in a licence or direction include references to a pipeline system of a description, or situated in an area, so specified: *ibid* s 7(10)(c) (as substituted: see note 4 supra).

8 *Ibid* s 7(2) (as substituted (see note 4 supra); amended by the Utilities Act 2000 ss 76(1), (3), 108, Sch 6 Pt I, PARAS 1, 4; and by virtue of s 3(2)).

9 Ie the holder of a licence under the Gas Act 1986 s 7ZA (as added): see PARA 806 post.

10 Ie the holder of a licence under *ibid* s 7A (as added and amended): see PARA 807 post.

11 *Ibid* s 7(3) (as substituted (see note 4 supra); amended by the Energy Act 2004 s 149(1), (5)). As to applications for licences see PARA 808 post; and as to standard conditions of licences see PARA 810 post. As to the prohibition on carrying on certain activities without a licence see PARA 803 ante; and as to exemptions and exceptions from that prohibition see PARA 804 ante.

12 See notes 6-7 supra.

13 Gas Act 1986 s 7(4) (as substituted (see note 4 supra); amended by virtue of the Utilities Act 1986 s 3(2)). References in the Gas Act 1986 Pt I (as amended) to, or to the grant of, an extension under s 7 (as substituted and amended), or an extension of such a licence, are to be construed as references to, or to the giving of, such a direction: s 7(4).

14 Ibid s 7(4A) (added by the Utilities Act 2000 s 76(1), (4)). References in the Gas Act 1986 Pt I (as amended) to, or to the grant of, a restriction under s 7 (as substituted and amended), or a restriction of such a licence, are to be construed as references to, or to the giving of, such a direction: s 7(4A) (as so added).

15 For the meaning of 'notice' see PARA 804 note 6 ante.

16 Gas Act 1986 s 7(5) (as substituted (see note 4 supra); amended by the Utilities Act 2000 ss 76(1), (5), 108, Sch 8; and by virtue of s 3(2)).

17 As to the Secretary of State see PARA 601 note 1 ante.

18 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

19 Gas Act 1986 s 7(6) (amended by the Utilities Act 2000 ss 76(1), (5), 108, Sch 6 Pt I paras 1, 4, Sch 8; and by virtue of s 3(2)). As to publication by the Authority see PARA 793 note 5 ante.

20 Ie under the Gas Act 1986 s 7A (as added and amended): see PARA 806 post.

21 See ibid s 7(9) (amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 4; and by virtue of s 3(2)).

UPDATE

805 Licensing of gas transporters

TEXT AND NOTES--The Secretary of State may modify (1) a condition of a particular licence under the Gas Act 1986 s 7; (2) the standard conditions incorporated in licences under those provisions by virtue of the Gas Act 1986 s 8 (see PARA 810); (3) a document maintained in accordance with the conditions of licences under the Gas Act 1986 s 7, or an agreement that gives effect to a document so maintained: Energy Act 2008 s 88(1)(c)-(e). The Secretary of State may exercise the power in the Energy Act 2008 s 88(1) for the purpose only of (a) requiring the holder of a licence to provide or install, or facilitate the provision, installation or operation of, meters of a particular kind, or (b) requiring the holder of a licence to make arrangements related to the matters mentioned in head (a): s 88(2). See further s 88(3)-(7). The procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by s 88 is set out: see Energy Act 2008 s 89. Supplemental provision is made: see Energy Act 2008 s 90.

The Secretary of State may modify (1) the conditions of a particular licence under the Gas Act 1986 s 7; (2) the standard conditions incorporated in licences under s 7 by virtue of the Gas Act 1986 s 8 (see PARA 810): Energy Act 2008 s 94(1). The Secretary of State may exercise the power in s 94(1) for the purpose only of enabling the Gas and Electricity Markets Authority to recover and pay into the Consolidated Fund amounts in respect of (a) payments made by the Secretary of State by virtue of the Gas Act 1986 s 17(7) or (7A); (b) other costs incurred by the Secretary of State in performing a function conferred by the Gas Act 1986 s 17 or by gas meter regulations (within the meaning of the Energy Act 2008 s 92: see PARAS 947-949): Energy Act 2008 s 94(2). See further s 94(3)-(9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/806. Licences for operation of gas interconnectors.

806. Licences for operation of gas interconnectors.

The Gas and Electricity Markets Authority ('GEMA')¹ may grant a licence authorising any person to participate in the operation of a gas interconnector²; but a licence must not be so granted to a person who is the holder of a licence as a gas transporter³ or the holder of a licence⁴ as a gas supplier or gas shipper⁵.

A licence under these provisions:

- 1096 (1) must specify the interconnector or interconnectors in relation to which participation is authorised; and
- 1097 (2) may limit the forms of participation in the operation of an interconnector which are authorised by the licence⁶.

The Energy Act 2004 confers transitional powers on the Secretary of State⁷ to grant a gas interconnector licence to a person who was participating in the operation of a gas interconnector at the time when the power of GEMA to grant licences under the above provisions came into force⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Gas Act 1986 s 7ZA(1) (s 7ZA added by the Energy Act 2004 s 149(1), (6)). For the meaning of 'gas interconnector' see PARA 792 note 4 ante; and for the meaning of references to participating in the operation of a gas interconnector see PARA 803 note 7 ante. As to applications for licences see PARA 808 post; and as to standard conditions of licences see PARA 810 post. As to the prohibition on carrying on certain activities without a licence see PARA 803 ante; and as to exemptions and exceptions from that prohibition see PARA 804 ante.

3 Ie a licence under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

4 Ie a licence under ibid s 7A (as added and amended): see PARA 807 post.

5 See ibid s 7ZA(2) (as added: see note 2 supra).

6 Ibid s 7ZA(3) (as added: see note 2 supra).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 See the Energy Act 2004 s 152(1), (2), (6). Before granting a licence to a person by virtue of s 152, the Secretary of State must consult (1) that person; (2) GEMA; and (3) such other persons as the Secretary of State considers appropriate: s 152(4). Section 152(4) may be satisfied by consultation that took place wholly or partly before 1 December 2004 (ie the date when the Gas Act 1986 s 7ZA (as added) and the Energy Act 2004 s 152 came into force: see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(2), Sch 2): Energy Act 2004 s 152(5).

The Gas Act 1986 s 7B (as added and amended) (see PARAS 808-809 post) and s 8 (as substituted and amended) (see PARA 810 post) (general provisions relating to licences and licence conditions) have effect in relation to the grant of licences by the Secretary of State by virtue of the Energy Act 2004 s 152 as if (a) references in those provisions to GEMA included references to the Secretary of State; (b) the Gas Act 1986 s 7B(1), (2) and (2A) (as added and amended) were omitted; and (c) in s 8 (as substituted and amended), the words 'the Secretary of State, to' in s 8(5)(b) (as substituted) and s 8(6) (as substituted and amended) were omitted: Energy Act 2004 s 152(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/807. Licensing of gas suppliers and gas shippers.

807. Licensing of gas suppliers and gas shippers.

The Gas and Electricity Markets Authority ('GEMA')¹ may² grant a licence authorising any person to do either or both of the following, namely:

- 1098 (1) to supply, to any premises specified in the licence³, gas⁴ which has been conveyed through pipes⁵ to those premises; and
- 1099 (2) to supply, to any premises at a rate which, at the time when he undertakes to give the supply, he reasonably expects to exceed 73,200 kilowatt hours⁶ a year, gas which has been conveyed through pipes to those premises⁷.

In Part I of the Gas Act 1986⁸, 'gas supplier' means the holder of such a licence, except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence⁹.

The Authority may also grant a licence authorising any person to arrange with any gas transporter¹⁰ for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by that transporter, either generally or for purposes connected with the supply of gas to any premises specified in the licence¹¹; and in Part I of the 1986 Act, 'gas shipper' means holder of such a licence, except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence¹².

A licence must not, however, be granted under either of the above provisions to a person who is the holder of a gas transporter licence¹³ or the holder of a licence¹⁴ for the operation of a gas interconnector¹⁵.

The Authority may, with the consent of the licence holder, direct that any licence under these provision is to have effect:

- 1100 (a) as if any premises specified in the direction¹⁶ were specified in the licence;
- or
- 1101 (b) in the case of a licence under head (2) above, as if it were also a licence under head (1) above and any premises specified in the direction were specified in the licence¹⁷;

but this does not apply in relation to a licence as a gas supplier¹⁸ which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a gas transporter¹⁹.

The Authority may also, with the consent of the licence holder, direct that any licence under these provisions is to have effect as if any premises specified in the direction were not specified in the licence²⁰.

If the holder of a licence as a gas supplier²¹ applies to the Authority for a restriction of the licence, or for the revocation of the licence in accordance with any term contained in it, the Authority must²² accede to the application if it is satisfied that such arrangements have been made as:

- 1102 (i) will secure continuity of supply for all relevant consumers²³; and
 1103 (ii) in the case of each such consumer who is supplied with gas in pursuance of a contract, will secure such continuity on the same terms as nearly as may be as the terms of the contract²⁴.

The Gas Act 1995 provided that, subject to certain exceptions²⁵, no domestic supply licence²⁶ might authorise the supply of gas to any premises before the relevant date, that is to say, 1 January 1999 or, if the Secretary of State by order so provided, such earlier date (not earlier than 1 January 1998) as might be determined by or under the order²⁷. The 1995 Act also contains provisions for managing the transition from the previous system of authorisations of public gas suppliers to the system of licensing of gas transporters, gas suppliers and gas shippers²⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 le subject to the Gas Act 1986 s 7A(3) (as added and amended): see the text and notes 13-15 infra.

3 For these purposes, references to premises specified in a licence or direction include references to premises of a description, or situated in an area, so specified: *ibid* s 7A(7) (s 7A added by the Gas Act 1995 s 6(1)). The Authority must not, in any licence under the Gas Act 1986 s 7A(1) (as added and amended) (see the text and notes 1-2 supra, 4-7 infra), or in any extension or restriction of such a licence, specify any premises by description or area if it is of the opinion that the description or area has been so framed as (1) in the case of a licence or extension, artificially to exclude from the licence or extension; or (2) in the case of a restriction, artificially to include in the restriction, premises likely to be owned or occupied by persons who are chronically sick, disabled or of pensionable age, or who are likely to default in the payment of charges: s 7A(8) (as so added; amended by virtue of the Utilities Act 2000 s 3(2)). As to when a person is of pensionable age for these purposes see PARA 789 note 11 ante.

4 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

5 For the meaning of references to the conveyance of gas through pipes see PARA 803 note 4 ante.

6 le or before 31 December 1999, 2,500 therms: see the Gas Act 1986 s 48(2A)(a) (added by the Gas Act 1995 s 10(1), Sch 3 para 54(4)). 'Kilowatt hour' means 3.6 megajoules: Gas Act 1986 s 48(1) (definition added by the Gas (Metrication) Regulations 1992, SI 1992/450, reg 3(2)).

7 Gas Act 1986 s 7A(1) (as added (see note 3 supra); s 7A(1), (2), (4), (6) amended by virtue of the Utilities Act 2000 s 3(2)).

As to applications for licences see PARA 808 post; and as to standard conditions of licences see PARA 810 post. As to the prohibition on carrying on certain activities without a licence see PARA 803 ante; and as to exemptions and exceptions from that prohibition see PARA 804 ante.

8 le in the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante; the text and notes 1-7 supra, 9-27 infra; and PARA 808 et seq post.

9 *Ibid* s 7A(11) (as added: see note 3 supra). Any reference in the Gas Act 1986 Pt I (as amended) (however expressed) to activities authorised by a licence under s 7A(1) (as added and amended) is to be construed without regard to any exception contained in Sch 2A (as added and amended; prospectively repealed) (see PARA 804 ante): s 7A(12) (as so added; prospectively repealed by the Utilities Act 2000 s 108, Sch 8, as from a day to be appointed under s 110(2); at the date at which this title states the law, no such day had been appointed).

10 For the meaning of 'gas transporter' see PARA 805 ante.

11 Gas Act 1986 s 7A(2) (as added and amended (see notes 3, 7 supra; further amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

12 Gas Act 1986 s 7A(11) (as added: see note 3 supra).

13 le the holder of a licence under *ibid* s 7 (as substituted and amended): see PARA 805 ante.

14 le the holder of a licence under *ibid* s 7ZA (as added): see PARA 806 ante.

15 See *ibid* s 7A(3) (as added (see note 3 *supra*); amended by the Energy Act 2004 s 149(1), (7)).

16 See note 3 *supra*.

17 Gas Act 1986 s 7A(4) (as added and amended: see notes 3, 7 *supra*). References in Pt I (as amended) to, or to the grant of, an extension under s 7A (as added and amended), or an extension of such a licence, are to be construed as references to, or to the giving of, such a direction: s 7A(4) (as so added).

18 *Ie* a licence under *ibid* s 7A(1) (as added and amended).

19 *Ibid* s 7A(5) (as added (see note 3 *supra*); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

20 Gas Act 1986 s 7A(6) (as added and amended: see notes 3, 7 *supra*). References in Pt I (as amended) to, or to the grant of, a restriction under s 7A (as added and amended), or a restriction of such a licence, are to be construed as references to, or to the giving of, such a direction: s 7A(6) (as so added).

21 See note 18 *supra*.

22 *Ie* subject to the Gas Act 1986 s 7A(8) (as added and amended): see note 3 *supra*.

23 A person is a relevant consumer for these purposes if (1) immediately before the restriction or revocation takes effect, he is being supplied with gas by the holder of the licence; and (2) in the case of a restriction, his premises are excluded from the licence by the restriction: *ibid* s 7A(10) (as added: see note 3 *supra*).

24 *Ibid* s 7A(9) (as added (see note 3 *supra*); amended by virtue of the Utilities Act 2000 s 3(2)). For these purposes, 'contract' does not include any contract which, by virtue of the Gas Act 1986 Sch 2B para 8 (as added and amended) (see *PARA 859 post*), is deemed to have been made: s 7A(10) (as added: see note 3 *supra*).

25 *Ie* subject to the Gas Act 1995 s 6(3)-(6) (now amended by virtue of the Utilities Act 2000 ss 3(1), (2), 76(7)): see note 27 *infra*.

26 For these purposes, 'domestic supply licence' means a licence granted under the Gas Act 1986 s 7A(1)(a) (as added) (see head (1) in the text), a licence having effect as such a licence by virtue of a direction given under s 7A(4)(b) (as added), or a licence treated as so granted by virtue of a scheme made under the Gas Act 1995 Sch 5 para 4 or Sch 5 para 16: s 6(8). Any reference for these purposes to a domestic supply licence includes a reference to an extension of such a licence (within the meaning of the Gas Act 1986 Pt I (as amended)): Gas Act 1995 s 6(7).

27 *Ibid* s 6(2). Section 6(2) did not apply in relation to a domestic supply licence in so far as it related to (1) any premises at any time if, at that time, the gas transporter in whose authorised area the premises were situated was an associate of the holder of the domestic supply licence in question; or (2) any premises to which that provision had ceased to apply at any time and which were situated in an area which had not, at that or any later time, ceased to be an authorised area of a particular gas transporter: see s 6(3), (4) (amended by virtue of the Utilities Act 2000 s 76(7)). Nor did the Gas Act 1995 s 6(2) apply in relation to a domestic supply licence in so far as it related to any premises to which gas was conveyed otherwise than by a gas transporter: see s 6(5) (as so amended). In so far as a domestic supply licence relates to premises which are situated in any area specified in an order made by the Secretary of State, s 6(2) applied in relation to the licence as if for the relevant date there were substituted such earlier date as might be determined, in relation to that area, by or under the order: see s 6(6). For these purposes, a gas transporter is an associate of the holder of a domestic supply licence if (a) both of them are companies registered under the Companies Act 1985 or the Companies Act 2006 and are limited by shares; and (b) either one company is wholly owned by the other or both companies are wholly owned by the same person: Gas Act 1995 s 6(9); Companies Act 2006 s 1297(5). 'Gas transporter' and 'authorised area' in relation to such a transporter have the same meanings as in the Gas Act 1986 Pt I (as amended): Gas Act 1995 s 6(8) (as so amended).

An order under s 6 (now as amended) might provide for anything falling to be determined under the order to be determined by the former Director General of Gas Supply (now by the Gas and Electricity Markets Authority) and might make such supplementary or incidental provision as the Secretary of State considered necessary or expedient (s 6(10) (as so amended)); and was to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (s 6(11)). For the orders so made see the Gas (Extent of Domestic Supply Licences) Order 1996, SI 1996/752 (amended by SI 1996/3275; SI 1997/826); the Gas (Extent of Domestic Supply Licences) Order 1997, SI 1997/826 (amended by virtue of the Utilities Act 2000 s 3(2)).

28 See the Gas Act 1995 s 17(1), Sch 5 Pt I (paras 1-12) (amended by the Finance Act 1998 s 165, Sch 27 Pt V(3)).

UPDATE

807 Licensing of gas suppliers and gas shippers

TEXT AND NOTES 1-24--The Secretary of State may modify (1) a condition of a particular licence under the Gas Act 1986 s 7A; (2) the standard conditions incorporated in licences under those provisions by virtue of the Gas Act 1986 s 8 (see PARA 810); (3) a document maintained in accordance with the conditions of licences under the Gas Act 1986 s 7A, or an agreement that gives effect to a document so maintained: Energy Act 2008 s 88(1)(c)-(e). The Secretary of State may exercise the power in the Energy Act 2008 s 88(1) for the purpose only of (a) requiring the holder of a licence to provide or install, or facilitate the provision, installation or operation of, meters of a particular kind, or (b) requiring the holder of a licence to make arrangements related to the matters mentioned in head (a): s 88(2). See further s 88(3)-(7). The procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by s 88 is set out: see Energy Act 2008 s 89. Supplemental provision is made: see Energy Act 2008 s 90.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/808. Application for a licence or for an extension or restriction of a licence.

808. Application for a licence or for an extension or restriction of a licence.

An application for a licence¹ or for an extension or restriction of a licence² must be made in such form and manner, and must contain, or be accompanied by, such information³ and documents and such fee, if any, as may be prescribed in regulations made by the Gas and Electricity Markets Authority ('GEMA')⁴. Such an application must be:

- 1104 (1) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal office; and
- 1105 (2) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory⁵.

An application must be in the specified form⁶ or a form to the like effect, and must contain the specified⁷ information⁸. It must be accompanied by the information and documents which are specified⁹ in relation to:

- 1106 (a) gas supplier licences¹⁰;
- 1107 (b) gas shipper licences¹¹;
- 1108 (c) gas transporter licences¹²; and
- 1109 (d) interconnector licences¹³.

Within the prescribed period¹⁴ after the making of an application for a licence or for an extension or restriction of a licence, the applicant must:

- 1110 (i) publish a notice of the application in the prescribed manner¹⁵; and
- 1111 (ii) in the case of an application for a gas transporter licence or the extension of such a licence¹⁶, give notice of the application to any gas transporter whose authorised area¹⁷ includes the whole or any part of the area to which the application relates¹⁸.

Where the Authority proposes to refuse the application, it must give to the applicant a notice:

- 1112 (A) stating that it proposes to refuse the application;
- 1113 (B) stating the reasons why it proposes to refuse the application; and
- 1114 (C) specifying the time within which representations with respect to the proposed refusal may be made,

and must consider any representations which are duly made and not withdrawn¹⁹.

As soon as practicable after granting a licence or an extension or restriction of a licence, the Authority must send a copy of the licence or extension or restriction to the Health and Safety Executive²⁰. In the case of a gas transporter licence or an extension or restriction of such a licence, it must also send a copy to any gas transporter whose authorised area includes the whole or any part of the area specified in the licence, extension or restriction²¹. The Authority

must also send a copy of any licence or extension or restriction to any other person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant²².

1 For the meaning of 'licence' see PARA 789 note 9 ante.

2 For the meanings of 'extension' and 'restriction' of a licence see the Gas Act 1986 ss 7(4), (4A), 7A(4), (6) (as amended); and PARAS 805 notes 13-14, 807 notes 17, 20 ante. See also the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 3(1).

3 For the meaning of 'information' see PARA 792 note 8 ante.

4 Gas Act 1986 s 7B(1), (11) (s 7B added by the Gas Act 1995 s 7; the Gas Act 1986 s 7B(11) added by the Utilities Act 2000 s 74(1), (7)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

For the prescribed fee for an application see the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 7(1), Sch 3, Table. Where more than one fee would otherwise be payable in respect of a particular application, the prescribed fee is the higher or highest such fee: reg 7(2). Any sums received by the Authority under or by virtue of the Gas Act 1986 s 7B (as added and amended) must be paid into the Consolidated Fund: s 7B(10) (added by the Gas Act 1995 s 7; amended by virtue of the Utilities Act 2000 s 3(2)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

5 Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, regs 3(1), 4.

6 For the prescribed form see ibid reg 5, Sch 1.

7 Ie the information specified in ibid Sch 1.

8 Ibid reg 5.

9 An application in respect of (1) a gas supplier licence must be accompanied by the information and documents specified in ibid Sch 2 Pt 1; (2) a gas shipper licence must be accompanied by the information and documents specified in Sch 2 Pt 2; (3) a gas transporter licence must be accompanied by the information and documents specified in Sch 2 Pt 3; and (4) an interconnector licence must be accompanied by the information and documents specified in Sch 2 Pt 4: reg 6(1)(a)-(d). For these purposes, 'interconnector licence' means a licence granted or to be granted under the Gas Act 1986 s 7ZA(1) (as added) (see PARA 806 ante); 'shipper licence' means a licence granted or to be granted under s 7A(2) (as added and amended) (see PARA 807 ante); 'supplier licence' means a licence granted or to be granted under s 7A(1) (as added and amended) (see PARA 807 ante); and 'transporter licence' means a licence granted or to be granted under s 7 (as substituted and amended) (see PARA 805 ante): Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 3(1).

The obligation imposed by reg 6(1) applies, to the extent that information and documents are specified in Sch 2 by reference to, or in relation to, a standard condition: (a) subject to reg 6(3), in the case of an application for a licence, other than for a gas supplier licence of the type described in the Gas Act 1986 s 8(2) (as substituted and amended), as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and (b) in the case of an application for an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence: Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 6(2). Where a modification to any standard condition is requested in accordance with Sch 1 para 4(1), the obligation imposed by reg 6(2)(a) (see head (a) supra) is modified accordingly: reg 6(3). Unless the context otherwise requires, a reference to a standard condition is a reference (i) in relation to a shipper licence, a supplier licence or a transporter licence, to a standard condition which is determined under the Utilities Act 2000 s 81(2) (as amended) (see PARA 810 post); or (ii) in relation to an interconnector licence, to a standard condition which is determined under the Energy Act 2004 s 150(1) (see PARA 810 post), subject to any modifications of the standard conditions made under the Gas Act 1986 Pt I (ss 4AA-48) (as amended), the Utilities Act 2000 or the Energy Act 2004, after the determination under those provisions: Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 3(1).

10 An applicant for a gas supplier licence must specify whether the application is for a licence to supply gas (1) to any premises; (2) only to premises specified in the licence, or to premises of a description so specified; or (3) only to any premises situated in a specified area, or to premises of a specified description which are so situated; and must provide a sufficient description adequately specifying the premises or a description of the premises and the location of the premises intended to be supplied, and, in the case of an application that

relates to head (3) *supra*, also the specified area: *ibid* Sch 2 Pt 1 para 1. The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by any other convenient means: Sch 2 Pt 1 note (b). The applicant must also state whether the application relates to domestic premises: Sch 2 Pt 1 para 1. 'Domestic premises' means premises used wholly or mainly for domestic purposes: reg 3(1).

For all applications for gas supplier licences, or extensions of such licences, the applicant must state whether the licence or extension is to authorise the supply of gas to premises to which it is conveyed by a gas transporter, and if not give details of any exemption under the Gas Act 1986 s 6A (as added and amended) (see PARA 804 *ante*) under which the gas is or will be conveyed: Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, Sch 2 Pt 1 para 2. If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement either with an application made by the applicant in accordance with the relevant regulations, or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 1 note (a).

If the application is for a restriction of a gas supplier licence, the applicant must provide (a) an estimate of the total number of premises to which the applicant supplies gas at the time of the application and to which the applicant would cease to supply gas if the application were acceded to ('relevant premises'); and (b) unless there are, at the date of the application, no relevant consumers (within the meaning of the Gas Act 1986 s 7A(10) (as added) (see PARA 807 *ante*) in relation to the applicant, a description of the applicant's proposed arrangements under s 7A(9) (as added and amended) for (i) ensuring continuity of supply for all such relevant consumers; and (ii) in the case of each such consumer who is supplied with gas in pursuance of a contract (within the meaning of s 7A (as added and amended)), securing such continuity on the same terms as nearly as may be as the terms of the contract: Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, Sch 2 Pt 1 para 3.

11 An applicant for a gas shipper licence must provide a sufficient description adequately specifying the premises or a description of the premises, and also the specified area, if any, to which the application relates: *ibid* Sch 2 Pt 2 para 1. The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by other means: Sch 2 Pt 2 note (b). If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement either with an application made by the applicant in accordance with the relevant regulations, or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 2 note (a).

12 An applicant for a gas transporter licence must specify whether it is an application for a licence to convey gas (1) to any premises; and/or (2) to any pipeline system operated by another gas transporter; and if head (2) *supra* applies, whether that pipeline system is operated throughout Great Britain or within a specified area or areas. If in the case of a specified area or areas, the applicant must provide a sufficient description adequately specifying the area to which it relates: *ibid* Sch 2 Pt 3 para 1. The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by other means: Sch 2 Pt 3 note (b). The applicant must also state whether the application relates to domestic premises; and if it falls within head (2) *supra*, the applicant must also specify the description of pipeline system to which the application relates (stating, in particular, whether it relates only to any system which is designed to receive gas at an operating pressure not exceeding 7 bar gauge): *ibid* Sch 2 Pt 3 para 1. The applicant must also provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 18 (Provision of Services for Persons who are Blind or Deaf), 19 (Arrangements in Respect of Powers of Entry), 19A (Authorisation of Officers), 19B (Exercise of Powers of Entry) and 21 (Complaint Handling Procedure): Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, Sch 2 Pt 3 para 2. If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement either with an application made by the applicant in accordance with the relevant regulations, or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 3 note (a).

If the application is for a restriction of a gas transporter licence, the applicant must provide (a) an estimate of the total number of premises to which the applicant conveys gas at the time of the application and to which the applicant would cease to convey gas if the application were acceded to ('the relevant premises'); (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in Sch 2 Pt 3 para 3(c)) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with the Gas Act 1986 s 10 (as substituted and amended) (ensuring the connection of all such relevant consumers is maintained: see PARAS 836-838 *post*): Gas (Applications for Licences and Extensions and Restrictions of Licences) (No 2) Regulations 2007, SI 2007/1971, Sch 2 Pt 3 para 3(a), (b). For the purposes of head (b) *supra*, a person is a relevant consumer if (i) immediately before the restriction takes effect, he is connected to the pipeline system of the holder of the licence; and (ii) his premises are to be excluded from the licence by the restriction: Sch 2 Pt 3 para 3(c).

13 An application in respect of a gas interconnector licence must specify the actual or proposed point of connection to a gas transportation or gas distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection: *ibid* Sch 2 Pt 4 para 1. In relation to an application for a licence in respect of an interconnector that was not completed by 3 August 2003, the applicant must state whether he seeks not to have applied to the licence any or all of the following standard licence conditions (1) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector; (2) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector: Sch 2 Pt 4 para 2. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in heads (1)-(2) *supra* not to be in effect the following additional information must be provided in respect of those licence conditions: (a) the period of time for which the applicant seeks that the licence condition or conditions not be in effect; (b) a statement setting out the evidence and reasoning as to why the applicant considers (i) the investment in the interconnector enhances competition in gas supply and enhances security of supply; (ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not be or would not have been made unless those licence conditions were not in effect; (iii) that, should the licence conditions not be in effect for the period of time sought, this will not be detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected; and (c) a further statement that (i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of its legal form, from the system operators in whose systems the interconnector to which the application relates will be built; and (ii) charges will be levied on users of the interconnector: Sch 2 Pt 4 para 3.

14 The prescribed period is ten working days: *ibid* reg 8(1). For these purposes, 'working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971: Electricity Act 1989 s 64(1) (definition applied by the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1971, reg 8(4)).

15 The prescribed manner of publication for these purposes is either by (1) requesting the Authority to place the notice on the website address of the Authority (at 'www.ofgem.gov.uk' or such other website address as may be notified to the applicant by the Authority in writing); or (2) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant's website address on the website address of the Authority (at 'www.ofgem.gov.uk' or such other website address as may be notified to the applicant by the Authority in writing): *ibid* reg 8(2). Where an application is for the restriction of a licence, the applicant must also ensure that notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates: reg 8(3).

16 Is a licence under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 *ante*.

17 For the meaning of 'authorised area' see PARA 805 note 3 *ante*.

18 Gas Act 1986 s 7B(2) (as added (see note 4 *supra*); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

19 Gas Act 1986 s 7B(2A) (added by the Utilities Act 2000 s 74(1), (2)).

20 Gas Act 1986 s 7B(9)(a) (as added (see note 4 *supra*); amended by the Utilities Act 2000 s 108, Sch 8; and by virtue of s 3(2)). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

21 Gas Act 1986 s 7B(9)(b) (as added (see note 4 *supra*); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1), 6(a); and by virtue of s 3(2)).

22 Gas Act 1986 s 7B(9)(c) (as added (see note 4 *supra*); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 6(b); and by virtue of s 3(2)).

UPDATE

808 Application for a licence or for an extension or restriction of a licence

TEXT AND NOTES 1-15--SI 2007/1971 now replaced by Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009, SI 2009/3190.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/809. Content of licences etc; in general.

809. Content of licences etc; in general.

A licence¹ or an extension or restriction of a licence² must be in writing and, unless revoked or suspended in accordance with any term contained in it, a licence is to continue in force for such period as may be specified in or determined by or under the licence³.

A licence may include:

- 1115 (1) such conditions, whether or not relating to the activities authorised by the licence⁴, as appear to the Gas and Electricity Markets Authority ('GEMA')⁵ to be requisite or expedient having regard to the Authority's general duties in relation to gas⁶;
- 1116 (2) conditions requiring the rendering to the Authority of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence⁷.

Without prejudice to the generality of head (1) above:

- 1117 (a) conditions included in a gas transporter licence⁸ by virtue of that provision:
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 - 83. (i) may require the licence holder⁹ to enter into agreements with other persons for the use of any pipeline system of his, wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence, for such purposes as may be specified in the conditions¹⁰;
 - 84. (ii) may include provision for determining the terms on which such agreements are to be entered into¹¹;
- 58
1118 (b) conditions included by virtue of that provision in a licence may:
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 - 85. (i) require the holder to comply with any direction given by the Authority or the Secretary of State¹² as to such matters as are specified in the licence or are of a description so specified¹³;
 - 86. (ii) require the holder, except in so far as the Authority or the Secretary of State consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified¹⁴; and
 - 87. (iii) provide for the determination by the Authority, the Secretary of State or the Health and Safety Executive¹⁵ of such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified¹⁶; and
- 60
1119 (c) conditions included by virtue of that provision in a gas transporter licence¹⁷ may require the holder, in such circumstances as are specified in the licence:
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 - 88. (i) so to increase his charges for the conveyance of gas¹⁸ as to raise such amounts as may be determined by or under the conditions¹⁹; and
 - 89. (ii) to pay the amounts so raised to such holders of gas supplier and gas shipper licences²⁰ as may be so determined²¹.

Conditions included in a licence may also:

- 1120 (A) impose requirements by reference to designation, acceptance or approval by the Authority, the Secretary of State or the Health and Safety Executive and provide for references in the conditions to any document to operate as references to that document as revised or reissued from time to time²²;
- 1121 (B) contain provision for the conditions to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions, or to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined²³;

and any provision included in a licence by virtue of head (B) above is to have effect in addition to the provision made by Part I of the Gas Act 1986²⁴ with respect to the modification²⁵ of the conditions of a licence²⁶.

1 For the meaning of 'licence' see PARA 789 note 9 ante.

2 For the meanings of 'extension' and 'restriction' of a licence see the Gas Act 1986 ss 7(4), (4A), 7A(4), (6) (as amended); and PARAS 805 notes 13-14, 807 notes 17, 20 ante.

3 Ibid s 7B(3) (s 7B added by the Gas Act 1995 s 7).

4 For the meaning of references to activities authorised by the licence, in the case of a licence under the Gas Act 1986 s 7A(1) (as added and amended) see PARA 807 note 9 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Ie the duties imposed by the Gas Act 1986 ss 4AA, 4AB and 4A (as added and amended); see PARAS 789-791 ante.

7 Ibid s 7B(4) (as added (see note 3 supra); amended by the Utilities Act 2000 ss 74(1), (3), 108, Sch 6 Pt I paras 1, 5, Sch 8; and by virtue of s 3(2)). The conditions included by virtue of head (2) in the text may require the payment of sums relating to the expenses of the Gas and Electricity Consumer Council and of the Secretary of State in relation to the establishment of the Authority and the Council: see the Utilities Act 2000 s 8; and PARA 732 ante. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. Any sums received by the Authority under or by virtue of the Gas Act 1986 s 7B (as added and amended) must be paid into the Consolidated Fund: s 7B(10) (as so added; amended by virtue of the Utilities Act 2000 s 3(2)).

8 Ie a licence under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

9 For the meaning of 'licence holder' see PARA 789 note 9 ante.

10 Gas Act 1986 s 7B(4A)(a) (s 7B(4A) added by the Utilities Act 2000 s 74(1), (4)).

11 Gas Act 1986 s 7B(4A)(b) (as added: see note 10 supra).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 Gas Act 1986 s 7B(5)(a)(i) (as added (see note 3 supra); s 7B(5) amended by virtue of the Utilities Act 2000 s 3(2)).

14 Gas Act 1986 s 7B(5)(a)(ii) (as added and amended: see notes 3, 13 supra).

15 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

16 Gas Act 1986 s 7B(5)(a)(iii) (as added and amended (see notes 3, 13 supra); also amended by the Utilities Act 2000 s 74(1), (5)).

17 See note 8 supra.

18 For the meaning of 'gas' see PARA 802 ante.

19 Gas Act 1986 s 7B(5)(b)(i) (as added: see note 3 supra).

20 Ie holders of licences under ibid s 7A (as added and amended): see PARA 807 ante.

21 Gas Act 1986 s 7B(5)(b)(ii) (as added: see note 3 supra).

22 Ibid s 7B(6) (as added (see note 3 supra); amended by the Utilities Act 2000 ss 74(1), (6), 108, Sch 8; and by virtue of s 3(2)).

23 Gas Act 1986 s 7B(7) (as added: see note 3 supra).

24 Ie made by ibid Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 810 et seq post.

25 For the meaning of 'modification' see PARA 778 note 7 ante.

26 Gas Act 1986 s 7B(8) (as added: see note 3 supra). As to the modification of licence conditions see PARA 812 et seq post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/810. Standard conditions of licences.

810. Standard conditions of licences.

The Utilities Act 2000 makes provision with regard to the standard conditions that may be included in gas transporter, gas supplier and gas shipper licences¹ and the Energy Act 2004 makes provisions with regard to the standard conditions that may be included in gas interconnector licences². Each condition which by virtue of the relevant provisions of the 2000 or the 2004 Act³ is a standard condition for the purposes of such licences must be incorporated by reference in each such licence⁴; but this does not apply in relation to a gas supplier licence⁵ which authorises only the supply to premises of gas⁶ which has been conveyed to the premises otherwise than by a gas transporter⁷.

Subject to the following provisions, the Gas and Electricity Markets Authority ('GEMA')⁸ may, in granting a licence, modify⁹ any of the standard conditions to such extent as it considers requisite to meet the circumstances of the particular case¹⁰. The Authority must not, however, so make any modifications of a condition of a gas interconnector licence¹¹ unless it is of the opinion that the modifications are such that:

- 1122 (1) the licence holder would not be unduly disadvantaged in competing with one or more other holders of such licences; and
- 1123 (2) no other holder of such a licence would be unduly disadvantaged in competing with the holder of the licence to be modified or with any one or more other holders of such licences¹².

Nor must the Authority so make any modifications of a condition of a gas supplier or gas shipper licence¹³ unless it is of the opinion that the modifications are such that:

- 1124 (a) the licence holder would not be unduly disadvantaged in competing with other holders of such a licence; and
- 1125 (b) no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences, including the holder of the licence being modified¹⁴.

Before so making any modifications, the Authority must give notice¹⁵;

- 1126 (i) stating that it proposes to make the modifications and setting out their effect;
- 1127 (ii) stating the reasons why it proposes to make the modifications; and
- 1128 (iii) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁶. Such a notice must be given:

- 1129 (A) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- 1130 (B) by sending a copy of the notice to the Secretary of State, to the Health and Safety Executive¹⁷ and to the Gas and Electricity Consumer Council¹⁸.

If, within the time specified in that notice, the Secretary of State directs the Authority not to make any modification, the Authority must comply with the direction¹⁹.

The modification under the above provisions of a condition of a licence does not prevent so much of the condition as is not so modified being regarded as a standard condition for the purposes of Part I²⁰ of the Gas Act 1986²¹.

1 The standard conditions for the purposes of gas licences of any type (that is to say, licences under the Gas Act 1986 s 7 (as substituted and amended) (see PARA 805 ante), s 7A(1) (as added and amended) (see PARA 807 ante) or s 7A(2) (as added and amended) (see PARA 807 ante) may contain provision (1) for any standard condition included in a licence of that type not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions; (2) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or (3) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined: Utilities Act 2000 s 81(1). Such conditions as might be determined by the Secretary of State before 1 October 2001 (ie the commencement of s 81(3), which amends the Gas Act 1986 s 8(1) (as substituted): see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule) and published by him in such manner as he considered appropriate, in relation to gas licences of any type are, subject to any modifications made under the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante, PARA 811 et seq post) or under the Energy Act 2004 after the determination under this provision, to be standard conditions for the purposes of licences of that type (in place of the standard conditions which would otherwise be incorporated in licences of that type granted immediately before that date): Utilities Act 2000 s 81(2). As to the Secretary of State see PARA 601 note 1 ante.

2 Before 1 April 2005 (ie the commencement of the Energy Act 2004 s 150(6), which amends the Gas Act 1986 s 8(1) (as substituted and amended): see the Energy Act 2004 (Commencement No 5) Order 2005, SI 2005/877, art 2(1), Sch 1), the Secretary of State was to determine standard conditions for licences under the Gas Act 1986 s 7ZA (as added) (see PARA 806 ante): Energy Act 2004 s 150(1). Those standard conditions might contain provision (1) for a standard condition included in a licence under the Gas Act 1986 s 7ZA (as added) not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions; (2) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or (3) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined: Energy Act 2004 s 150(2). The Secretary of State must publish the standard conditions so determined by him (s 150(3)) and the publication must be in such manner as the Secretary of State considers appropriate (s 150(4)). The standard conditions determined by the Secretary of State have effect subject to any modifications made under the Gas Act 1986 Pt I (as amended) or under the Energy Act 2004: s 150(5). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.

The Energy Act 2004 also conferred transitional power on the Secretary of State to modify certain standard conditions of gas licences in order to fund modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 post): see the Energy Act 2004 s 177; and PARA 742 ante.

3 Ie by virtue of the Utilities Act 200 s 81(2) (see note 1 supra) or the Energy Act 2004 s 150 (see note 2 supra).

4 See the Gas Act 1986 s 8(1) (s 8 substituted by the Gas Act 1995 s 8(1); the Gas Act 1986 s 8(1) amended by the Utilities Act 2000 ss 81(3), 108, Sch 8; the Energy Act 2004 s 150(6)).

5 Ie a licence under the Gas Act 1986 s 7A(1) (as added and amended): see PARA 807 ante.

6 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

7 Gas Act 1986 s 8(2) (as substituted (see note 4 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). For the meaning of 'gas transporter' see PARA 805 ante.

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 For these purposes, 'modify' includes fail to incorporate and 'modification' is to be construed accordingly: Gas Act 1986 s 8(9) (as substituted: see note 4 supra).

10 Ibid s 8(3) (as substituted (see note 4 supra); s 8(3)-(7) amended by virtue of the Utilities Act 2000 s 3(2)).

11 Ie a condition of a licence under the Gas Act 1986 s 7ZA (as added): see PARA 806 ante.

12 Ibid s 8(6A) (added by the Energy Act 2004 s 150(7)).

13 Ie a condition of a licence under the Gas Act 1986 s 7A(1) or (2) (as added and amended): see PARA 807 ante.

14 Ibid s 8(7) (as substituted and amended (see notes 4, 10 supra); also amended by the Utilities Act 2000 s 82(1)).

15 For the meaning of 'notice' see PARA 804 note 6 ante.

16 Gas Act 1986 s 8(4) (as substituted and amended: see notes 4, 10 supra).

17 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

18 Gas Act 1986 s 8(5) (as substituted and amended: see notes 4, 10 supra). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to publication by the Authority see PARA 793 note 5 ante.

19 Ibid s 8(6) (as substituted and amended: see notes 4, 10 supra).

20 Ie ibid Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 811 et seq post.

21 Ibid s 8(8) (as substituted: see note 4 supra).

UPDATE

810 Standard conditions of licences

NOTE 1--Utilities Act 2000 s 81(2) amended: Energy Act 2008 Sch 5 para 14.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(i) Licensing of Activities relating to Gas/811. Transfer of licences.

811. Transfer of licences.

A licence¹ is to be capable of being transferred by the licence holder², with the consent of the Gas and Electricity Markets Authority ('GEMA')³, in accordance with the following provisions and subject to any term of the licence relating to its transfer⁴. It may however, include conditions which must be complied with before the licence can be transferred⁵. A transfer may relate to the whole or any part of the licence⁶; and this reference to part of a licence is a reference to a part of the activities authorised by the licence⁷, whether described by reference to activities being carried on by the licence holder or to activities which he is authorised to carry on⁸.

The Authority's consent may be given subject to compliance with such modification or other conditions⁹ as the Authority considers necessary or expedient¹⁰. In the case of a partial transfer, conditions so imposed may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred¹¹.

In deciding whether to give its consent to a proposed transfer, the Authority must apply the same criteria as it would apply if the Authority were deciding whether:

- 1131 (1) in the case of a general transfer, to grant a corresponding licence to the transferee; or
- 1132 (2) in the case of a partial transfer:
- 63 90. (a) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
- 91. (b) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained¹².
- 64

The Authority must give the Health and Safety Executive¹³ not less than 28 days' notice¹⁴ of any proposal to consent to any proposed transfer and must give that Executive and the Secretary of State¹⁵ not less than 28 days' notice of any proposal to impose a modification condition¹⁶. If, before the expiry of the time specified in a notice so given to the Secretary of State, the Secretary of State directs the Authority not to impose the condition, the Authority must comply with the direction¹⁷.

Before giving consent to the transfer of a licence, the Authority must give notice:

- 1133 (i) stating that it proposes to grant consent to the transfer;
- 1134 (ii) stating the reasons why it proposes to give consent; and
- 1135 (iii) specifying the time from the date of publication of the notice, not being less than two months, within which representations or objections with respect to the transfer may be made,

and must consider any representations or objections that are duly made and not withdrawn¹⁸. Such a notice must be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer¹⁹.

A purported transfer of a licence is void:

- 1136 (A) if the licence is not capable of transfer or the Authority has not given its consent;
- 1137 (B) if the purported transfer is in breach of a condition of the licence; or
- 1138 (C) if there has, before the purported transfer, been a contravention²⁰ of a condition subject to compliance with which the Authority's consent is given²¹.

1 For the meaning of 'licence' see PARA 789 note 9 ante.

2 For the meaning of 'licence holder' see PARA 789 note 9 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Gas Act 1986 s 8AA(1)(a) (s 8AA added by the Gas Act 1995 s 10(1), Sch 3 para 1; substituted by the Utilities Act 2000 s 85). For these purposes, 'transfer' includes any form of transfer or assignment: Gas Act 1986 s 8AA(12) (as so substituted).

5 Ibid s 8AA(1)(b) (as substituted: see note 4 supra).

6 Ibid s 8AA(2) (as substituted: see note 4 supra).

7 For the meaning of references to activities authorised by the licence, in the case of a licence under ibid s 7A(1) (as added and amended), see PARA 807 note 9 ante.

8 Ibid s 8AA(3) (as substituted: see note 4 supra).

9 For these purposes, 'modification condition' means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence: ibid s 8AA(12) (as substituted: see note 4 supra). For the meaning of 'modifications' see PARA 778 note 7 ante.

10 Ibid s 8AA(4) (as substituted: see note 4 supra).

11 Ibid s 8AA(5) (as substituted: see note 4 supra).

12 Ibid s 8AA(6) (as substituted: see note 4 supra).

13 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

14 For the meaning of 'notice' see PARA 804 note 6 ante.

15 As to the Secretary of State see PARA 601 note 1 ante.

16 Gas Act 1986 s 8AA(7) (as substituted: see note 4 supra).

17 Ibid s 8AA(8) (as substituted: see note 4 supra).

18 Ibid s 8AA(9) (as substituted: see note 4 supra).

19 Ibid s 8AA(10) (as substituted: see note 4 supra). As to publication by the Authority see PARA 793 note 5 ante.

20 For the meaning of 'contravention' see PARA 779 note 3 ante.

21 Gas Act 1986 s 8AA(11) (as substituted: see note 4 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(ii) Modification of Licences/812. Modification by agreement.

(ii) Modification of Licences

812. Modification by agreement.

Subject to the following provisions, the Gas and Electricity Markets Authority ('GEMA')¹ may either modify² the conditions of a particular licence³ or modify the standard conditions of gas transporter licences⁴, gas interconnector licences⁵, gas supplier licences⁶ or gas shipper licences⁷. Where at any time the Authority so modifies⁸ the standard conditions of gas transporter, gas interconnector, gas supplier or gas shipper licences, it must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in such licences granted after that time⁹. It may also may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of such licences granted before that time¹⁰.

Before making modifications under these provisions, the Authority must give notice¹¹:

- 1139 (1) stating that it proposes to make the modifications and setting out their effect;
- 1140 (2) stating the reasons why it proposes to make the modifications; and
- 1141 (3) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹². Such a notice must be given by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications and by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders¹³, to the Secretary of State¹⁴, to the Health and Safety Executive¹⁵ and to the Gas and Electricity Consumer Council¹⁶. If, within the time specified in the notice, the Secretary of State directs the Authority not to make any modification, the Authority must comply with the direction¹⁷.

The Authority must not make any modifications of a particular licence¹⁸ unless the licence holder has consented to the modifications and, in the case of standard conditions of a gas supplier or gas shipper licence¹⁹, the Authority is of the opinion that the modifications are requisite to meet the circumstances of the particular case and are such that:

- 1142 (a) the licence holder would not be unduly disadvantaged in competing with other holders of such licences; and
- 1143 (b) no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences, including the holder of the licence being modified²⁰.

The modification, in the case of a particular licence²¹, of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part I²² of the Gas Act 1986²³.

The Authority may not make²⁴ any modifications of the standard conditions of any licences unless:

- 1144 (i) no notice of objection to those modifications is given to the Authority within the time specified in the notice setting out the Authority's proposals²⁵ by any relevant licence holder²⁶;
- 1145 (ii) if one or more relevant licence holders gives or give notice of objection to the Authority within that time, the proportion, expressed as a percentage, of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed²⁷ and the proportion, expressed as a percentage, of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed²⁸, is less than such percentage as may be prescribed²⁹; or
- 1146 (iii) heads (A) to (C) below apply to the case³⁰, and those heads so apply where the Authority is of the opinion:

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- 92. (A) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- 93. (B) that the modifications would remove or reduce the burden without removing any necessary protection; and
- 94. (C) in the case of a gas supplier or gas shipper licence³¹, that the modifications are such that no holder of such a licence would be unduly disadvantaged in competing with other holders of such licences³².

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1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'modify' see PARA 778 note 7 ante.

3 Gas Act 1986 s 23(1)(a) (s 23 substituted by the Gas Act 1995 s 10(1), Sch 3 para 21; the Gas Act 1986 s 23(1)-(5), (10), (11) amended by virtue of the Utilities Act 2000 s 3(2)).

4 le licences under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

5 le licences under ibid s 7ZA (as added): see PARA 806 ante.

6 le licences under ibid s 7A(1) (as substituted and amended): see PARA 807 ante.

7 Ibid s 23(1)(b) (as substituted and amended (see note 3 supra); further amended by the Energy Act 2004 s 150(8)). The reference in the text to gas shipper licences is a reference to licences under the Gas Act 1986 s 7A(2) (as substituted and amended): see PARA 807 ante.

8 le under ibid s 23(1)(b) (as substituted and amended): see the text and notes 3-7 supra.

9 Ibid s 23(2)(a) (as substituted and amended (see note 3 supra); further amended by the Energy Act 2004 s 150(8)). Where at any time the Authority modifies standard conditions under the Gas Act 1986 s 23(2)(a) (as so substituted and amended) for the purposes of their incorporation in licences under s 7 (as substituted and amended) s 7ZA (as added) or s 7A(1) or (2) (as added and amended) granted after that time, it must publish the modifications in such manner as it considers appropriate: s 23(11) (as so substituted and amended; further amended by the Energy Act 2004 s 150(9)).

10 Gas Act 1986 s 23(2)(b) (as substituted and amended: see note 3 supra).

11 For the meaning of 'notice' see PARA 804 note 6 ante.

12 Gas Act 1986 s 23(3) (as substituted and amended: see note 3 supra).

13 For these purposes, 'relevant licence holder', in relation to proposed modifications under ibid s 23(1)(b) (as substituted and amended) of standard conditions of licences of any type, means the holder of a licence of

that type which (1) is to be modified under the proposals by the inclusion of any new standard condition; or (2) includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under the Utilities Act 2000 s 81(1): see PARA 810 note 1 ante) at the time specified in the notice under the Gas Act 1986 s 23(3) (as substituted and amended): s 23(12) (substituted by the Utilities Act 2000 s 82(4)).

14 As to the Secretary of State see PARA 601 note 1 ante.

15 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

16 Gas Act 1986 s 23(4) (as substituted and amended: see note 3 supra). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to publication by the Authority see PARA 793 note 5 ante.

17 Ibid s 23(5) (as substituted and amended: see note 3 supra).

18 Ie any modifications under ibid s 23(1)(a) (as substituted and amended): see the text and notes 1-3 supra.

19 Ie a licence under ibid s 7A(1) or (2) (as added and amended): see PARA 807 ante.

20 Ibid s 23(6) (substituted by the Utilities Act 2000 s 82(2)).

21 Ie the modification under the Gas Act 1986 s 23(1)(a) (as substituted and amended): see the text and notes 1-3 supra.

22 Ie for the purposes of ibid Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 813 et seq post.

23 Ibid s 23(6A) (added by the Utilities Act 2000 s 82(2)).

24 Ie under the Gas Act 1986 s 23(1)(b) (as substituted and amended): see the text and notes 1-7 supra.

25 Ie the notice under ibid s 23(3) (as substituted and amended): see the text and notes 11-12 supra.

26 Ibid s 23(7)(a) (s 23(7), (8) substituted by the Utilities Act 2000 s 82(3)).

27 For these purposes, 'prescribed' means prescribed by order made by the Secretary of State: Gas Act 1986 s 23(12) (as substituted: see note 13 supra). A statutory instrument containing an order under s 23 (as substituted and amended) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament: s 23(13) (added by the Utilities Act 2000 s 82(4)). As to the exercise of this power see note 29 infra.

28 Ie the percentage given by the Gas Act 1986 s 23(8) (as substituted; see note 26 supra). For the purposes of s 23(8) (as so substituted), 'weighted according to market share' means multiplied by a factor which is (1) in the case of gas suppliers who are relevant licence holders and who have given notice of objection, the total number of consumers contracted at the relevant time to those suppliers for the supply of gas divided by the total number of consumers contracted at the relevant time for the supply of gas to gas suppliers who are relevant licence holders; (2) in the case of gas shippers who are relevant licence holders and who have given notice of objection, the sum of the aggregated daily average of NTS input and NTS offtake of those shippers at the relevant time divided by the sum of the aggregated daily average of NTS input and NTS offtake at the relevant time of gas shippers who are relevant licence holders; (3) in the case of gas transporters who are relevant licence holders and who have given notice of objection, the total quantity of gas conveyed to the premises of consumers by those transporters during the 12 month period ending at the relevant time divided by the total quantity of gas conveyed to the premises of consumers during the 12 month period ending at the relevant time by gas transporters who are relevant licence holders; as calculated (in each case) by the Authority on the basis of the information available to it: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 4(2). For these purposes, 'the relevant time': (a) in art 4(2)(a) (see head (1) supra) is 23.59 hours on the last day of the calendar month preceding the day on which the Authority gives a relevant notice; and (b) in art 4(2)(b) and (c) (see heads (2)-(3) supra) is 06.00 hours on the day which is 30 days prior to the day on which the Authority gives a relevant notice (art 4(3)); and 'a relevant notice' is a notice given by the Authority pursuant to the Gas Act 1986 s 23(3) (as substituted and amended) which makes proposals in respect of the conditions included or to be included in a licence of the type held by the relevant licence holder and in relation to which the Authority is making a calculation under art 4 (Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 4(4)). A gas shipper's aggregated daily average NTS input and NTS offtake must be calculated by reference to that shipper's total NTS input and NTS offtake in the 12 month period which ends at the relevant time: art 4(5). 'NTS' means the high

pressure pipeline system (excluding any regional distribution system for the conveyance of gas) owned and operated by Transco plc; 'NTS input' means the quantity of gas introduced at an entry point into the NTS; 'NTS offtake' means the quantity of gas taken out at an exit point from the NTS; and 'Transco plc' means the company registered in England and Wales under number 02006000: art 2.

29 Gas Act 1986 s 23(7)(b), (8) (as substituted; see note 26 supra). For these purposes, the prescribed percentage is 20%: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 4(1).

30 Gas Act 1986 s 23(7)(c) (as substituted; see note 26 supra).

31 See note 19 supra.

32 Gas Act 1986 s 23(10) (as substituted and amended: see note 3 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(ii) Modification of Licences/813. Modification references to the Competition Commission.

813. Modification references to the Competition Commission.

The Gas and Electricity Markets Authority ('GEMA')¹ may make to the Competition Commission² a reference which is so framed as to require the Commission to investigate and report on the questions:

- 1147 (1) whether any matters which relate to:
- 67
95. (a) the carrying on of activities authorised or regulated by a particular licence³;
- or
96. (b) the storage⁴ of gas⁵ on terms which have been determined by the holder of a particular gas transporter licence⁶, or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence,
- 68
- 1148 and which are specified in the reference operate, or may be expected to operate, against the public interest⁷; and
- 1149 (2) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications⁸ of the relevant conditions, that is to say, the conditions of the licence⁹.

The Authority may also make to the Commission a reference which is so framed as to require the Commission to investigate and report on the questions:

- 1150 (i) whether any matters which relate to the carrying on of activities authorised or regulated by gas transporter licences¹⁰, gas interconnector licences¹¹, gas supplier licences¹² which incorporate the standard conditions¹³, or gas shipper licences¹⁴, and which are specified in the reference operate, or may be expected to operate, against the public interest; and
- 1151 (ii) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the relevant conditions, that is to say, the standard conditions of such licences¹⁵.

The Authority may, at any time, by notice¹⁶ given to the Commission, vary a reference under the above provisions by adding to the matters specified in the reference or by excluding from the reference some of the matters so specified; and on receipt of such notice the Commission must give effect to the variation¹⁷.

The Authority may specify in a reference under these provisions, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference, any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have¹⁸ and any modifications of the relevant conditions¹⁹ by which, in its opinion, those effects could be remedied or prevented²⁰.

Every such reference must specify a period, not longer than six months beginning with the date of the reference, within which a report on the reference is to be made²¹.

As soon as practicable after making such a reference or a variation of such a reference, the Authority:

- 1152 (A) must send a copy of the reference or variation to the holder of the licence or, as the case may be, the relevant licence holders²² and to the Gas and Electricity Consumer Council²³; and
- 1153 (B) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it²⁴.

The Authority must also send a copy of a reference under heads (i) and (ii) above, or a variation of such a reference, to the Secretary of State²⁵; and if, before the end of the period of 28 days beginning with the day on which he receives the copy of the reference or variation, the Secretary of State directs the Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission must comply with the direction²⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see the text and notes 3-25 infra), s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 For the meaning of 'licence' see PARA 789 note 9 ante; and for the meaning of references to activities authorised by the licence, in the case of a licence under the Gas Act 1986 s 7A(1) (as added and amended) see PARA 807 note 9 ante.

4 For the meaning of 'storage' see PARA 792 note 6 ante.

5 For the meaning of 'gas' see PARA 802 ante.

6 I.e. a licence under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

7 As to the matters to which the Commission is to have regard in determining whether any matter operates, or may be expected to operate, against the public interest see *ibid* s 24(6) (as amended); and PARA 814 post.

8 For the meaning of 'modifications' see PARA 778 note 7 ante.

9 Gas Act 1986 s 24(1) (s 24(1) substituted, and s 24(1A) added, by the Gas Act 1995 s 10(1), Sch 3 para 22(1); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 8(1), (2) and by virtue of s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20).

10 I.e. licences under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

11 I.e. licences under *ibid* s 7ZA (as added): see PARA 806 ante.

12 I.e. licences under *ibid* s 7A(1) (as added and amended): see PARA 807 ante.

13 As to the standard conditions of licences see PARA 810 ante; and as to the transitional power conferred on the Secretary of State to modify certain standard conditions in order to fund modification references see the Energy Act 2004 s 177; and PARA 742 ante.

14 I.e. licences under the Gas Act 1986 s 7A(2) (as added and amended): see PARA 807 ante.

15 Ibid s 24(1A) (as added and amended (see note 9 supra); also amended by the Energy Act 2004 s 149(1), (9)).

16 For the meaning of 'notice' see PARA 804 note 6 ante.

17 Gas Act 1986 s 24(2) (amended by the Utilities Act 2000 s 108, Sch 8; and by virtue of s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20).

18 Gas Act 1986 s 24(3)(a) (s 24(3), (4) amended by the Gas Act 1995 s 10(1), Sch 3 para 22(2), (3); and by virtue of the Utilities Act 2000 s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20).

19 For these purposes, and the purposes of the Gas Act 1986 s 24A (as added) (see PARA 814 post), s 25 (as amended) (see PARA 815 post), s 26 (as amended) (see PARA 816 post) and s 26A (as added and amended) (see PARA 817 post), 'relevant conditions' has the meaning given by s 24(1) (as substituted and amended) or s 24(1A) (as added and amended) (see the text and notes 1-15 supra): s 24(8) (added by the Gas Act 1995 s 10(1), Sch 3 para 22(6); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 8(1), (4); the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (3)(b)).

20 Gas Act 1986 s 24(3)(b) (as amended: see note 18 supra).

21 Ibid s 24A(1) (added by the Enterprise Act 2002 Sch 25 para 15(1), (4)).

22 For these purposes, and the purposes of the Gas Act 1986 s 24A (as added) (see PARA 814 post), s 25 (as amended) (see PARA 815 post), s 26 (as amended) (see PARA 816 post) and s 26A (as added and amended) (see PARA 817 post), 'relevant licence holder' (1) in relation to a reference under s 24(1A) (as added and amended), means the holder of a licence to which the reference relates; (2) in relation to modifications of relevant conditions within the meaning given by s 24(1A) (as added and amended), means the holder of a licence which incorporates the conditions: s 24(8) (as amended: see note 19 supra).

23 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

24 Gas Act 1986 s 24(4) (as amended: see note 18 supra). As to publication by the Authority see PARA 793 note 5 ante.

25 As to the Secretary of State see PARA 601 note 1 ante.

26 Gas Act 1986 s 24(4A) (added by the Gas Act 1995 s 10(1), Sch 3 para 22(4); amended by virtue of the Utilities Act 2000 s 3(2); and by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(ii) Modification of Licences/814. Procedure on modification references.

814. Procedure on modification references.

It is the duty of the Gas and Electricity Markets Authority ('GEMA')¹, for the purpose of assisting the Competition Commission² in carrying out an investigation on a modification reference³ or in carrying out its functions in the exercise of its power to veto modifications⁴, to give to the Commission:

- 1154 (1) any information⁵ which is in its possession and which relates to matters falling within the scope of the investigation or the carrying out of those functions, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- 1155 (2) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters⁶.

The Commission, for the purpose of carrying out any such investigation or such functions, must take account of any information so given to it for that purpose⁷.

In determining for the purposes of a modification reference whether any particular matter operates, or may be expected to operate, against the public interest, the Commission must have regard to the matters as respects which general duties are imposed⁸ on the Secretary of State⁹ and the Authority¹⁰.

The provisions of Part 3 of the Enterprise Act 2002¹¹ which set out the Commission's powers of investigation relating to:

- 1156 (a) the attendance of witnesses and the production of documents etc¹²;
- 1157 (b) general enforcement of the powers under head (a) above¹³;
- 1158 (c) penalties¹⁴;
- 1159 (d) the main procedural requirements with regard to penalties¹⁵;
- 1160 (e) payments and interest by instalments¹⁶;
- 1161 (f) appeals in relation to penalties¹⁷;
- 1162 (g) the recovery of penalties¹⁸; and
- 1163 (h) statement of policy in relation to the enforcement of notices under the provisions mentioned in head (a) above¹⁹,

apply, with specified modifications²⁰, for the purposes of modification references as they apply for the purposes of references under that Part of the 2002 Act²¹.

Provisions of Part 3 of the 2002 Act which have effect for the purposes of the provisions referred to in heads (a) to (h) above, including, in particular, provisions relating to offences and the making of orders, have effect for the purposes of the application of those provisions as mentioned above, in relation to those provisions as so applied²²; and accordingly, corresponding provisions of the Gas Act 1986 do not have effect in relation to those provisions as so applied²³.

A report of the Commission on a modification reference²⁴ does not have effect, and no action is to be taken by the Authority to make modifications in relation to it²⁵, unless the report is made before the end of the period specified in the reference²⁶ or such further period, if any, as may

be allowed²⁷ by the Authority²⁸. The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months²⁹. No more than one such extension is possible in relation to the same reference³⁰. The Authority must, in the case of an extension so made by it, publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and send a copy of what has been so published by it to the holder of the licence³¹ or, as the case may be, the relevant licence holders³².

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see the text and notes 1-10 supra; and PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 le a reference under the Gas Act 1986 s 24 (as amended): see PARA 813 ante.

4 le its functions under ibid s 26A (as added and amended): see PARA 817 post.

5 For the meaning of 'information' see PARA 792 note 8 ante.

6 Gas Act 1986 s 24(5)(a), (b) (amended by the Utilities Act 2000 s 83(1); and by virtue of s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)).

7 Gas Act 1986 s 24(5) (as amended: see note 6 supra).

8 le imposed by ibid ss 4AA, 4AB and 4A (as added and amended): see PARAS 789-791 ante.

9 As to the Secretary of State see PARA 601 note 1 ante.

10 Gas Act 1986 s 24(6) (amended by the Gas Act 1995 s 10(1), Sch 3 para 22(5); the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 8(1), (3); and by virtue of s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)).

11 le the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq.

12 le ibid s 109.

13 le ibid s 110. In its application by virtue of the Gas Act 1986 s 24B(1) (as added), the Enterprise Act 2002 s 110 has effect as if s 110(2) were omitted and in s 110(9) the words from 'or section' to 'section 65(3))' were omitted: Gas Act 1986 s 24B(2) (s 24B added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (4)).

14 le the Enterprise Act 2002 s 111.

15 le ibid s 112.

16 le ibid s 113.

17 le ibid s 114.

18 le ibid s 115. In its application by virtue of the Gas Act 1986 s 24B(1) (as added), the Enterprise Act 2002 s 111(5)(b)(ii) has effect as if (1) for the words 'published (or, in the case of a report under section 50 or 65, given)' there were substituted 'made'; (2) for the words 'published (or given)', in both places where they appear, there were substituted 'made'; and (3) the words 'by this Part' were omitted: Gas Act 1986 s 24B(3) (as added: see note 13 supra).

19 le the Enterprise Act 2002 s 116.

20 le the modifications mentioned in the Gas Act 1986 s 24B(2), (3) (as added): see notes 13, 18 supra.

- 21 Ibid s 24B(1) (as added: see note 13 supra).
- 22 See ibid s 24B(4) (as added: see note 13 supra).
- 23 Ibid s 24B(5) (as added: see note 13 supra).
- 24 As to such reports see PARA 815 post.
- 25 Ie no action is to be taken in relation to it under the Gas Act 1986 s 26 (as amended): see PARA 816 post.
- 26 As to specifying a period in the reference see PARA 813 the text and note 21 ante.
- 27 Ie under the Gas Act 1986 s 24A(3) (as added): see the text and note 29 infra.
- 28 Ibid s 24A(2) (s 24A added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (4)).
- 29 Ibid s 24A(3) (as added: see note 28 supra).
- 30 Ibid s 24A(4) (as added: see note 28 supra).
- 31 For the meaning of 'licence' see PARA 789 note 9 ante.
- 32 Gas Act 1986 s 24A(5) (as added: see note 28 supra). For the meaning of 'relevant licence holder' for these purposes see PARA 813 note 22 ante. As to publication by the Authority see PARA 793 note 5 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(ii) Modification of Licences/815. Reports on modification references.

815. Reports on modification references.

The report by the Competition Commission¹ on a modification reference² must be made to the Gas and Electricity Markets Authority ('GEMA')³. In making such a report the Commission:

- 1164 (1) must include in it definite conclusions on the questions comprised in the reference together with such account of the Commission's reasons for them as is expedient, in its opinion, for facilitating proper understanding of those questions and of its conclusions⁴;
- 1165 (2) where the Commission concludes that any of the matters specified in the reference operate or may be expected to operate against the public interest⁵, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have⁶;
- 1166 (3) where the Commission concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions⁷, must specify in the report modifications by which those effects could be remedied or prevented⁸.

For the purposes of subsequent action⁹, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in accordance with the relevant statutory provision¹⁰ in connection with the reference concerned¹¹; and if a member of a group so constituted disagrees with any conclusions contained in such a report as the conclusions of the Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing¹².

Absolute privilege attaches to any such report for the purposes of the law relating to defamation¹³. In making any such report, however, the Commission must have regard to the following considerations before disclosing any information¹⁴:

- 1167 (a) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest¹⁵;
- 1168 (b) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests¹⁶;
- 1169 (c) the extent to which the disclosure of the information mentioned in head (b) above is necessary for the purposes of the report¹⁷.

The Authority must¹⁸:

- 1170 (i) on receiving a report on a reference with regard to a particular licence¹⁹, send a copy of it to the licence holder²⁰ and to the Secretary of State²¹ and, not less than 14 days after that copy is received by the Secretary of State, send another copy to the Gas and Electricity Consumer Council²² and publish that other copy in

- such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²³;
- 1171 (ii) on receiving a report on a reference with regard to matters relating to the carrying on of activities authorised or regulated by gas transporter, gas interconnector, gas supplier or gas shipper licences²⁴, send a copy of it to the Secretary of State and, not less than 14 days after that copy is received by the Secretary of State:
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97. (A) send another copy to the Council and to each relevant licence holder²⁵; and
98. (B) not less than 24 hours after complying with head (A) above, publish the copy sent to the Council in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²⁶.
- 70

If, however, it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in head (i) or head (ii) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be sent to the Council, or to the Council and the relevant licence holders, and published as there mentioned²⁷.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 Ie a reference under the Gas Act 1986 s 24 (as amended): see PARA 813 ante.

3 Ibid s 25(4) (s 25(4), (4A), (5), (5A), (6) amended by virtue of the Utilities Act 2000 s 3(2); the Gas Act 1986 s 25(1), (4) also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

As to the time limit for making a report on a modification reference see PARA 814 ante.

4 Gas Act 1986 s 25(1)(a) (as amended: see note 3 supra).

5 As to the matters to which the Commission must have regard in making such a determination see ibid s 24(6) (as amended); and PARA 814 ante.

6 Ibid s 25(1)(b) (as amended: see note 3 supra).

7 For the meaning of 'modifications' see PARA 778 note 7 ante; and for the meaning of 'the relevant conditions' for these purposes see PARA 813 note 19 ante.

8 Gas Act 1986 s 25(1)(c) (as amended (see note 3 supra); also amended by the Gas Act 1995 s 10(1), Sch 3 para 23(1)).

9 Ie for the purposes of the Gas Act 1986 s 26 (as amended) (see PARA 816 post) and s 26A (as added and amended) (see PARA 817 post).

10 Ie constituted in pursuance of the Competition Act 1998 s 45(7), Sch 7 para 15 (as amended): see COMPETITION vol 18 (2009) PARA 11.

11 Gas Act 1986 s 25(1A) (s 25(1A), (1B) added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (5) (a)).

12 Gas Act 1986 s 25(1B) (as added: see note 12 supra).

13 Ibid s 25(3) (s 25(3) substituted, and s 25(3A)-(3D) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (5)(b)).

14 Gas Act 1986 s 25(3A) (as added: see note 13 supra). For the meaning of 'information' see PARA 792 note 8 ante.

15 Ibid s 25(3B) (as added: see note 13 supra).

16 Ibid s 25(3C) (as added: see note 13 supra).

17 Ibid s 25(3D) (as added: see note 13 supra).

18 Ie subject to ibid s 25(6) (as amended): see the text and note 27 infra.

19 Ie a reference under ibid s 24(1) (as substituted and amended): see PARA 813 ante.

20 For the meaning of 'licence holder' see PARA 789 note 9 ante.

21 As to the Secretary of State see PARA 601 note 1 ante.

22 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

23 Gas Act 1986 s 25(5) (amended by the Gas Act 1995 s 10(1), Sch 3 para 23(3); and by virtue of the Utilities Act 2000 s 3(2)). As to publication by the Authority see PARA 793 note 5 ante.

24 Ie a reference under the Gas Act 1986 s 24(1A) (as added and amended): see PARA 813 ante.

25 For the meaning of 'relevant licence holder' for these purposes see PARA 813 note 22 ante.

26 Gas Act 1986 s 25(5A) (added by the Gas Act 1995 s 10(1), Sch 3 para 23(4); amended by virtue of the Utilities Act 2000 s 3(2)).

27 Gas Act 1986 s 25(6) (amended by the Gas Act 1995 Sch 3 para 23(5); and by virtue of the Utilities Act 2000 s 3(2)).

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816. Modification following report.

Where a report of the Competition Commission¹ on a modification reference²:

- 1172 (1) includes conclusions to the effect that any of the matters specified in the reference operate or may be expected to operate against the public interest³;
- 1173 (2) specifies effects adverse to the public interest which those matters have or may be expected to have;
- 1174 (3) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions⁴; and
- 1175 (4) specifies modifications by which those effects could be remedied or prevented,

the Gas and Electricity Markets Authority ('GEMA')⁵ must, subject to the following provisions, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report⁶ and must, before making such modifications, have regard to the modifications specified in the report⁷.

Where at any time the Authority so modifies⁸ the standard conditions⁹ of gas transporter licences¹⁰, gas interconnector licences¹¹, gas supplier licences¹² or gas shipper licences¹³, it must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in such licences granted after that time¹⁴ and may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of such licences granted before that time¹⁵. Before making such modifications, the Authority must have regard to the modifications specified in the report¹⁶.

Before making modifications under the above provisions, the Authority must give notice¹⁷:

- 1176 (a) stating that it proposes to make the modifications and setting out their effect;
- 1177 (b) stating the reasons why it proposes to make the modifications; and
- 1178 (c) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁸. Such a notice must be given:

- 1179 (i) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- 1180 (ii) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders¹⁹, to the Health and Safety Executive²⁰ and to the Gas and Electricity Consumer Council²¹.

After considering any representations or objections made in response to proposals set out in such a notice, the Authority must give notice to the Commission setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report and stating the reasons for making the modifications²²; and the Authority must include with that notice a copy of any representations or objections received in relation to the earlier notice²³ of its proposals²⁴. If the period of four weeks from the date on which that notice to the Commission is given elapses without a direction not to make the modifications set out in that notice²⁵ having been given to it, the Authority must either:

- 1181 (A) make the modifications set out in the notice; or
- 1182 (B) if a direction not to make specified modifications²⁶ has been given, make the modifications which are not specified in the direction²⁷.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 post); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 I.e a reference under the Gas Act 1986 s 24 (as amended): see PARA 813 ante.

3 As to the matters to which the Commission must have regard in making such a determination see *ibid* s 24(6) (as amended); and PARA 814 ante.

4 For the meaning of 'modifications' see PARA 778 note 7 ante; and for the meaning of 'the relevant conditions' for these purposes see PARA 813 note 19 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Gas Act 1986 s 26(1) (amended by the Gas Act 1995 s 10(1), Sch 3 para 24(1), (3); and by virtue of the Utilities Act 2000 s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)).

The modification under the Gas Act 1986 s 26(1) (as so amended) of part of a standard condition of a particular licence in consequence of a reference under s 24(1) (as substituted and amended) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante, PARA 817 et seq post): s 26(6) (added by the Utilities Act 2000 s 83(3)).

7 Gas Act 1986 s 26(2) (s 26(2)-(4) amended by virtue of the Utilities Act 2000 s 3(2)).

8 I.e under the Gas Act 1986 s 26(1) (as amended) as it applies in relation to a report on a reference under s 24(1A) (as added and amended) (see PARA 813 ante): s 26(1A) (added by the Gas Act 1995 s 10(1), Sch 3 para 24(2)).

9 As to standard conditions of licences see PARA 810 ante.

10 I.e licences under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

11 I.e licences under *ibid* s 7ZA (as added): see PARA 806 ante.

12 I.e licences under *ibid* s 7A(1) (as added and amended): see PARA 807 ante.

13 I.e licences under *ibid* s 7A(2) (as added and amended): see PARA 807 ante.

14 *Ibid* s 26(1A)(a) (as added (see note 8 supra); amended by the Energy Act 2004 s 150(8); and by virtue of the Utilities Act 2000 s 3(2)). Where at any time the Authority so modifies standard conditions for the purposes of their incorporation in licences under the Gas Act 1986 s 7 (as substituted and amended), s 7ZA (as added) or s 7A(1) or (2) (as added and amended) granted after that time, it must publish the modifications in such manner as it considers appropriate: s 26(5) (added by the Gas Act 1995 Sch 3 para 24(4); amended by the Energy Act 2004 s 150(9); and by virtue of the Utilities Act 2000 s 3(2)).

15 Gas Act 1986 s 26(1A)(b) (as added and amended: see notes 8, 14 supra).

- 16 Ibid s 26(2) (as amended: see note 7 supra).
- 17 For the meaning of 'notice' see PARA 804 note 6 ante.
- 18 Gas Act 1986 s 26(3) (as amended: see note 7 supra).
- 19 For the meaning of 'relevant licence holder' for these purposes see PARA 813 note 22 ante.
- 20 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 21 Gas Act 1986 s 26(4) (as amended (see note 7 supra); also amended by the Gas Act 1995 Sch 3 para 24(1), (3)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to publication by the Authority see PARA 793 note 5 ante.
- 22 Gas Act 1986 s 26(4A) (s 26(4A)-(4C) added by the Utilities Act 2000 s 83(2)).
- 23 Ie the notice under the Gas Act 1986 s 26(3) (as amended): see the text and notes 17-18 supra.
- 24 Ibid s 26(4B) (as added: see note 22 supra).
- 25 Ie a direction under ibid s 26A(1)(a) (as added): see PARA 817 post.
- 26 Ie a direction under ibid s 26A(1)(b) (as added): see PARA 817 post.
- 27 Ibid s 26(4C) (as added: see note 22 supra). The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under s 26(4A) (as added) and on the application of the Commission, direct that the period for giving a direction under s 26A(1) (as added), and, accordingly, the period mentioned in s 26(4C) (as so added) is to be extended by 14 days: s 26A(2) (added by the Utilities Act 2000 s 83(4)).

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817. Competition Commission's power to veto modifications following report.

The Competition Commission¹ may, within the period of four weeks after the date on which it is given a notice of proposed modifications², direct the Gas and Electricity Markets Authority ('GEMA')³ either:

- 1183 (1) not to make the modifications set out in that notice⁴; or
- 1184 (2) not to make such of the modifications as may be specified in the direction⁵;

and the Authority must comply with any such direction⁶. The power to give such a direction may only be exercised in respect of such of the modifications set out in the notice of proposals⁷ as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications⁸.

If the Commission gives such a direction, the Commission must give notice⁹ setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it¹⁰; and must itself make such modifications of the relevant conditions¹¹ as appear to it to be requisite for the purpose of remedying or preventing:

- 1185 (a) if the direction was given under head (1) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
- 1186 (b) if the direction was given under head (2) above, such of those adverse effects as are not remedied or prevented by the modifications made¹² by the Authority¹³.

In exercising its function to make such modifications, the Commission must have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence¹⁴; and before so making modifications the Commission must give notice¹⁵:

- 1187 (i) stating that it proposes to make the modifications and setting them out;
- 1188 (ii) stating the reason why it proposes to make them;
- 1189 (iii) specifying the period, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁶.

Where, in consequence of a reference with regard to matters relating to the carrying on of activities authorised or regulated by gas transporter, gas interconnector, gas supplier or gas shipper licences¹⁷, the Commission so modifies¹⁸ the standard conditions¹⁹ of licences of any type²⁰, the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time²¹; and where the Commission modifies the standard conditions of licences of any type as

mentioned above, it must make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time²² and must publish the modifications made for those purposes in such manner as it considers appropriate²³.

After making modifications under these provisions the Commission must publish a notice stating that the modifications have been made and setting them out, with the reasons for making them²⁴.

For the purposes of the law relating to defamation, absolute privilege attaches to any notice under the above provisions²⁵. In giving²⁶ or publishing²⁷ any such notice, however, the Commission must have regard to the following considerations before disclosing any information²⁸:

- 1190 (A) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest²⁹;
- 1191 (B) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests³⁰;
- 1192 (C) the extent to which the disclosure of the information mentioned in head (B) above is necessary for the purposes of the notice³¹.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (see the text and notes 2-31 infra); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 Ie a notice under the Gas Act 1986 s 26(4A) (as added): see PARA 816 ante. For the meaning of 'modifications' see PARA 778 note 7 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Gas Act 1986 s 26A(1)(a) (s 26A added by the Utilities Act 2000 s 83(4)).

5 Gas Act 1986 s 26A(1)(b) (as added: see note 4 supra).

6 Ibid s 26A(1) (as added: see note 4 supra). As to the time limit for giving such a direction see PARA 816 the text and notes 24-27 ante.

Section 26A (as added and amended) does not apply to the modification of a licence following a report of the Commission made before 1 October 2001 (ie the commencement of the Utilities Act 2000 s 83(4): see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule): Gas Act 1986 s 26A(14) (as added: see note 4 supra).

7 Ie the notice under ibid s 26(4A) (as added): see PARA 816 ante.

8 Ibid s 26A(3) (as added: see note 4 supra). The following provisions of the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq apply, with the modifications mentioned in the Gas Act 1986 s 26A(11G), (11H) (as added), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under s 26A (as added and amended) as they apply for the purposes of any investigation on references under the Enterprise Act 2002 Pt 3 (as amended), ie: (1) s 109 (attendance of witnesses and production of documents etc); (2) s 110 (enforcement of powers under s 109: general); (3) s 111 (penalties); (4) s 112 (penalties: main procedural requirements); (5) s 113 (payments and interest by instalments); (6) s 114 (appeals in relation to penalties); (7) s 115 (recovery of penalties); and (8) s 116 (statement of policy on enforcement of notices under s 109): Gas Act 1986 s 26A(11F) (s 26A(11A)-(11J) added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (6)(a)). The Enterprise Act 2002 s 110 has effect, in its application by virtue of the Gas Act 1986 s 26A(11F) (as so added) as if: (a) the Enterprise Act 2002 s 110(2) were omitted; (b) in s 110(4), for the words 'the publication of the report of the Commission on the reference concerned' there were substituted 'the publication by the Commission of a notice under section 26A(8) of the

Gas Act 1986 in connection with the reference concerned or, if no direction has been given by the Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period'; and (c) in the Enterprise Act 2002 s 110(9) the words from 'or section' to 'section 65(3))' were omitted: Gas Act 1986 s 26A(11G) (as so added). The Enterprise Act 2002 s 115(5)(b) has effect, in its application by virtue of the Gas Act 1986 s 26A(11F) (as so added) as if for the Enterprise Act 2002 s 115(5)(b)(ii) there were substituted: '(ii) if earlier, the day on which a notice is published by the Commission under section 26A(8) of the Gas Act 1986 in connection with the reference concerned or, if no direction is given by the Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.'; Gas Act 1986 s 26A(11H) (as so added). Provisions of the Enterprise Act 2002 Pt 3 (as amended) which have effect for the purposes of ss 109-116 (including, in particular, provisions relating to offences and the making of orders) have effect, for the purposes of the application of those provisions by virtue of the Gas Act 1986 s 26A(11F) (as so added), in relation to those provisions as applied by virtue of s 26A(11F) (as so added): s 26A(11I) (as so added). Accordingly, corresponding provisions of the Gas Act 1986 do not have effect in relation to those provisions as so applied: s 26A(11J) (as so added).

9 A notice under *ibid* s 26A(4)(a) (as added) (see the text and note 10 *infra*) or s 26A(6) (as added) (see the text and notes 15-16 *infra*) must be given (1) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and (2) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders: s 26A(7) (as added: see note 4 *supra*). As to service of notices see PARA 980 *post*; for the meaning of 'notice' see PARA 804 note 6 *ante*; and for the meaning of 'relevant licence holder' for these purposes see PARA 813 note 22 *ante*.

10 *Ibid* s 26A(4)(a) (as added: see note 4 *supra*).

11 For the meaning of 'relevant conditions' for these purposes see PARA 813 note 19 *ante*.

12 *Ie* made under the Gas Act 1986 s 26(4C)(b) (as added): see PARA 816 *ante*.

13 *Ibid* s 26A(4)(b) (as added: see note 4 *supra*). The modification under s 26A (as added and amended) of part of a standard condition of a particular licence in consequence of a reference under s 24(1) (as amended) (see PARA 813 *ante*) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Pt I (ss 4AA-48) (as amended) (see PARA 789 *et seq ante*, PARA 818 *et seq post*): s 26A(11) (as so added).

14 *Ibid* s 26A(5) (as added: see note 4 *supra*).

15 See note 9 *supra*.

16 *Ibid* s 26A(6) (as added: see note 4 *supra*).

17 *Ie* a reference under *ibid* s 24(1A) (as added and amended): see PARA 813 *ante*.

18 *Ie* under *ibid* s 26A(4)(b) (as added): see the text and notes 11-13 *supra*.

19 As to the standard conditions of licences see PARA 810 *ante*.

20 *Ie* of licences under the Gas Act 1986 s 7 (as substituted and amended) (see PARA 805 *ante*), s 7ZA (as added) (see PARA 806 *ante*) or s 7A(1) (as added and amended) or s 7A(2) (as added and amended) (see PARA 807 *ante*).

21 *Ibid* s 26A(9) (as added (see note 4 *supra*); amended by the Energy Act 2004 s 150(10)).

22 Gas Act 1986 s 26A(10)(a) (as added: see note 4 *supra*).

23 *Ibid* s 26A(10)(b) (as added: see note 4 *supra*).

24 *Ibid* s 26A(8) (as added: see note 4 *supra*).

25 *Ibid* s 26A(11A) (as added: see note 8 *supra*).

26 *Ie* under *ibid* s 26A(4)(a) or (6) (as added).

27 *Ie* under *ibid* s 26A(8) (as added).

28 *Ibid* s 26A(11B) (as added: see note 8 *supra*). For the meaning of 'information' see PARA 792 note 8 *ante*.

- 29 Ibid s 26A(11C) (as added: see note 8 supra).
- 30 Ibid s 26A(11D) (as added: see note 8 supra).
- 31 Ibid s 26A(11E) (as added: see note 8 supra).

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818. Modification by order under other enactments.

Where the Office of Fair Trading¹, the Competition Commission² or, as the case may be, the Secretary of State³ ('the relevant authority') makes a relevant order⁴, the order may also provide for the modification⁵ of:

- 1193 (1) the conditions of a particular licence⁶; or
- 1194 (2) the standard conditions⁷ of gas transporter licences⁸, gas interconnector licences⁹, gas supplier licences¹⁰ or gas shipper licences¹¹,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order¹².

The modification under head (1) above of part of a standard condition of a particular licence¹³ does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part I¹⁴ of the Gas Act 1986¹⁵.

Where at any time the relevant authority modifies under head (2) above the standard conditions of gas transporter licences, gas interconnector licences, gas supplier licences or gas shipper licences, the relevant authority:

- 1195 (a) must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in such licences granted after that time; and
- 1196 (b) may, after consultation with the Gas and Electricity Markets Authority ('GEMA')¹⁶, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of such licences granted before that time¹⁷;

and where at any time the relevant authority modifies standard conditions under head (a) above for the purposes of their incorporation in licences granted after that time, the relevant authority must publish those modifications in such manner as the relevant authority considers appropriate¹⁸.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 ante); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For these purposes, 'relevant order' means (1) an order under the Enterprise Act 2002 s 75, s 83 or s 84, or Sch 7 para 5, 10 or 11, where (a) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or (b) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or (2) an order under s 160 or s 161 where the

feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to (a) activities authorised or regulated by a licence; or (b) the storage of gas on terms which have been determined by the holder of a licence under the Gas Act 1986 s 7 (as substituted and amended) (see PARA 805 ante), or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence: Gas Act 1986 s 27(1ZA) (added by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 4(1), (2)). The reference in head (1) supra to the Enterprise Act 2002 Sch 7 para 5, 10 or 11 includes a reference to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592, Sch 2 para 5, 10 or 11: see art 16, Sch 4 para 6. Expressions used in the Gas Act 1986 s 27(1ZA) (as so added) and in the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended) or (as the case may be) Pt 4 (ss 131-184) (see COMPETITION vol 18 (2009) PARA 276 et seq) have the same meanings in the Gas Act 1986 s 27(1ZA) (as so added) as in the Enterprise Act 2002 Pt 3 (as amended) or Pt 4: Gas Act 1986 s 27(6) (substituted by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 4(1), (6)).

5 For the meaning of 'modification' see PARA 778 note 7 ante.

6 For the meaning of 'licence' see PARA 789 note 9 ante.

7 As to the standard conditions of licences see PARA 810 ante.

8 Ie licences under the Gas Act 1986 s 7 (as substituted and amended): see PARA 805 ante.

9 Ie licences under ibid s 7ZA (as added): see PARA 806 ante.

10 Ie licences under ibid s 7A(1) (as added and amended): see PARA 807 ante.

11 Ie licences under ibid s 7A(2) (as added and amended): see PARA 807 ante.

12 Ibid s 27(1) (substituted by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 4(1), (2); amended by the Energy Act 2004 s 150(8)).

13 Ie in consequence of a reference under the Gas Act 1986 s 24(1) (as amended): see PARA 813 ante.

14 Ie ibid Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 819 et seq post.

15 Ibid s 27(1A) (added by the Utilities Act 2000 s 83(5)).

16 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

17 Gas Act 1986 s 27(2) (substituted by the Gas Act 1995 s 10(1), Sch 3 para 25; amended by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 4(1), (3); the Energy Act 2004 s 150(8); and by virtue of the Utilities Act 2000 s 3(2)).

18 Gas Act 1986 s 27(5) (substituted by the Gas Act 1995 s 10(1), Sch 3 para 25; amended by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 4(1), (5)). As to publication by the Authority see PARA 793 note 5 ante.

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(iii) Alteration of Activities requiring Licence

819. Power to alter activities requiring licence.

The Secretary of State¹ may by order² provide:

- 1197 (1) that specified activities are to become licensable activities; or
- 1198 (2) that specified activities are to cease to be licensable activities³;

and activities are licensable activities if undertaking them without the authority of a licence⁴ or exemption⁵ constitutes an offence under the statutory prohibition⁶ on unlicensed activities⁷.

Such an order may make consequential, transitional, incidental or supplementary provision including:

- 1199 (a) amendments, or repeals, in any provision of the Gas Act 1986 or any other enactment; and
- 1200 (b) provision modifying any standard conditions of licences⁸ or, in the case of an order under head (1) above, provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities⁹;

but may only provide for activities to become licensable activities if they are activities connected with:

- 1201 (i) the conveyance of gas through pipes¹⁰ to premises or to pipeline systems operated by gas transporters¹¹;
- 1202 (ii) participation in the operation of a gas interconnector¹²;
- 1203 (iii) the supply to premises of gas¹³ conveyed through pipes; or
- 1204 (iv) arranging with gas transporters for gas to be introduced into, conveyed by means of or taken out of pipeline systems operated by the gas transporters¹⁴.

An order under these provisions providing for activities:

- 1205 (A) to become licensable activities may only be made on the application of the Gas and Electricity Markets Authority ('GEMA')¹⁵ made¹⁶ in accordance with the relevant statutory provisions¹⁷;
- 1206 (B) to cease to be licensable activities may be made either on the application of the Authority made¹⁸ in accordance with the relevant statutory provisions¹⁹ or following consultation²⁰ by the Secretary of State²¹.

Such an order may provide that it is to remain in force only for a period specified in the order²².

¹ As to the Secretary of State see PARA 601 note 1 ante.

- 2 No such order may be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: Gas Act 1986 s 41C(8) (s 41C added by the Utilities Act 2000 s 88). As to the power to make orders generally see PARA 777 note 15 ante.
- 3 Gas Act 1986 s 41C(1) (as added: see note 2 supra).
- 4 For the meaning of 'licence' see PARA 789 note 9 ante.
- 5 For the meaning of 'exemption' see PARA 789 note 19 ante.
- 6 le under the Gas Act 1986 s 5(1) (as substituted and amended): see PARA 803 ante.
- 7 Ibid s 41C(2) (as added: see note 2 supra).
- 8 As to the standard conditions of licences see PARA 810 ante.
- 9 Gas Act 1986 s 41C(3) (as added: see note 2 supra).
- 10 For the meaning of references to the conveyance of gas through pipes see PARA 803 note 4 ante; and for the meaning of 'gas' see PARA 802 ante.
- 11 For the meaning of 'gas transporter' see PARA 805 ante.
- 12 For the meaning of 'gas interconnector' see PARA 792 note 4 ante; and for the meaning of references to participating in the operation of a gas interconnector see PARA 803 note 7 ante.
- 13 For the meaning of references to the supply of gas see PARA 802 ante.
- 14 Gas Act 1986 s 41C(4) (as added (see note 2 supra); amended by the Energy Act 2004 s 149(1), (10)).
- 15 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 16 le made in accordance with the Gas Act 1986 s 41D (as added): see PARA 820 post.
- 17 Ibid s 41C(5) (as added: see note 2 supra).
- 18 le made in accordance with ibid s 41G (as added): see PARA 824 post.
- 19 Ibid s 41C(6)(a) (as added: see note 2 supra).
- 20 le consultation under ibid s 41H (as added): see PARA 825 post.
- 21 Ibid s 41C(6)(b) (as added: see note 2 supra).
- 22 Ibid s 41C(7) (as added: see note 2 supra). At the date at which this title states the law, no such order had been made.

UPDATE

819 Power to alter activities requiring licence

TEXT AND NOTES--The Gas Act 1986 s 41HA (ss 41HA-41HC added by Energy Act 2008 Sch 4 para 1) gives the Secretary of State an order-making power to both create new licensable activities under the Gas Act 1986 s 41C in relation to smart metering and to order that such new licensable activities will cease to be licensable. Supplemental provision with respect to procedure is made: see Gas Act 1986 s 41HB. The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted: see Gas Act 1986 s 41HC.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/820. Application by the Gas and Electricity Markets Authority for an order including new activities.

820. Application by the Gas and Electricity Markets Authority for an order including new activities.

If the Gas and Electricity Markets Authority ('GEMA')¹ proposes to make an application for an order providing for activities to become licensable activities², it must give notice³:

- 1207 (1) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
- 1208 (2) setting out the conditions which it would expect such an order to determine to be standard conditions⁴ for the purposes of licences⁵ authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
- 1209 (3) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections which are duly made and not withdrawn⁶. The notice must be given by serving a copy on the Gas and Electricity Consumer Council⁷ and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to it to be carrying on, or be intending to carry on, the activities, and of any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities⁸.

If an objection has been duly made, and not withdrawn, by a person who is carrying on or intends to carry on the activities, the Authority must make a reference⁹ to the Competition Commission¹⁰ before making the application¹¹; and in any other case where the Authority considers it appropriate to make a reference to the Commission¹² before making the application, the Authority may make such a reference¹³. If a reference is made to the Commission, the application must not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest¹⁴.

The application must set out:

- 1210 (a) the activities which the Authority considers should become licensable activities; and
- 1211 (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which the Authority would expect to be included in such licences¹⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licensable activities' see PARA 819 ante.

3 For the meaning of 'notice' see PARA 804 note 6 ante.

- 4 As to the standard conditions of licences see PARA 810 ante.
- 5 For the meaning of 'licence' see PARA 789 note 9 ante.
- 6 Gas Act 1986 s 41D(1) (s 41D added by the Utilities Act 2000 s 88).
- 7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.
- 8 Gas Act 1986 s 41D(2) (as added: see note 6 supra). As to publication by the Authority see PARA 793 note 5 ante.
- 9 le under ibid s 41E (as added): see PARA 821 post.
- 10 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 ante); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.
- 11 Gas Act 1986 s 41D(3) (as added: see note 6 supra).
- 12 See note 9 supra.
- 13 Gas Act 1986 s 41D(4) (as added: see note 6 supra).
- 14 Ibid s 41D(5) (as added: see note 6 supra). As to the matters to which the Commission is to have regard in making such a determination see s 41E(6) (as added); and PARA 822 post.
- 15 Ibid s 41D(6) (as added: see note 6 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/821. References to the Competition Commission before application for an order including new licensable activities.

821. References to the Competition Commission before application for an order including new licensable activities.

A reference to the Competition Commission¹ before the Gas and Electricity Markets Authority ('GEMA')² makes an application for an order including new licensable activities³ must require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest⁴. Every such reference must specify a period, not longer than six months beginning with the date of the reference, within which a report on the reference is to be made⁵. The Authority may, at any time, by notice⁶ given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission must give effect to the variation⁷.

The Authority must specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference⁸:

- 1212 (1) the conditions which the Authority would expect to be determined to be standard conditions⁹ for the purposes of licences¹⁰ authorising the undertaking of the activities specified in the reference and any other conditions which the Authority would expect to be included in such licences; and
- 1213 (2) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have¹¹.

As soon as practicable after making the reference, or a variation of the reference, the Authority must serve a copy of it on the Gas and Electricity Consumer Council¹² and must publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it, and of any other persons appearing to the Authority to be likely to be affected by it¹³.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 ante); or s 41E (as added and amended) (references regarding licensable activities: see the text and notes 2-13 infra; and PARA 822 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 I.e a reference under the Gas Act 1986 s 41E (as added): see the text and notes 4-13 infra; and PARA 822 post. For the meaning of 'licensable activities' see PARA 819 ante; and as to applications for an order including new licensable activities see PARA 820 ante.

4 Ibid s 41E(1) (s 41E added by the Utilities Act 2000 s 88). As to the matters to which the Commission is to have regard in making such a determination see the Gas Act 1986 s 41E(6) (as so added); and PARA 822 post.

5 Ibid s 41EA(1) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (12)).

6 For the meaning of 'notice' see PARA 804 note 6 ante.

7 Gas Act 1986 s 41E(2) (as added: see note 4 supra).

8 As to the procedure on such investigation see PARA 822 post.

9 As to the standard conditions of licences see PARA 810 ante.

10 For the meaning of 'licence' see PARA 789 note 9 ante.

11 Gas Act 1986 s 41E(3) (as added: see note 4 supra).

12 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

13 Gas Act 1986 s 41E(4) (as added: see note 4 supra). As to publication by the Authority see PARA 793 note 5 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/822. Procedure on a reference before application for an order including new licensable activities.

822. Procedure on a reference before application for an order including new licensable activities.

The Gas and Electricity Markets Authority ('GEMA')¹ must, for the purpose of assisting the Competition Commission² in carrying out the investigation on the reference before the Authority makes an application for an order including new licensable activities³, give to the Commission:

- 1214 (1) any information⁴ which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- 1215 (2) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,

and the Commission must take account of the information for the purpose of carrying out the investigation⁵. In determining for these purposes whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission must have regard to:

- 1216 (a) the matters referred to in the statutory provision setting out the principal objective and general duties of the Secretary of State⁶ and the Authority⁷;
- 1217 (b) any social or environmental policies set out or referred to in guidance issued⁸ by the Secretary of State; and
- 1218 (c) any advice about health and safety in relation to gas⁹ given¹⁰ by the Health and Safety Commission¹¹.

The provisions of Part 3 of the Enterprise Act 2002¹² which set out the Commission's powers of investigation relating to:

- 1219 (i) the attendance of witnesses and the production of documents etc¹³;
- 1220 (ii) general enforcement of the powers under head (i) above¹⁴;
- 1221 (iii) penalties¹⁵;
- 1222 (iv) the main procedural requirements with regard to penalties¹⁶;
- 1223 (v) payments and interest by instalments¹⁷;
- 1224 (vi) appeals in relation to penalties¹⁸;
- 1225 (vii) the recovery of penalties¹⁹; and
- 1226 (viii) statement of policy in relation to the enforcement of notices under the provisions mentioned in head (i) above²⁰,

apply, with specified modifications²¹, for the purposes of such references as they apply for the purposes of references under that Part of the 2002 Act²². The provision of that Part of the 2002 Act relating to false or misleading information²³ also applies, with modifications²⁴ in relation to

functions of the Commission in connection with such references as it applies in relation to its functions under Part 3 of that 2002 Act²⁵.

Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of the provisions of that Act mentioned above²⁶, including, in particular, provisions relating to offences and the making of orders, have effect for the purposes of the application of those provisions as mentioned above, in relation to those provisions as so applied²⁷; and accordingly, corresponding provisions of the Gas Act 1986 do not have effect in relation to those provisions as so applied²⁸.

A report of the Commission on a such a reference²⁹ does not have effect³⁰ unless the report is made before the end of the period specified in the reference³¹ or such further period, if any, as may be allowed³² by the Authority³³. The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months³⁴; but no more than one such extension is possible in relation to the same reference³⁵. The Authority must publish such an extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it³⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 ante); or s 41E (as added and amended) (references regarding licensable activities: see the text and notes 3-11 infra; and PARA 821 ante) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 Ie the reference under the Gas Act 1986 s 41E (as added and amended): see PARA 821 ante. For the meaning of 'licensable activities' see PARA 819 ante; and as to applications by the Authority for an order including new licensable activities see PARA 820 ante.

4 For the meaning of 'information' see PARA 792 note 8 ante.

5 Gas Act 1986 s 41E(5) (s 41E(5), (6) added by the Utilities Act 2000 s 88).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Ie the matters referred to in the Gas Act 1986 s 4AA (as added and amended): see PARA 789 ante.

8 Ie issued under ibid s 4AB (as added): see PARA 790 ante.

9 For the meaning of 'gas' see PARA 802 ante.

10 Ie given under the Gas Act 1986 s 4A (as substituted): see PARA 791 ante.

11 Ibid s 41E(6) (as added: see note 5 supra). As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

12 Ie the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq.

13 Ie ibid s 109.

14 Ie ibid s 110. In its application by virtue of the Gas Act 1986 s 41EB(1) (as added), the Enterprise Act 2002 s 110 has effect as if (1) s 110(2) were omitted; and (2) in s 110(9), the words from 'or section' to 'section 65(3))' were omitted: Gas Act 1986 s 41EB(2) (ss 41EA, 41EB added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (12)).

15 Ie the Enterprise Act 2002 s 111.

16 Ie ibid s 112.

17 Ie ibid s 113.

18 le ibid s 114.

19 le ibid s 115. In its application by virtue of the Gas Act 1986 s 41EB(1) (as added), the Enterprise Act 2002 s 111(5)(b)(ii) effect as if (1) for the words 'published (or, in the case of a report under section 50 or 65, given)' there were substituted 'made'; (2) for the words 'published (or given)', in both places where they appear, there were substituted 'made'; and (3) the words 'by this Part' were omitted: Gas Act 1986 s 41EB(3) (as added: see note 14 supra).

20 le the Enterprise Act 2002 s 116.

21 le with the modifications mentioned in the Gas Act 1986 s 41EB(2), (3) (as added): see notes 14, 19 supra.

22 Ibid s 41EB(1) (as added: see note 14 supra).

23 le the Enterprise Act 2002 s 117.

24 le as if, in ibid s 117(1)(a) and (2), the words 'the OFT, OFCOM,' and 'or the Secretary of State' were omitted: Gas Act 1986 s 41EB(4) (as added (see note 14 supra); amended by the Communications Act 2003 s 389(1), Sch 16 para 2).

25 Gas Act 1986 s 41EB(4) (as added: see note 14 supra).

26 le the Enterprise Act 2002 ss 109-117.

27 See the Gas Act 1986 s 41EB(5) (as added: see note 14 supra).

28 Ibid s 41EB(6) (as added: see note 14 supra).

29 le a report on a reference under ibid s 41E (as added and amended). As to such reports see PARA 823 post.

30 le in particular for the purposes of ibid s 41D(5) (as added): see PARA 820 ante.

31 As to the period specified in the reference see PARA 821 the text and note 5 ante.

32 le under the Gas Act 1986 s 41EA(3) (as added): see the text and note 34 infra.

33 Ibid s 41EA(2) (as added: see note 14 supra).

34 Ibid s 41EA(3) (as added: see note 14 supra).

35 Ibid s 41EA(4) (as added: see note 14 supra).

36 Ibid s 41EA(5) (as added: see note 14 supra). As to publication by the Authority see PARA 793 note 5 ante.

UPDATE

822 Procedure on a reference before application for an order including new licensable activities

TEXT AND NOTE 11--1986 Act s 41E(6)(c) amended: SI 2008/960.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/823. Reports on references before application for an order including new licensable activities.

823. Reports on references before application for an order including new licensable activities.

A report of the Competition Commission¹ on a reference before the Gas and Electricity Markets Authority ('GEMA')² makes an application for an order including new licensable activities³ must be made to the Authority⁴. In making a report on such a reference the Commission must include in the report definite conclusions on whether the fact that the activities specified in the reference, or the reference as varied, are not licensable activities operates, or may be expected to operate, against the public interest⁵. The Commission must also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions⁶.

Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it must specify in the report:

- 1227 (1) the effects adverse to the public interest which that fact has or may be expected to have; and
- 1228 (2) any modifications⁷ to the conditions specified in the reference⁸ which the Commission considers appropriate⁹.

A conclusion contained in a report of the Commission is to be disregarded¹⁰ if the conclusion is not that of at least two-thirds of the members of the group constituted¹¹ in connection with the reference concerned in accordance with the relevant statutory provision¹²; and if a member of a group so constituted disagrees with any conclusions contained in a report made on such a reference as the conclusions of the Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing¹³.

For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on such a reference¹⁴; but in making any report on such a reference the Commission must have regard to the following considerations before disclosing any information¹⁵:

- 1229 (a) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest¹⁶;
- 1230 (b) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests¹⁷;
- 1231 (c) the extent to which the disclosure of the information mentioned in head (b) above is necessary for the purposes of the report¹⁸.

On receiving the report, the Authority must send a copy of it to the Secretary of State¹⁹ and must²⁰, not less than 14 days after the copy is received by the Secretary of State, send another

copy to the Gas and Electricity Consumer Council²¹ and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²². If, however, it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of that period of 14 days, direct the Authority to exclude that matter from the copy of the report to be so sent to the Council and published²³.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Gas Act 1986 s 24 (as amended) (see PARA 813 ante), s 26A (as added and amended) (power to veto modification following report: see PARA 817 ante); or s 41E (as added and amended) (references regarding licensable activities: see PARAS 821-822 ante) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 I.e. a report on a reference under the Gas Act 1986 s 41E (as added and amended): see PARAS 821-822 ante. For the meaning of 'licensable activities' see PARA 819 ante; and as to applications by the Authority for an order including new licensable activities see PARA 820 ante.

4 Ibid s 41F(5) (s 41F added by the Utilities Act 2000 s 88).

5 Gas Act 1986 s 41F(1) (as added: see note 4 supra). As to the matters to which the Commission must have regard in making such a determination see s 41E(6) (as added); and PARA 822 ante.

6 Ibid s 41F(2) (as added: see note 4 supra).

7 For the meaning of 'modifications' see PARA 778 note 7 ante.

8 I.e. in accordance with the Gas Act 1986 s 41E(3)(a) (as added): see PARA 821 ante.

9 Ibid s 41F(3) (as added: see note 4 supra).

10 I.e. for the purposes of ibid s 41D(5) (as added): see PARA 820 ante.

11 I.e. constituted in pursuance of the Competition Act 1998 s 45(7), Sch 7 para 15 (as amended): see COMPETITION vol 18 (2009) PARA 11.

12 Gas Act 1986 s 41F(3A) (s 41F(3A), (3B) added by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (13)(a)).

13 Gas Act 1986 s 41F(3B) (as added: see note 12 supra).

14 Ibid s 41F(4) (s 41F(4) substituted, and s 41F(4A)-(4D) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (13)(b)).

15 Gas Act 1986 s 41F(4A) (as added: see note 14 supra). For the meaning of 'information' see PARA 792 note 8 ante.

16 Ibid s 41F(4B) (as added: see note 14 supra).

17 Ibid s 41F(4C) (as added: see note 14 supra).

18 Ibid s 41F(4D) (as added: see note 14 supra).

19 Ibid s 41F(6) (as added: see note 4 supra). As to the Secretary of State see PARA 601 note 1 ante.

20 I.e. subject to ibid s 41F(8) (as added): see the text and note 23 infra.

21 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

22 Gas Act 1986 s 41F(7) (as added: see note 4 supra). As to publication by the Authority see PARA 793 note 5 ante.

23 Ibid s 41F(8) (as added: see note 4 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/824. Application by the Gas and Electricity Markets Authority for an order excluding activities.

824. Application by the Gas and Electricity Markets Authority for an order excluding activities.

Before making an application for an order providing for activities to cease to be licensable activities¹, the Gas and Electricity Markets Authority ('GEMA')² must give notice³:

- 1232 (1) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
- 1233 (2) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections duly made and not withdrawn⁴. The notice must be given:

- 1234 (a) by serving a copy on the Secretary of State⁵, the Health and Safety Executive⁶ and the Gas and Electricity Consumer Council⁷; and
- 1235 (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order⁸.

An application under these provisions must set out:

- 1236 (i) the activities which the Authority considers should cease to be licensable activities; and
- 1237 (ii) the Authority's reasons for proposing that the order be made⁹.

1 As to such orders, and for the meaning of 'licensable activities', see PARA 819 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For the meaning of 'notice' see PARA 804 note 6 ante.

4 Gas Act 1986 s 41G(1) (s 41G added by the Utilities Act 2000 s 88).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 316 et seq.

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

8 Gas Act 1986 s 41G(2) (as added: see note 4 supra). As to publication by the Authority see PARA 793 note 5 ante.

9 Ibid s 41G(3) (as added: see note 4 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iii) Alteration of Activities requiring Licence/825. Consultation by Secretary of State about order excluding activities.

825. Consultation by Secretary of State about order excluding activities.

If the Secretary of State¹ proposes to make an order providing for activities to cease to be licensable activities², otherwise than on an application³ by the Gas and Electricity Markets Authority ('GEMA')⁴, he must give notice⁵:

- 1238 (1) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
- 1239 (2) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections duly made and not withdrawn⁶. The notice must be given:

- 1240 (a) by serving a copy on the Authority, the Health and Safety Executive⁷ and the Gas and Electricity Consumer Council⁸; and
- 1241 (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such an order⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the power to make such orders, and for the meaning of 'licensable activities', see PARA 819 ante.

3 Ie an application under the Gas Act 1986 s 41G (as added): see PARA 824 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 For the meaning of 'notice' see PARA 804 note 6 ante.

6 Gas Act 1986 s 41H(1) (s 41H added by the Utilities Act 2000 s 88).

7 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 316 et seq.

8 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

9 Gas Act 1986 s 41H(2) (as added: see note 6 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iv) Third Party Rights with regard to Pipeline Systems and Relevant Facilities/826. Acquisition of rights to use pipeline systems.

(iv) Third Party Rights with regard to Pipeline Systems and Relevant Facilities

826. Acquisition of rights to use pipeline systems.

In the case of a pipeline system operated by a gas transporter¹, any person may, after giving the transporter not less than 28 days' notice², apply to the Gas and Electricity Markets Authority ('GEMA')³ for directions under these provisions which would secure to the applicant a right of a description specified in the application to have conveyed by the system gas⁴ which is of a kind so specified and which is of, or of a kind similar to, the kind which the system is designed to convey⁵. Where such an application is made, it is the duty of the Authority:

- 1242 (1) to decide whether the application is to be adjourned, so as to enable negotiations or further negotiations to take place, to be considered further or to be rejected;
- 1243 (2) to give notice of its decision to the applicant;
- 1244 (3) in the case of a decision that the application is to be considered further, to give to the transporter, to the Health and Safety Executive⁶ and to any person who has a right to have gas conveyed by the pipeline system, notice that the application is to be so considered and an opportunity of being heard about the matter⁷.

Where, after further considering such an application, the Authority is satisfied that the giving of directions under these provisions would not prejudice the efficient operation of the pipeline system, or the conveyance by the system of:

- 1245 (a) the quantities of gas which the gas transporter requires or may reasonably be expected to require to be conveyed by the system to enable the transporter to comply with the conditions of his licence⁸ and to perform his contractual obligations;
- 1246 (b) the quantities of gas which any person who has a right to have gas conveyed by the system is entitled to require to be so conveyed in the exercise of that right,

the Authority may give such directions to the transporter⁹. Such directions may:

- 1247 (i) specify the terms on which the Authority considers the gas transporter should enter into an agreement with the applicant for all or any of the following purposes:
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- 99. (A) for securing to the applicant the right to have conveyed by the pipeline system, for the period specified in the directions and in the quantities so specified or determined by or under the directions, gas which is of a kind so specified;
 - 100. (B) for securing that the exercise of that right is not prevented or impeded;

- 101. (c) for regulating the charges which may be made for the conveyance of gas by virtue of that right;
 - 102. (d) for securing to the applicant such ancillary or incidental rights as the Authority considers necessary or expedient, which may include the right to have a pipeline of his connected to the pipeline system by the transporter;
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- 1248 (ii) specify the sums or the method of determining the sums which the Authority considers should be paid by way of consideration for any such right; and
 - 1249 (iii) require the transporter, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified¹⁰.

In giving any such directions, the Authority must apply the principle that the gas transporter should be entitled to receive by way of charges for the conveyance of gas by virtue of the right both the appropriate proportion¹¹ of the costs incurred by the transporter in administering, maintaining and operating his pipeline system¹² and a return equal to the appropriate proportion¹³ of the return received by the transporter, otherwise than by virtue of the right, on the capital value of the system, including so much of that return as is set aside to meet the need from time to time to renew the system¹⁴.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 For the meaning of 'notice' see PARA 804 note 6 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For these purposes, any reference to a right to have gas of any kind conveyed by a pipeline system includes a reference to a right to introduce into, or take out of, such a system gas of that kind: Gas Act 1986 s 19(7) (s 19 substituted by the Gas Act 1995 s 10(1), Sch 3 para 16). For the meaning of 'gas' see PARA 802 ante.

5 Gas Act 1986 s 19(1) (as substituted (see note 4 supra); s 19(1), (3)-(5) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)).

6 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

7 Gas Act 1986 s 19(2) (as substituted (see note 4 supra); amended by virtue of the Utilities Act 2000 s 3(2)).

8 For the meaning of 'licence' see PARA 789 note 9 ante.

9 Gas Act 1986 s 19(3) (as substituted and amended: see notes 4-5 supra).

10 Ibid s 19(4) (as substituted and amended: see notes 4-5 supra).

11 For these purposes, 'the appropriate proportion' means such proportion as properly (1) reflects the use made of the gas transporter's pipeline system by virtue of the right as compared with the use made of that system for other purposes; and (2) takes into account the sums paid by way of consideration for the right and any sums paid in respect of the pipeline system (whether by the applicant or by any other person) in pursuance of directions under ibid s 21(1) (as substituted and amended) (see PARA 831 post): s 19(6) (as substituted (see note 4 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(2)).

12 Gas Act 1986 s 19(5)(a) (as substituted and amended: see notes 4-5 supra).

13 See note 11 supra.

14 Gas Act 1986 s 19(5)(b) (as substituted and amended: see notes 4-5 supra).

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827. Acquisition of rights to use storage facilities.

The owner¹ of a storage facility² to which the following provisions apply³ (a 'relevant facility'):

- 1250 (1) must publish at least once in every year⁴ the main commercial conditions⁵ relating to the grant to another person of a right to have gas or liquid gas stored in the facility⁶ on that person's behalf; and
- 1251 (2) must publish any changes to the published conditions as soon as they become effective⁷.

The owner of a relevant facility must ensure that the conditions which he is so required to publish do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas or liquid gas stored in the facility⁸.

Any person who seeks a right to have gas or liquid gas stored on his behalf in a relevant facility ('the applicant') must, before making an application⁹ to the Gas and Electricity Markets Authority ('GEMA')¹⁰, apply to the owner of the facility for the right¹¹. Such an application must be made by giving notice¹² to the owner specifying what is being sought¹³; and such a notice must, in particular, specify:

- 1252 (a) the period during which the gas or liquid gas is to be stored in the facility;
- 1253 (b) the kind of gas or liquid gas to be stored, which must be of, or similar to, the kind which the facility is designed to store; and
- 1254 (c) the quantities of gas or liquid gas to be stored¹⁴.

Where an applicant gives such notice, he and the owner of the facility must negotiate in good faith and endeavour to reach agreement on the application¹⁵.

If the owner and the applicant do not reach any such agreement, the applicant may apply to the Authority for directions¹⁶ which would secure to the applicant the right specified in his notice¹⁷. The Authority must not, however, entertain such an application unless it is satisfied that the parties have had a reasonable time in which to fulfil their duties¹⁸ to negotiate and endeavour to reach agreement¹⁹.

Where a person so applies to the Authority and the Authority is satisfied that the parties have had such reasonable time, the Authority must decide whether the application is to be adjourned, so as to enable further negotiations to take place, to be considered further or to be rejected²⁰, and must give notice of its decision to the applicant²¹. In the case of a decision that the application is to be considered further, the Authority must give to the owner of the facility, the Health and Safety Executive²² and any person who has a right to have gas or liquid gas stored in the facility notice that the application is to be so considered and an opportunity of being heard on the matter²³.

Where, after considering such an application, the Authority is satisfied that the giving of directions under this provision would not prejudice the efficient operation of the facility, or the storage in the facility of the quantities of gas or liquid gas which the owner of the facility

requires or may reasonably be expected to require to be stored in the facility²⁴ and the quantities of gas or liquid gas which any person who has a right to have gas or liquid gas stored in the facility is entitled to require to be so stored in the exercise of that right²⁵, the Authority may give such directions to the owner of the facility²⁶. Such directions may:

1255 (i) specify the terms on which the Authority considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes:

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103. (A) for securing to the applicant the right to have stored in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, gas or liquid gas which is of a kind so specified;

104. (B) for securing that the exercise of that right is not prevented or impeded;

105. (C) for regulating the charges which may be made for the storage of gas or liquid gas by virtue of that right;

106. (D) for securing to the applicant such ancillary or incidental rights as the Authority considers necessary or expedient, which may include, in particular, a right to have a pipeline of his connected to the facility by the owner;

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1256 (ii) specify the sums or the method of determining the sums which the Authority considers should be paid by way of consideration for any such right; and

1257 (iii) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified²⁷.

1 For these purposes, 'owner' includes any person occupying or having control of the facility: see the Gas Act 1986 s 19E(1) (s 19E added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 1; the Gas Act 1986 s 19E(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(2), Sch 2 para 6(a); definition of 'owner' amended by Sch 2 para 6(g)). For the meaning of 'owner' generally see PARA 836 note 3 post.

2 For the meaning of 'storage' generally see PARA 792 note 6 ante. For these purposes, 'storage', in relation to liquid gas in a storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and 'stored', in relation to liquid gas in a storage facility, is to be construed accordingly; and 'storage facility' means a facility in Great Britain (excluding the territorial sea adjacent to the United Kingdom) for either or both of the following: (1) the storage of gas in cavities in strata or in porous strata, provided that the facility is or will be used for the storage of gas which has previously been conveyed in a pipeline system operated by a gas transporter; (2) the storage of liquid gas; but the reference in head (2) supra to the storage of liquid gas does not include such temporary storage as is mentioned in PARA (c) of the definition of 'LNG import facility' (as to that definition see PARA 829 note 2 post): Gas Act 1986 s 19E(1) (as added and amended (see note 1 supra); definition of 'storage' added, and definition of 'storage facility' substituted, by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(2), Sch 2 para 6(i), (j)). For the meaning of 'gas' see PARA 802 ante.

3 As to the application of the Gas Act 1986 s 19B (as added and amended) see PARA 828 post.

4 For this purpose, 'year' means any year ending with 9 August: *ibid* s 19B(2) (s 19B added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, SI 2000/1937, Sch 2 para 1).

5 'Main commercial conditions' means (1) in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right; (2) the other significant terms on which such a right would be granted; and (3) such additional information as the Authority may from time to time specify by notice: Gas Act 1986 s 19E(1) (as added and amended (see note 1 supra); definition amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(d), (e); and by virtue of the Utilities Act 2000 s 3(2)).

6 Any reference for these purposes to a right to have gas or gas of any kind, or liquid gas or liquid gas of any kind, stored in a storage facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind, or liquid gas or liquid gas of that kind: Gas Act 1986 s 19E(5) (as added (see note 1 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(l)).

7 Gas Act 1986 s 19B(1) (as added (see note 4 supra); s 19B(1), (3), (4), (6), (10)-(12) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 2).

8 Gas Act 1986 s 19B(3) (as added and amended: see notes 4, 7 supra).

9 *Ie* under *ibid* s 19B(8) (as added and amended): see the text and notes 16-17 *infra*.

10 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* *ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.

11 Gas Act 1986 s 19B(4) (as added and amended (see notes 4, 7 supra); also amended by virtue of the Utilities Act 1986 s 3(2)).

12 For the meaning of 'notice' see PARA 804 note 6 *ante*.

13 Gas Act 1986 s 19B(5) (as added: see note 4 supra).

14 *Ibid* s 19B(6) (as added and amended: see notes 4, 7 supra).

15 *Ibid* s 19B(7) (as added: see note 4 supra).

16 *Ie* directions under *ibid* s 19B(11) (as added and amended): see the text and notes 24-26 *infra*.

17 *Ibid* s 19B(8) (as added (see note 4 supra); amended by virtue of the Utilities Act 2000 s 3(2)).

For the purpose of considering an application under the Gas Act 1986 s 19B(8) (as so added and amended), the Authority may by notice require the owner of the relevant facility to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings: s 19E(2) (as added (see note 1 supra); amended by virtue of the Utilities Act 2000 s 3(2)). Owners of relevant facilities must keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by such a notice: Gas Act 1986 s 19E(3) (as so added). For these purposes, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and the Income and Corporation Taxes Act 1988 s 416(2)-(5) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299) applies with any necessary modifications for these purposes as it applies for the purposes of Pt XI (ss 414-422) (as amended) (close companies: see INCOME TAXATION vol 23(2) (Reissue) PARA 1296 *et seq*): Gas Act 1986 s 19E(4) (as so added). 'Accounting information' means such accounting records as would be required by the Companies Act 1985 s 221 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by ss 386, 387, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) in respect of each of the storage activities undertaken by the owner of the facility if those activities were the only business undertaken by the owner and the owner were a person to whom that provision applied; and 'significant transaction' means any transaction which relates to rights to have gas or liquid gas stored in a storage facility and any other transaction which is of a description specified from time to time by the Authority by notice: see the Gas Act 1986 s 19E(1) (as added and amended (see note 1 supra); definition of 'significant transaction' amended for these purposes by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(h)(i); and by virtue of the Utilities Act 2000 s 3(2)).

18 *Ie* their duties under the Gas Act 1986 s 19B(7) (as added): see the text and note 15 supra.

19 *Ibid* s 19B(9) (as added (see note 4 supra); amended by virtue of the Utilities Act 2000 s 3(2)).

20 Gas Act 1986 s 19B(10)(a) (as added (see note 4 supra); s 19B(10)-(12) also amended by virtue of the Utilities Act 2000 s 3(2)).

21 Gas Act 1986 s 19B(10)(b) (as added and amended: see notes 4, 20 supra).

22 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

23 Gas Act 1986 s 19B(10)(c) (as added and amended: see notes 4, 7, 20 supra).

24 See *ibid* s 19B(11)(a) (as added and amended: see notes 4, 7, 20 supra).

25 See *ibid* s 19B(11)(b) (as added and amended: see notes 4, 7, 20 supra).

26 *Ibid* s 19B(11) (as added and amended: see notes 4, 7, 20 supra).

27 *Ibid* s 19B(12) (as added and amended: see notes 4, 7, 20 supra).

UPDATE

827 Acquisition of rights to use storage facilities

NOTE 17--Day now appointed for repeal of 1985 Act s 221 and replacement by Companies Act 2006 ss 386, 387: SI 2007/3495. Definition of 'accounting information' amended to take account of coming into force of Companies Act 2006: SI 2008/948.

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828. Relevant storage facilities for the purposes of the acquisition of rights.

The provisions set out in the previous paragraph whereby third parties may acquire rights to use storage facilities¹ apply to a storage facility² unless, or except to the extent that, its capacity is exempt under the following provisions³.

A person who is or expects to be an owner⁴ of a storage facility may apply in writing to the Gas and Electricity Markets Authority ('GEMA')⁵ for an exemption with respect to the facility⁶. An exemption must be given in writing and may be given:

- 1258 (1) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- 1259 (2) unconditionally or subject to such conditions as the Authority considers appropriate;
- 1260 (3) so as to have effect, in the case of a facility other than a new facility⁷, in relation to the whole of the capacity of the facility, or, in the case of a new facility, in relation to the whole of the capacity of the facility or any significant increase in the capacity of the facility⁸.

The Authority must give an exemption with respect to a facility, other than a new facility, where it is satisfied that use of the facility by other persons is not necessary for the operation of an economically efficient gas market⁹. It must give an exemption with respect to a new facility where it is satisfied that either:

- 1261 (a) use of the facility by other persons is not necessary for the operation of an economically efficient gas market; or
- 1262 (b) the following requirements are met¹⁰, namely that:
 - 75 107. (i) the facility or, as the case may be, the significant increase in its capacity will promote security of supply;
 - 108. (ii) the level of risk is such that the investment to construct the facility or, as the case may be, to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
 - 109. (iii) the facility is or is to be owned by a person other than the gas transporter¹¹ who operates or will operate the pipeline system connected or to be connected to the facility;
 - 110. (iv) charges will be levied on users of the facility or, as the case may be, the increase in its capacity;
 - 111. (v) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and
 - 112. (vi) the European Commission is or will be content with the exemption¹².

In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of head (b) above may only be given in relation to that increase in its capacity¹³. An exemption may not be given by virtue of head (b) above more than once in respect of the same facility¹⁴; but this does not prevent a further exemption being given by virtue of that head in respect of a facility if:

- 1263 (A) the facility is or is to be modified to provide for a significant increase in its capacity;
- 1264 (B) the exemption has effect only in relation to that increase in its capacity; and
- 1265 (C) no previous exemption has been given by virtue of that head in relation to that increase in its capacity¹⁵.

The Authority must publish its decision to give or refuse to give an exemption together with the reasons for its decision in such manner as it considers appropriate¹⁶.

An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility concerned not less than four months before the coming into force of the revocation¹⁷.

1 le the Gas Act 1986 s 19B (as added and amended): see PARA 827 ante.

2 For the meaning of 'storage facility' see PARA 827 note 2 ante.

3 Gas Act 1986 s 19A(1) (s 19A added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 1; the Gas Act 1986 s 19A(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, SI 2004/2043, reg 2(2), Sch 2 para 1(a)).

4 For the meaning of 'owner' for these purposes see PARA 827 note 1 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Gas Act 1986 s 19A(2) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 1(b), (c); and by virtue of the Utilities Act 2000 s 3(2)).

7 'New facility' means (1) a storage facility the construction of which is or is to be completed after 3 August 2003; or (2) a storage facility the modification of which to provide for a significant increase in capacity is or is to be completed after 3 August 2003: Gas Act 1986 s 19E(1) (definition added by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(f)).

8 Gas Act 1986 s 19A(3) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 1(d); and by virtue of the Utilities Act 2000 s 3(2)).

9 Gas Act 1986 s 19A(5) (s 19A(5) substituted, and s 19A(6)-(11) added, by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 1(f)). For the meaning of 'gas' see PARA 802 ante.

10 Gas Act 19A(6) (as added: see note 9 supra).

11 For the meaning of 'gas transporter' see PARA 805 ante.

12 Gas Act 19A(8) (as added: see note 9 supra).

13 Ibid s 19A(7) (as added: see note 9 supra).

14 Ibid s 19A(9) (as added: see note 9 supra).

15 Ibid s 19A(10) (as added: see note 9 supra).

16 Ibid s 19A(11) (as added: see note 9 supra).

17 Ibid s 19A(4) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 1(e)).

UPDATE

828 Relevant storage facilities for the purposes of the acquisition of rights

TEXT AND NOTE 17--An exemption may contain provision for its revocation: Gas Act 1986 s 19A(4) (substituted by SI 2009/1349).

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829. Acquisition of rights to use LNG facilities and owner's duty to provide information.

The owner¹ of an LNG import facility² to which the following provisions apply³ (a 'relevant facility') must⁴:

- 1266 (1) publish prior to their entry into force the main commercial conditions⁵ relating to the grant to another person of a right to have liquid gas treated⁶ in the facility on that person's behalf; and
- 1267 (2) publish any changes to the published conditions as soon as they become effective⁷.

The cost or the method of determining the cost of acquiring the right to have liquid gas treated in a relevant facility and any changes thereto must be approved by the Gas and Electricity Markets Authority ('GEMA')⁸ prior to their publication; and such approval may be given on condition that certain modifications⁹ are made to the cost or methodology¹⁰. Before the owner of a relevant facility seeks such approval he must carry out such consultation as the Authority may require¹¹.

The owner of a relevant facility must ensure that the conditions which he is required to publish under heads (1) and (2) above do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have liquid gas treated in the facility¹².

Any person who seeks a right to have liquid gas treated on his behalf in a relevant facility ('the applicant') must, before making an application¹³ to the Authority, apply to the owner of the facility for the right¹⁴. Such an application must be made by giving notice¹⁵ to the owner specifying what is being sought¹⁶; and the notice must, in particular, specify the kind of liquid gas to be treated, which must be of, or similar to, the kind which the facility is designed to treat, and the quantities of liquid gas to be treated¹⁷. The owner must notify the applicant of his decision giving reasons for any refusal¹⁸.

If the owner refuses the application, the applicant may apply to the Authority for directions¹⁹ which would secure to the applicant the right specified in his notice²⁰. Where a person so applies to the Authority, the Authority must decide whether to give such directions²¹, to consider the application further or to reject the application, and must give notice of its decision to the applicant²². In the case of a decision that the application is to be considered further, the Authority must give to the owner of the facility, the Health and Safety Executive²³ and any person who has a right to have liquid gas treated in the facility, notice that the application is to be so considered and an opportunity of being heard about the matter²⁴ and must, after so considering the matter, decide whether to give such directions or to reject the application and must give notice of its decision to the applicant²⁵. Where, after considering such an application, the Authority is satisfied that the giving of directions under this provision would not prejudice the efficient operation of the facility, or the treatment in the facility of:

- 1268 (a) the quantities of liquid gas which the owner of the facility requires or may reasonably be expected to require to be treated in the facility; and

- 1269 (b) the quantities of liquid gas which any person who has a right to have liquid gas treated in the facility is entitled to require to be so treated in the exercise of that right,

the Authority may give such directions to the owner of the facility²⁶. Such directions may:

- 1270 (i) specify the terms on which the Authority considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes:
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113. (A) for securing to the applicant the right to have treated in the facility, and in the quantities so specified or determined by or under the directions, liquid gas which is of a kind so specified;
114. (B) for securing that the exercise of that right is not prevented or impeded;
115. (C) for regulating the charges which may be made for the treatment of liquid gas by virtue of that right;
116. (D) for securing to the applicant such ancillary or incidental rights as the Authority considers necessary or expedient;
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- 1271 (ii) specify the sums or the method of determining the sums which the Authority considers should be paid by way of consideration for any such right; and
- 1272 (iii) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified²⁷.

A person who is or expects to be the owner of an LNG import facility must provide the Authority with such information²⁸ in such manner and at such times as the Authority may reasonably require to facilitate the performance of its functions under the Gas Act 1986²⁹.

1 For the meaning of 'owner' for these purposes see PARA 827 note 3 ante.

2 For these purposes, 'LNG import facility' means a facility for the following: (1) the importation of liquid gas; (2) the regasification of liquid gas following its importation and prior to its conveyance to a pipeline system operated by a gas transporter; and (3) any temporary storage of liquid gas which is necessary for the operation of the facility: Gas Act 1986 s 19E(1) (s 19E added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 1; the Gas Act 1986 s 19E(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(2), Sch 2 para 6(a); definition of 'LNG import facility' substituted by Sch 2 para 6(c)).

3 As to the application of the Gas Act 1986 s 19D (as added and amended) see PARA 830 post.

4 ie subject to ibid s 19D(2A) (as added): see the text and notes 8-10 infra.

5 For these purposes, 'main commercial conditions' means, in the case of an LNG import facility, (1) the terms setting out the cost or the method of determining the cost of acquiring the right to have liquid gas treated in the facility; (2) the other significant terms on which such a right would be granted; and (3) such additional information as the Gas and Electricity Markets Authority ('GEMA') may from time to time specify by notice: ibid s 19E(1) (as added and amended (see note 1 supra); definition of 'main commercial conditions' amended for these purposes by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(d), (e); and by virtue of the Utilities Act 2000 s 3(2)).

6 For these purposes, 'treatment', in relation to liquid gas in an LNG import facility, includes importation, temporary storage and regasification, and 'treat' is to be construed accordingly: Gas Act 1986 s 19E(1) (as added and amended (see note 1 supra); definition of 'treatment' substituted by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(k)).

7 Gas Act 1986 s 19D(1) (s 19D added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 2 para 1; the Gas Act 1986 s 19D(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(a), (b)).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 For the meaning of 'modifications' see PARA 778 note 7 ante.

10 Gas Act 1986 s 19D(2A) (s 19D(2A), (2B) added by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(d)).

11 Gas Act 1986 s 19D(2B) (as added: see note 10 supra).

12 Ibid s 19D(3) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(e)).

13 Ie under the Gas Act 1986 s 19D(8) (as added and amended): see the text and notes 19-20 infra.

14 Ibid s 19D(4) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(e); and by virtue of the Utilities Act 2000 s 3(2)).

15 For the meaning of 'notice' see PARA 804 note 6 ante.

16 Gas Act 1986 s 19D(5) (as added: see note 7 supra).

17 Ibid s 19D(6) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(f), (g)).

18 Gas Act 1986 s 19D(7) (substituted by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(h)).

19 Ie directions under the Gas Act 1986 s 19D(11) (as added and amended): see the text and note 26 infra.

20 Ibid s 19D(8) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(i); and by virtue of the Utilities Act 2000 s 3(2)).

For the purpose of considering an application under the Gas Act 1986 s 19B(8) (as so added and amended), the Authority may by notice require the owner of the relevant facility to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings: s 19E(2) (as added (see note 1 supra); amended by virtue of the Utilities Act 2000 s 3(2)). Owners of relevant facilities must keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by such a notice: Gas Act 1986 s 19E(3) (as so added). For these purposes, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and the Income and Corporation Taxes Act 1988 s 416(2)-(5) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299) applies with any necessary modifications for these purposes as it applies for the purposes of Pt XI (ss 414-422) (as amended) (close companies: see INCOME TAXATION vol 23(2) (Reissue) PARA 1296 et seq); Gas Act 1986 s 19E(4) (as so added). 'Accounting information' means such accounting records as would be required by the Companies Act 1985 s 221 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by ss 386, 387, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) in respect of each of the storage activities undertaken by the owner of the facility if those activities were the only business undertaken by the owner and the owner were a person to whom that provision applied; and 'significant transaction' means any transaction which relates to rights to have liquid gas treated in an LNG import facility and any other transaction which is of a description specified from time to time by the Authority by notice: see the Gas Act 1986 s 19E(1) (as added and amended (see note 1 supra); definition of 'significant transaction' amended for these purposes by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 6(h)(ii); and by virtue of the Utilities Act 2000 s 3(2)).

21 See note 19 supra.

22 Gas Act 1986 s 19D(10)(a), (b) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(k), (l); and by virtue of the Utilities Act 2000 s 3(2)).

23 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

24 Gas Act 1986 s 19D(10)(c)(i) (s 19D(10)(c) substituted by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(m)).

25 Gas Act 1986 s 19D(10)(c)(ii) (as substituted: see note 24 supra).

26 Ibid s 19D(11) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(n); and by virtue of the Utilities Act 2000 s 3(2)).

27 Gas Act 1986 s 19D(12) (as added (see note 7 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 4(o)-(q); and by virtue of the Utilities Act 2000 s 3(2)).

28 For the meaning of 'information' see PARA 792 note 8 ante.

29 Gas Act 1986 s 19DA (added by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 5).

UPDATE

829 Acquisition of rights to use LNG facilities and owner's duty to provide information

NOTE 20--Day now appointed for repeal of 1985 Act s 221 and replacement by Companies Act 2006 ss 386, 387: SI 2007/3495. Definition of 'accounting information' amended to take account of coming into force of Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(4) REGULATION OF THE SUPPLY OF GAS/(iv) Third Party Rights with regard to Pipeline Systems and Relevant Facilities/830. Relevant LNG facilities for the purposes of the acquisition of rights.

830. Relevant LNG facilities for the purposes of the acquisition of rights.

The provisions set out in the previous paragraph whereby third parties may acquire rights to use LNG facilities¹ apply to an LNG import facility² unless, or except to the extent that, its capacity is exempt under the following provisions³.

A person who is or expects to be an owner⁴ of an LNG import facility may apply in writing to the Gas and Electricity Markets Authority ('GEMA')⁵ for an exemption with respect to the facility⁶. An exemption must be given in writing and may be given:

- 1273 (1) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- 1274 (2) unconditionally or subject to such conditions as the Authority considers appropriate;
- 1275 (3) so as to have effect in relation to the whole of the capacity of the facility or any significant increase in the capacity of the facility⁷.

The Authority must give an exemption with respect to a facility where it is satisfied that the following requirements are met⁸, namely that:

- 1276 (a) the facility or, as the case may be, the significant increase in its capacity will promote security of supply;
- 1277 (b) the level of risk is such that the investment to construct the facility or, as the case may be, to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
- 1278 (c) the facility is or is to be owned by a person other than the gas transporter⁹ who operates or will operate the pipeline system connected or to be connected to the facility;
- 1279 (d) charges will be levied on users of the facility or, as the case may be, the increase in its capacity;
- 1280 (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and
- 1281 (f) the European Commission is or will be content with the exemption¹⁰.

In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of the above provisions may only be given in relation to that increase in its capacity¹¹. An exemption may not be given¹² more than once in respect of the same facility¹³; but this does not prevent a further exemption being given in respect of a facility if:

- 1282 (i) the facility is or is to be modified to provide for a significant increase in its capacity;
- 1283 (ii) the exemption has effect only in relation to that increase in its capacity; and

1284 (iii) no previous exemption has been given in relation to that increase in its capacity¹⁴.

The Authority must publish its decision to give or refuse to give an exemption together with the reasons for its decision in such manner as it considers appropriate¹⁵.

An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice¹⁶ of revocation to the owner of the facility concerned not less than four months before the coming into force of the revocation¹⁷.

1 le the Gas Act 1986 s 19D (as added and amended): see PARA 829 ante.

2 For the meaning of 'LNG import facility' see PARA 829 note 2 ante.

3 Gas Act 1986 s 19C(1) (s 19C added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 1; the Gas Act 1986 s 19C(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(2), Sch 2 para 3(a)).

4 For the meaning of 'owner' for these purposes see PARA 827 note 1 ante; and as to the owner's duty to give information to the Gas and Electricity Markets Authority see PARA 829 the text and notes 28-29 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Gas Act 1986 s 19C(2) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 3(b), (c); and by virtue of the Utilities Act 2000 s 3(2)).

7 Gas Act 1986 s 19C(3) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 3(d); and by virtue of the Utilities Act 2000 s 3(2)).

8 Gas Act 1986 s 19C(5) (s 19C(5) substituted, and s 19C(6)-(10) added, by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 3(f)).

9 For the meaning of 'gas transporter' see PARA 805 ante.

10 Gas Act 1986 s 19C(7) (as added: see note 8 supra).

11 Ibid s 19C(6) (as added: see note 8 supra).

12 le by virtue of ibid s 19C(5) (as substituted): see the text and note 8 supra.

13 Ibid s 19C(8) (as added: see note 8 supra).

14 Ibid s 19C(9) (as added: see note 8 supra).

15 Ibid s 19C(10) (as added: see note 8 supra). As to publication by the Authority see PARA 793 note 5 ante.

16 For the meaning of 'notice' see PARA 804 note 6 ante.

17 Gas Act 1986 s 19C(4) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, Sch 2 para 3(e)).

UPDATE

830 Relevant LNG facilities for the purposes of the acquisition of rights

TEXT AND NOTE 17--An exemption may contain provision for its revocation: Gas Act 1986 s 19C(4) (substituted by SI 2009/1349).

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831. Increase of capacity etc of pipelines.

If in the case of a pipeline system operated by a gas transporter¹ it appears to the Gas and Electricity Markets Authority ('GEMA')², on the application of a person other than the transporter, that the system can and should be modified:

- 1285 (1) by installing in it a junction through which another pipeline³ may be connected to the system; or
- 1286 (2) by modifying apparatus and works⁴ associated with a high pressure pipeline⁵ so as to increase the capacity of the pipeline,

then the Authority may⁶, after giving to the transporter an opportunity of being heard about the matter and giving to the Health and Safety Executive⁷ notice⁸ of its proposed directions, give directions to the transporter in accordance with heads (a) to (d) below in consequence of the application⁹. Where the Authority proposes to give such directions, it is its duty before doing so to give to the applicant particulars of the modifications¹⁰ which it proposes to specify in the directions¹¹ and an opportunity of making an application to acquire rights¹² in respect of the pipeline system¹³.

Directions under these provisions may:

- 1287 (a) specify the modifications which the Authority considers should be made in consequence of the application;
- 1288 (b) specify the sums or the method of determining the sums which the Authority considers should be paid to the gas transporter by the applicant by way of consideration for the modifications;
- 1289 (c) specify the arrangements which the Authority considers should be made by the applicant, within a period specified in that behalf in the directions, for the purpose of securing that those sums will be paid to the transporter if he carries out the modifications;
- 1290 (d) require the transporter, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified in that behalf in the directions¹⁴.

In giving any such directions, the Authority must apply the principle that, in so far as the following, namely:

- 1291 (i) the cost of carrying out the modifications; and
- 1292 (ii) a reasonable element of profit,

will not be recoverable by the gas transporter from elsewhere, the transporter should be entitled to receive them by way of consideration for carrying out the modifications¹⁵.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For these purposes, 'pipeline' has the same meaning as in the Pipe-lines Act 1962 (see s 65 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559): Gas Act 1986 s 21(5) (added by the Gas Act 1995 s 10(1), Sch 3 para 18(5)).

4 The reference in head (2) in the text to apparatus and works associated with a pipeline is to be construed in accordance with the Pipe-lines Act 1962 s 65(2) (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559): Gas Act 1986 s 21(4).

5 For these purposes, 'high pressure pipeline' means any pipeline which has a design operating pressure exceeding 7 bar gauge: *ibid* s 21(5) (as added: see note 3 *supra*).

6 *Ie* subject to *ibid* s 21(3) (as amended): see the text and notes 10-13 *infra*.

7 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

8 For the meaning of 'notice' see PARA 804 note 6 ante.

9 Gas Act 1986 s 21(1) (substituted by the Gas Act 1995 s 10(1), Sch 3 para 18(1); the Gas Act 1986 s 21(1), (2) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)).

10 References for these purposes to modifications include, in the case of modifications to any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works: Gas Act 1986 s 21(4). For the meaning of 'modifications' generally see PARA 778 note 7 ante.

11 *Ibid* s 21(3)(a) (amended by virtue of the Utilities Act 2000 s 3(2)).

12 *Ie* an application under the Gas Act 1986 s 19 (as substituted and amended): see PARA 826 ante.

13 *Ibid* s 21(3)(b) (as amended (see note 11 *supra*); also amended by the Gas Act 1995 Sch 3 para 18(3)). The Gas Act 1986 s 19 (as substituted and amended) has effect in relation to such an application made by virtue of s 21(3)(b) (as amended) as if for references to a pipeline system there were substituted references to the pipeline system as it would be with those modifications and the reference in s 19(2) (as substituted and amended) to the Authority deciding whether the application is to be adjourned were omitted: s 21(3) (as so amended).

14 *Ibid* s 21(2) (as amended (see note 9 *supra*); also amended by the Gas Act 1995 Sch 3 para 18(2)).

15 Gas Act 1986 s 21(3A) (added by the Gas Act 1995 Sch 3 para 18(4); amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)).

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832. Enforcement of rights in respect of pipelines and relevant facilities.

The obligation to comply with any directions concerning the right to use pipelines¹, the right to use storage facilities² or LNG transport facilities³ or the modification of pipelines⁴ ('relevant directions') and the obligation to comply with any duty to negotiate in respect of rights to use storage facilities⁵ or to notify an applicant of the refusal of an application to use LNG storage facilities⁶ ('relevant duties') are duties owed to any person who may be affected by a contravention⁷ of them⁸. Where a duty is so owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person⁹. In any such proceedings brought¹⁰ against any person, it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the relevant directions or relevant duties¹¹.

Without prejudice to any rights which any person may have¹² to bring civil proceedings in respect of any contravention or apprehended contravention of any relevant directions, compliance with any such directions is enforceable by civil proceedings by the Gas and Electricity Markets Authority ('GEMA')¹³ for an injunction or for any other appropriate relief¹⁴. Compliance with the duties relating to the publication of the main commercial conditions relating to the grant of third party rights to use storage facilities¹⁵ and LNG import facilities¹⁶, and the duties of the owners of such facilities with regard to the keeping of their internal accounts¹⁷ is also enforceable by civil proceedings by the Authority for an injunction or for any other appropriate relief¹⁸.

1 le directions under the Gas Act 1986 s 19 (as substituted and amended): see PARA 826 ante.

2 le directions under *ibid* s 19B(11) (as added and amended): see PARA 827 ante.

3 le directions under *ibid* s 19D(11) (as added and amended): see PARA 829 ante.

4 le directions under *ibid* s 21(1) (as substituted and amended): see PARA 831 ante.

5 le any duty in *ibid* s 19B(7) (as added): see PARA 827 ante.

6 le any duty in *ibid* s 19D(7) (as substituted): see PARA 829 ante.

7 For the meaning of 'contravention' see PARA 779 note 3 ante.

8 Gas Act 1986 s 22(1) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 2(a), (b)).

9 Gas Act 1986 s 22(2).

10 le brought in pursuance of *ibid* s 22(2).

11 *Ibid* s 22(3) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 2(c)).

12 le by virtue of the Gas Act 1986 s 22(2).

13 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

- 14 Gas Act 1986 s 22(4) (amended by virtue of the Utilities Act 2000 s 3(2)).
- 15 le the duties in the Gas Act 1986 s 19B(1), (3) (as added and amended): see PARA 827 ante.
- 16 le the duties in ibid s 19D(1), (3): see PARA 829 ante.
- 17 le the duties in ibid s 19E(3) (as added): see PARAS 827 note 17, 829 note 20 ante.
- 18 Ibid s 22(5) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(2), Sch 2 para 2(d); amended by virtue of the Utilities Act 2000 s 3(2)).

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(v) Transit of Natural Gas

833. Transit of natural gas between transmission grids.

Regulations have been made¹ to facilitate the transit of natural gas between high pressure transmission grids in the European Community². When a grid operator³ receives a request for gas transit⁴, it must without delay notify the EC Commission, the Secretary of State⁵ and the Gas and Electricity Markets Authority ('GEMA')⁶ of the request⁷ and open negotiations on the conditions of the gas transit requested⁸. When a gas transit contract⁹ has been concluded, it must then notify the same authorities¹⁰ or, if such a contract is not concluded within 12 months of receipt of the request for gas transit, inform them of the reasons for the failure of the negotiations to result in the conclusion of a contract¹¹. Compliance with any of these obligations is enforceable by civil proceedings by the Authority for an injunction or for any other appropriate relief¹².

The conditions to be included in a gas transit contract must be non-discriminatory and fair for all parties concerned and must not include unfair clauses or unjustified restrictions¹³. They must also not endanger the security of supply nor quality of service and, in particular, must take full account of the utilisation of reserve production and storage capacity and the most efficient operation of existing systems¹⁴. The conditions to be included in such a contract may be subject to conciliation, at the request of either the entity seeking the gas transit or the grid operator, by the body set up for that purpose¹⁵.

1 In accordance with EC Council Directive 91/296 (OJ L147, 12.6.91, p 37) (as amended; now repealed and replaced by European Parliament and EC Council Directive 2003/55 (OJ L176, 15.7.2003, p 57) on the transit of natural gas through grids. See further PARA 653 ante.

2 See the Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190 (as amended); and the text and notes 3-15 infra.

3 'Grid operator' means an entity responsible for operating a high pressure transmission grid in the United Kingdom; 'entity' means a body specified in EC Council Directive 91/296 (OJ L147, 12.6.91, p 37), Annex (as amended from time to time and now repealed: see note 1 supra); and 'high pressure transmission grid', in the case of a grid situated in the Community, means a grid so specified: Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190, reg 2.

4 'Gas transit' means the transport by a grid operator of natural gas between high pressure transmission grids, at least one of which is situated in the Community, and across at least one frontier between member states: *ibid* reg 2.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190, reg 4(a) (amended by virtue of the Utilities Act 2000 s 3(2)).

8 Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190, reg 4(b).

9 'Gas transit contract' means a contract providing for gas transit: *ibid* reg 2.

10 *Ibid* reg 4(c).

- 11 Ibid reg 4(d).
- 12 Ibid reg 7 (amended by virtue of the Utilities Act 2000 s 3(2)).
- 13 Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190, reg 5(a).
- 14 Ibid reg 5(b).
- 15 Ibid reg 6. The relevant body is the one set up for that purpose pursuant to EC Council Directive 91/296 (OJ L147, 12.6.91, p 37) art 3(4) (now repealed and replaced by European Parliament and EC Council Directive 2003/55 (OJ L176, 15.7.2003, p 57): as to regulatory bodies see art 25): Gas Transit (EEC Requirements) Regulations 1992, SI 1992/1190, reg 6.

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(vi) Acquisition of Rights to Use Gas Processing Facilities

834. Acquisition of rights to use gas processing facilities.

The owner¹ of a gas processing facility²:

- 1293 (1) must publish at least once in every year³ the main commercial conditions⁴ relating to the grant to another person of a right to have gas processed by the facility on that person's behalf; and
- 1294 (2) must publish any changes to the published conditions as soon as they become effective⁵.

Compliance with this duty is enforceable by civil proceedings by the Secretary of State⁶ for an injunction or for any other appropriate relief or remedy⁷.

Any person who seeks a right to have gas processed on his behalf by a gas processing facility ('the applicant') must, before making an application to the Secretary of State⁸, apply to the owner of the facility for the right⁹. Such an application must be made by giving notice in writing to the owner specifying what is being sought¹⁰; and the notice must, in particular, specify:

- 1295 (a) the period during which the gas is to be processed by the facility;
- 1296 (b) the kind of gas to be processed, which must be of, or similar to, the kind which the facility is designed to process; and
- 1297 (c) the quantities of gas to be processed¹¹.

Where a person gives such notice, he and the owner of the gas processing facility must negotiate in good faith and endeavour to reach agreement on the application¹².

If the owner and the applicant do not reach any such agreement, the applicant may apply to the Secretary of State for directions¹³ which would secure to the applicant the right specified in his notice¹⁴. The Secretary of State must not, however, entertain such an application unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties¹⁵ to negotiate and endeavour to reach agreement¹⁶. Where an application is so made, it is the duty of the Secretary of State to decide whether the application is to be adjourned so as to enable further negotiations to take place, to be considered further or to be rejected¹⁷ and to give notice of his decision to the applicant¹⁸. In the case of a decision that the application is to be considered further, it is the duty of the Secretary of State to give to the owner of the facility, to any person who has a right to have gas processed by the facility, and to the Health and Safety Executive¹⁹, notice that the application is to be so considered and an opportunity of being heard about the matter²⁰.

Where, after further considering such an application, the Secretary of State is satisfied that the giving of such directions would not prejudice the efficient operation of the facility, or the processing by the facility of the quantities of gas which the owner of the facility or any associate of the owner²¹ requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by him²² and the quantities of gas which

any person who is not such an associate and has a right to have gas processed by the facility is entitled to require to be so processed in the exercise of that right²³, the Secretary of State may give such directions to the owner of the facility²⁴. Such directions may:

- 1298 (i) specify the terms on which the Secretary of State considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes:
- 79
117. (A) for securing to the applicant the right to have processed by the facility, during the period specified in the directions and in the quantities so specified, gas which is of a kind so specified;
118. (B) for securing that the exercise of that right is not prevented or impeded;
119. (C) for regulating the charges which may be made for the processing of gas by virtue of that right;
120. (D) for securing to the applicant such ancillary or incidental rights as the Secretary of State considers necessary or expedient, which may include the right to have a pipeline²⁵ of his connected to the facility by the owner;
- 80
- 1299 (ii) specify the sums or the method of determining the sums which the Secretary of State considers should be paid by way of consideration for any such right; and
- 1300 (iii) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified²⁶.

The obligation to comply with any such directions and any obligation to comply with the duty to negotiate²⁷ are duties owed to any person who may be affected by a contravention²⁸ of them²⁹. Where a duty is so owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person³⁰. In any such proceedings brought³¹ against any person, it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the relevant directions or relevant duties³².

Without prejudice to any rights which any person may have³³ to bring civil proceedings in respect of any contravention or apprehended contravention of any such directions, compliance with any such directions is enforceable by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief³⁴.

1 For these purposes, 'owner', in relation to a gas processing facility, includes a lessee and any person occupying or having control of the facility: Gas Act 1995 s 12(6). For the meaning of 'owner' generally see PARA 836 note 3 post.

2 For these purposes, 'gas processing facility' means any facility which carries out gas processing operations and which is operated otherwise than by a gas transporter; 'gas' means any substance which is or (if it were in a gaseous state) would be gas within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 802 ante); 'gas processing operation' means any of the following operations, namely (1) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain; (2) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and (3) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person, and 'process', in relation to gas, is to be construed accordingly; and 'gas transporter' has the same meaning as in the Gas Act 1986 Pt I (as amended) (see PARA 805 ante): Gas Act 1995 s 12(6) (definitions amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(3), Sch 3 para 5(a); and by virtue of the Utilities Act 2000 s 76(7)).

3 In head (1) in the text, 'year' means any year ending with 9 August: Gas Act 1995 s 12(1A) (s 12(1A)-(1G) added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(3), Sch 3 para 1).

4 For these purposes, 'main commercial conditions' means (1) such information as would enable a potential applicant for a right to have gas processed by a gas processing facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right; (2) the other significant terms on which such a right would be granted; and (3) such other information as the Secretary of State may from time to time specify by notice: Gas Act 1995 s 12(6) (definition added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 5(b)). Any document required or authorised the Gas Act 1995 s 12 (as amended) to be given to or served on any person may be given or served either by delivering it to that person, or by leaving it at his proper address, or by the recorded delivery service: Pipe-lines Act 1962 s 49(1) (applied for these purposes by the Gas Act 1995 s 6A (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 6)). Any such document required or authorised to be given to or served on an authority or body being a corporation is duly given or served if it is given to or served on the secretary or clerk of the authority or body; and for these purposes the proper address of any person to or on whom any such document is to be given or served is, in the case of the secretary or clerk of a corporation, that of the registered or principal office of the corporation, and in any other case the last-known address of the person to be served, provided that, where the person to or on whom the document is to be given or served has, in accordance with arrangements agreed, furnished an address for the giving or service of the document, being an address in the United Kingdom, his proper address for these purposes is the address furnished: Pipe-lines Act 1962 s 49(2), (3) (as so applied).

5 Gas Act 1995 s 12(1) (substituted by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 1).

6 It is the duty of the Gas and Electricity Markets Authority ('GEMA'), where either it considers it expedient or it is requested by the Secretary of State to do so, to give information, advice and assistance to the Secretary of State with respect to any matter in respect of which any function of the Secretary of State under the Gas Act 1995 is exercisable: s 13 (amended by virtue of the Utilities Act 2000 s 3(2)). As to the Secretary of State see PARA 601 note 1 ante.

7 Gas Act 1995 s 12(5A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 4).

8 Ie an application under the Gas Act 1995 s 12(1F) (as added): see the text and notes 13-14 infra.

9 Ibid s 12(1B) (as added: see note 3 supra).

10 Ibid s 12(1C) (as added: see note 3 supra).

11 Ibid s 12(1D) (as added: see note 3 supra).

12 Ibid s 12(1E) (as added: see note 3 supra).

13 Ie directions under ibid s 12 (as amended): see the text and notes 1-12 supra, 14-26 infra.

14 Ibid s 12(1F) (as added: see note 3 supra).

15 Ie their duties under ibid s 12(1E) (as added): see the text and note 12 supra.

16 Ibid s 12(1G) (as added: see note 3 supra).

17 Ibid s 12(2)(a) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 2).

18 Gas Act 1995 s 12(2)(b).

19 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

20 Gas Act 1995 s 12(2)(c).

21 For these purposes, a person is an associate of the owner of a gas processing facility if (1) both of them are companies; and (2) one of the companies has control of the other, or both are under the control of the same person or persons; and the Income and Corporation Taxes Act 1988 s 416(2)-(5) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299) applies the purposes of head (2) supra as it applies for the purposes of Pt XI (ss 414-422) (as amended) (close companies: see INCOME TAXATION vol 23(2) (Reissue) PARA 1296 et seq): Gas Act 1995 s 12(7).

22 See ibid s 12(3)(a).

23 See *ibid* s 12(3)(b).

24 *Ibid* s 12(3) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 3).

25 For these purposes, 'pipeline' has the same meaning as in the Pipe-lines Act 1962 (see s 65 (as amended)); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559): Gas Act 1995 s 12(6).

26 *Ibid* s 12(4).

27 *Ie* the duty in *ibid* s 12(1E) (as added): see the text and note 12 *supra*.

28 For the meaning of 'contravention' see PARA 779 note 3 *ante*.

29 Gas Act 1986 s 22(1) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 2 para 2(a), (b)); the Gas Act 1986 s 22 (as amended) applied by the Gas Act 1995 s 12(5) (substituted by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 3 para 4; amended by virtue of the Utilities Act 2000 s 3(2)).

30 Gas Act 1986 s 22(2) (as applied: see note 29 *supra*).

31 *Ie* brought in pursuance of *ibid* s 22(2) (as applied: see note 29 *supra*).

32 *Ibid* s 22(3) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 2 para 2(c); and as applied (see note 29 *supra*).

33 *Ie* by virtue of the Gas Act 1986 s 22(2) (as applied: see note 29 *supra*).

34 Gas Act 1986 s 22(4) (amended by virtue of the Utilities Act 2000 s 3(2); and as applied (see note 29 *supra*)).

UPDATE

834 Acquisition of rights to use gas processing facilities

NOTE 2--Definition of 'gas processing operation' in Gas Act 1995 s 12(6) further amended: Energy Act 2008 s 78(2)(a), Sch 6.

NOTE 21--Gas Act 1995 s 12(7) substituted: Energy Act 2008 s 78(2)(b).

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(5) SUPPLY AND USE OF GAS

(i) Powers and Duties of Gas Transporters

A. GENERAL DUTIES

835. General duties of gas transporters.

It is the duty of a gas transporter¹ as respects each authorised area² of his:

1301 (1) to develop and maintain an efficient and economical pipeline system for the conveyance of gas³; and

1302 (2) subject to head (1) above, to comply, so far as it is economical to do so, with any reasonable request for him:

81

121. (a) to connect to that system, and convey gas by means of that system to, any premises⁴; or

122. (b) to connect to that system a pipeline system operated by an authorised transporter⁵.

82

It is also the duty of a gas transporter:

1303 (i) to facilitate competition in the supply of gas⁶;

1304 (ii) to avoid any undue preference or undue discrimination:

83

123. (A) in the connection of premises, or a pipeline system operated by an authorised transporter, to any pipeline system operated by him; or

124. (B) in the terms on which he undertakes the conveyance of gas by means of such a system⁷.

84

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 For the meaning of 'authorised area' see PARA 805 note 3 ante.

3 For the meaning of 'gas' see PARA 802 ante.

4 For the meaning of references to the conveyance of gas through pipes to any premises see PARA 803 note 4 ante.

5 Gas Act 1986 s 9(1) (s 9 substituted by the Gas Act 1995 s 10(1), Sch 3 para 3; the Gas Act 1986 s 9(1) amended by the Utilities Act 2000 ss 79(1), (2), 108, Sch 6 Pt I paras 1, 2(1)). 'Authorised transporter' means a person authorised by a licence or exemption to convey gas through pipes to any premises or to a pipeline system operated by a gas transporter: Gas Act 1986 s 48(1) (definition added by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 19(a)). For the meanings of 'licence' and 'exemption' see PARA 789 notes 9, 19 ante. As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

6 Gas Act 1986 s 9(1A) (added by the Utilities Act 2000 s 79(1), (3)).

7 Gas Act 1986 s 9(2) (as substituted (see note 5 *supra*); amended by the Utilities Act 2000 s 79(1), (4)). As to the determination of disputes under these provisions see *PARA 965 post*; as to the enforcement of requirements imposed under them see *PARA 968 et seq post*; and as to penalties for the contravention of such requirements see *PARA 972 et seq post*.

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B. DUTY TO CONNECT CERTAIN PREMISES

836. The duty to connect certain premises.

Subject to the provisions of Part I of the Gas Act 1986¹ and any regulations made under those provisions, a gas transporter², on being required to do so by the owner³ or occupier⁴ of any premises in an authorised area⁵ of a gas transporter which:

- 1305 (1) are situated within 23 metres from a relevant main⁶ of the transporter; or
- 1306 (2) could be connected to any such main by a pipe supplied and laid, or proposed to be supplied and laid, by the owner or occupier of the premises,

must, in the case of premises:

- 1307 (a) falling within head (1) above, connect the premises to the relevant main, and supply and lay any pipe that may be necessary for that purpose; and
- 1308 (b) in the case of premises falling within head (2) above, connect the premises to the relevant main by the pipe there mentioned⁷.

Subject to the provisions of that Part of the 1986 Act and to any such regulations, where any premises are connected⁸, whether by virtue of the above provisions or otherwise, the gas transporter must maintain the connection until such time as it is no longer required by the owner or occupier of the premises⁹.

Where any person requires a connection in pursuance of the above provisions¹⁰, he must serve on the gas transporter a notice¹¹ specifying the premises in respect of which the connection is required and the day, not being earlier than a reasonable time after the service of the notice, upon which the connection is required to be made¹².

Where any pipe is supplied and laid by a gas transporter in pursuance of head (a) above, the cost of supplying and laying the pipe must, if and to the extent that the transporter so requires and the conditions of his licence¹³ so allow, be defrayed by the person requiring the connection¹⁴.

A gas transporter may require any person who requires a connection under head (b) above to accept any terms:

- 1309 (i) indemnifying the transporter in respect of any liability connected with the laying of the pipe;
- 1310 (ii) which it is reasonable in all the circumstances for that person to be required to accept¹⁵.

Where in pursuance of subsection (b) above a gas transporter connects any premises to a relevant main by a pipe supplied and laid by the owner or occupier of the premises, the cost of making the connection must, if and to the extent that the transporter so requires and the

conditions of his licence so allow, be defrayed by the person supplying and laying the pipe¹⁶. Where at any time a gas transporter connects any premises under head (b) above:

- 1311 (A) the pipe supplied and laid by the owner or occupier of the premises; and
- 1312 (B) any rights or liabilities of the owner or occupier which relate to the laying, maintenance, repair, alteration or removal of the pipe,

at that time vest in and become property, rights or liabilities of the transporter¹⁷.

It is the duty of a gas transporter to avoid any undue preference or undue discrimination in the connection of premises in pursuance of these provisions¹⁸.

1 The subject to the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante; the text and notes 2-18 infra; and PARA 837 post.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 'Owner', in relation to any premises or other property, includes a lessee, and cognate expressions are to be construed accordingly: Gas Act 1986 s 48(1).

4 There is no statutory definition of 'occupier' for these purposes; but it is apprehended that a person whose original entry onto premises was unlawful and forcible is not to be treated as an 'occupier', by analogy with the former duty to supply imposed by the Electric Lighting (Clauses) Act 1899: see *Woodcock v South Western Electricity Board* [1975] 2 All ER 545, [1975] 1 WLR 983.

5 For the meaning of 'authorised area' see PARA 805 note 3 ante.

6 Subject to the Gas Act 1986 s 10(13) (as substituted and amended), for these purposes 'relevant main', in relation to a gas transporter, means any distribution main in an authorised area of his which is being used for the purpose of giving a supply of gas to any premises in that area at a rate not exceeding 2,196,000 kilowatt hours a year: Gas Act 1986 ss 10(12), 48(2A)(a) (s 10 substituted by the Gas Act 1995 s 10(1), Sch 3 para 4; the Gas Act 1986 s 10(12)-(14) amended by the Utilities Act 2000 ss 80(1), (6), 108, Sch 6 Pt I paras 1, 2(1); the Gas Act 1986 s 48(2A)(a) added by the Gas Act 1995 Sch 3 para 54(4)). 'Distribution main', in relation to a gas transporter, means any main of the transporter through which the transporter is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk: Gas Act 1986 s 48(1) (definition amended by the Gas Act 1995 Sch 3 para 54(1)(b)). The Secretary of State may by order amend the Gas Act 1986 s 10(8) (as substituted and amended) (see PARA 837 post) or s 10(12) (as so substituted and amended), Sch 2A para 4 (as added; prospectively repealed) (see PARA 804 ante) or Sch 2B para 4, 8 or 16 (as added and amended) (see PARAS 857, 859, 864 post) by substituting such lower number of kilowatt hours as he considers appropriate: s 8A(1)(b) (added by the Competition and Service (Utilities) Act 1992 s 37; amended by the Gas Act 1995 Sch 3 para 2(1); prospectively amended, so as to remove the reference to the Gas Act 1986 Sch 2A para 4, by the Utilities Act 2000 s 108, Sch 8, as from a day to be appointed under s 110(2); at the date at which this title states the law, no such day had been appointed). Such an order may be made so as to provide for the number specified in one provision to differ from that for the time being specified in any of the other provisions: Gas Act 1986 s 8A(2) (as so added). As to the Secretary of State see PARA 601 note 1 ante; and as to the power to make orders generally see PARA 777 note 15 ante. For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

Any pipe which (1) vests in and becomes the property of a gas transporter by virtue of s 10(6) (as substituted and amended) (see the text and note 17 infra; and (2) would otherwise be a relevant main for these purposes, is to be such a main if, and only if, it has been declared to be such a main by the transporter: s 10(13) (as so substituted and amended). A gas transporter must make such a declaration in respect of each such pipe which is fit for the purpose of being a relevant main; and such a declaration is not capable of being revoked: s 10(14) (as so substituted and amended). As to the enforcement of this requirement see PARA 968 et seq post; and as to penalties for the contravention of this requirement see PARA 972 et seq post.

7 Ibid s 10(1), (2) (as substituted (see note 6 supra); s 10(1)-(3), (4), (5), (6), (7) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

8 For these purposes, 'connect', in relation to any premises, means connect to a relevant main of a gas transporter and 'connection' is to be construed accordingly: Gas Act 1986 s 10(2) (as substituted and amended: see notes 6-7 supra).

9 Ibid s 10(3) (as substituted and amended: see notes 6-7 supra). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

10 le in pursuance of ibid s 10(2) (as substituted and amended): see heads (a)-(b) in the text.

11 For the meaning of 'notice' see PARA 804 note 6 ante; and as to service of notices see PARA 980 post.

12 Gas Act 1986 s 10(4) (as substituted and amended: see notes 6-7 supra). As to the determination of disputes under these provisions see PARA 965 post.

13 For the meaning of 'licence' see PARA 789 note 9 ante.

14 Gas Act 1986 s 10(4) (as substituted and amended: see notes 6-7 supra).

15 Ibid s 10(3A) (added by the Utilities Act 2000 s 80(1), (2)). As to the determination of disputes under these provisions see PARA 965 post.

16 Gas Act 1986 s 10(5A) (added by the Utilities Act 2000 s 80(1), (3)). As to the determination of disputes under these provisions see PARA 965 post.

17 Gas Act 1986 s 10(6) (as substituted and amended (see notes 6-7 supra); also amended by the Utilities Act 2000 s 80(1), (4), (5)). As to the determination of disputes under these provisions see PARA 965 post.

18 See the Gas Act 1986 s 9(3)(a) (as substituted and amended); and PARA 835 ante.

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837. Exceptions to the duty to connect.

A gas transporter¹ is not required² to connect³, or maintain the connection of, any premises if:

- 1313 (1) the supply of gas⁴ to those premises is likely to exceed 2,196,000 kilowatt hours⁵ in any period of 12 months⁶;
- 1314 (2) he is prevented from doing so by circumstances not within his control⁷;
- 1315 (3) circumstances exist by reason of which his doing so would or might involve danger to the public, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect⁸; or
- 1316 (4) in the case of premises more than 23 metres from a relevant main of the transporter but which could be connected to any such main by a pipe supplied and laid, or proposed to be supplied and laid, by the owner⁹ or occupier¹⁰, the pipe supplied and laid by the owner or occupier of the premises is not fit for the purpose¹¹.

Where:

- 1317 (a) any person requires a connection to be made or maintained in pursuance of the gas transporter's statutory duty in that regard¹²;
- 1318 (b) the making or maintenance of the connection would involve a new or increased supply of gas to the premises in question;
- 1319 (c) the gas transporter reasonably expects that, if the connection were made or maintained, gas would be supplied to the premises in question at a rate exceeding 73,200 kilowatt hours a year¹³; and
- 1320 (d) the new or increased supply is such that the connection cannot be made or maintained without the laying of a new main, or the enlarging of an existing main, or the construction or enlarging of any other works required for the conveyance of gas,

the transporter may, if he thinks fit, refuse to make or maintain the connection unless that person enters into a written contract with the transporter to make such payments to him as he may reasonably require having regard to the expense to be incurred in laying or enlarging the main or constructing or enlarging the other works and the extent to which it is reasonable to expect that the transporter will recover that expense from elsewhere¹⁴. If and to the extent that regulations made by the Gas and Electricity Markets Authority ('GEMA')¹⁵ with the consent of the Secretary of State so provide, this exception is to have effect as if:

- 1321 (i) the reference in head (d) above to the laying of a new main, the enlarging of an existing main or the construction or enlarging of any other works required for the conveyance of gas included a reference to a new main which had previously been laid, an existing main which had previously been enlarged or any other works required for the conveyance of gas which had previously been constructed or enlarged;

1322 (ii) the reference to the expense to be incurred in laying or enlarging the main or constructing or enlarging the other works included a reference to the expense which had been so incurred; and

1323 (iii) the reference to the extent to which it is reasonable to expect that the transporter will recover that expense from elsewhere included a reference to the extent to which the transporter had been able so to recover that expense¹⁶.

Certain powers may in certain circumstances be conferred on the Secretary of State in relation to the supply of gas in an emergency¹⁷.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 Ie nothing in the Gas Act 1986 s 10(2) or (3) (as substituted and amended) (see PARA 836 ante) is to be taken as requiring him: see s 10(8), (9) (s 10 substituted by the Gas Act 1995 s 10(1), Sch 3 para 4; the Gas Act 1986 s 10(8)-(10) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

3 For the meaning of 'connect' for these purposes see PARA 836 note 8 ante.

4 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

5 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante. As to the Secretary of State's power to substitute a lower number of kilowatt hours see PARA 836 note 6 ante; and as to the Secretary of State see PARA 601 note 1 ante.

6 Gas Act 1986 s 10(8) (as substituted and amended: see note 2 supra), s 48(2A)(a) (added by the Gas Act 1995 Sch 3 para 54(4)). As to the determination of disputes under these provisions see PARA 965 post.

7 Gas Act 1986 s 10(9)(a) (as substituted and amended: see note 2 supra). As to the determination of disputes under these provisions see PARA 965 post.

8 Ibid s 10(9)(b) (as substituted and amended: see note 2 supra). As to the determination of disputes under these provisions see PARA 965 post.

9 For the meaning of 'owner' see PARA 836 note 3 ante.

10 Ie in the case of premises falling within the Gas Act 1986 s 10(1)(b) (as substituted and amended): see PARA 836 ante at head (1) in the text.

11 Ibid s 10(9)(c) (as substituted and amended: see note 2 supra). As to the determination of disputes under these provisions see PARA 965 post.

12 Ie in pursuance of ibid s 10(2) or (3) (as substituted and amended): see PARA 836 ante.

13 The Secretary of State has no power to substitute a lower number of kilowatt hours for these purposes.

14 Gas Act 1986 s 10(10) (as substituted and amended: see note 2 supra). As to the determination of disputes under these provisions see PARA 965 post.

15 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

16 Gas Act 1986 s 10(11) (as substituted (see note 2 supra); amended by virtue of the Utilities Act 2000 s 3(2)). As to the determination of disputes under these provisions see PARA 965 post. At the date at which this title states the law, no regulations had been made for these purposes.

17 See PARA 772 ante.

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838. Payment of charges for connection.

The Gas and Electricity Markets Authority ('GEMA')¹ may, with the consent of the Secretary of State², make provision by regulations for entitling a gas transporter³ to require a person requiring a connection⁴ to pay to the transporter an amount in respect of the expenses of the laying of the main used for the purpose of making that connection if:

- 1324 (1) the connection is required within the prescribed period⁵ after the laying of the main;
- 1325 (2) a person for the purpose of connecting whose premises the main was laid has made a payment to the transporter in respect of those expenses;
- 1326 (3) the amount required does not exceed any amount paid in respect of those expenses by such a person or by any person previously required to make a payment under the regulations; and
- 1327 (4) the transporter has not recovered those expenses in full⁶.

A gas transporter may require such a person to pay to the transporter such an amount if heads (1) to (4) above apply and if the gas transporter has made available to the person requiring the connection to a relevant main such information as may have been reasonably requested by that person for the purpose of ascertaining:

- 1328 (a) the expenses of the laying of the main;
- 1329 (b) the date of the laying of the main; and
- 1330 (c) the amounts paid in respect of those expenses by the persons for whom the main was laid, or by persons previously required to make a payment under the relevant regulations⁷.

In certain circumstances, a gas transporter may refuse to make or maintain a connection unless the person requiring it agrees to make reasonable payments towards the expenses of doing so⁸.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

² As to the Secretary of State see PARA 601 note 1 ante.

³ For the meaning of 'gas transporter' see PARA 805 ante.

⁴ I.e. requiring a connection in pursuance of the Gas Act 1986 s 10(2) (as substituted and amended): see PARA 836 ante. For the meaning of 'connection' see PARA 836 note 3 ante.

⁵ The prescribed period is 20 years: see the Gas (Connection Charges) Regulations 2001, SI 2001/3267, reg 3(a) (amended by SI 2002/1488).

⁶ Gas Act 1986 s 10(7) (substituted by the Gas Act 1995 s 10(1), Sch 3 para 4; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)). As to the determination of disputes under these provisions see PARA 965 post.

7 Gas (Connection Charges) Regulations 2001, SI 2001/3267, reg 3 (as amended: see note 5 *supra*). As to the determination of disputes under these provisions see *PARA 965 post*.

8 See the Gas Act 1986 s 10(10) (as substituted and amended); and *PARA 837 ante*.

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839. Power to require security.

Where any person requires a connection¹ to any premises situated within 23 metres from a relevant main² and a pipe falls to be supplied and laid³ by the gas transporter⁴, the transporter may require that person to give him reasonable security for the payment to the transporter of all money which may become due to him in respect of the supply and laying of the pipe⁵. If that person fails to give such security or, where any security given by him has become invalid or insufficient, fails to provide alternative or additional security, the transporter may if he thinks fit refuse to supply and lay the pipe for so long as the failure continues⁶.

Where any amount is deposited with a gas transporter by way of security in pursuance of these provisions, the transporter must pay interest on that amount, at such rate as may from time to time be fixed by the transporter with the approval of the Gas and Electricity Markets Authority ('GEMA')⁷, in respect of the period during which it remains in the hands of the transporter⁸.

1 For the meaning of 'connection' see PARA 836 note 3 ante (definition applied by the Gas Act 1986 s 11(3) (s 11 substituted by the Gas Act 1995 s 3 para 5)).

2 I.e. a connection in pursuance of the Gas Act 1986 s 10(2)(a) (as substituted and amended): see PARA 836 ante at head (a) in the text.

3 I.e. in pursuance of ibid s 10(2)(a) (as substituted and amended): see PARA 836 ante at head (a) in the text.

4 For the meaning of 'gas transporter' see PARA 805 ante.

5 Gas Act 1986 s 11(1)(a) (as substituted (see note 1 supra); s 11(1), (2) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the determination of disputes under these provisions see PARA 965 post.

6 Gas Act 1986 s 11(1)(b) (as substituted and amended: see notes 1, 5 supra). As to the determination of disputes under these provisions see PARA 965 post.

7 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Gas Act 1986 s 11(2) (as substituted and amended (see notes 1, 5 supra); further amended by virtue of the Utilities Act 2000 s 3(2)). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

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C. RESTRICTION ON USE OF CERTAIN PIPELINES

840. Restriction on use of certain pipelines for providing a supply.

Any pipeline¹ of a gas transporter² for the construction of which the execution of works had begun before the abolition of geographical exclusivity of the authorised areas of gas transporters³ and which is situated in an area which, immediately before that date, was the authorised area of a public gas transporter⁴ (the 'other transporter'), must not be used for the purpose of giving a supply of gas⁵ to any premises in that area at a rate less than 2,196,000 kilowatt hours⁶ per year unless the other transporter consents in writing to such use⁷. If the other transporter refuses or fails to give such consent, consent may instead be given in writing by the Gas and Electricity Markets Authority ('GEMA')⁸ where it considers it appropriate to do so⁹. Consent given under these provisions may not be withdrawn¹⁰.

1 For these purposes, 'pipeline' has the same meaning as in the Pipe-lines Act 1962 (see s 65 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559): Gas Act 1986 s 10A(4) (s 10A added by the Utilities Act 2000 s 77(1)).

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 le before 1 October 2001 (the commencement date of the Utilities Act 2000 s 76: see PARA 805 ante). For the meaning of 'authorised area' see PARA 805 note 3 ante.

4 As to the replacement of the term 'public gas transporter' with the term 'gas transporter' see *ibid* s 76(7); and PARA 805 ante.

5 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

6 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

7 Gas Act 1986 s 10A(1) (as added: see note 1 *supra*). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 Gas Act 1986 s 10A(2) (as added: see note 1 *supra*).

10 *Ibid* s 10A(3) (as added: see note 1 *supra*).

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D. WORKS, PIPELINES AND RIGHTS OVER LAND

(A) IN GENERAL

841. Compulsory acquisition of land by gas transporters.

The Secretary of State¹, after consultation with the Gas and Electricity Markets Authority ('GEMA')², may authorise a gas transporter³ to purchase compulsorily any land⁴, including any right over land, by the creation of new rights as well as the acquisition of existing ones⁵. Where any land has been so acquired, the gas transporter may not dispose of that land or of any interest in or right over it except with the consent of the Authority⁶. Where a gas transporter has acquired or proposes to acquire land or any right over land which is or forms part of a common, open space or a fuel or field garden allotment⁷ and other land is required for the purposes of being given in exchange for the land or right in question, the Secretary of State may authorise the transporter to purchase that other land compulsorily⁸. The Secretary of State also has specific powers to authorise the purchase by a gas transporter of land and rights for the purpose of underground gas storages⁹.

Statutory provisions relevant to compensation for the compulsory purchase of land apply to the compulsory acquisition by a gas transporter of a new right over land, with the necessary modifications, as they apply to compensation on the compulsory purchase of land and interests in land¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For the meaning of 'gas transporter' see PARA 805 ante.

4 Gas Act 1986 s 9(3)(a), Sch 3 para 1(1) (Sch 3 para 1(1), 3 amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)).

5 Gas Act 1986 Sch 3 para 1(2). The Acquisition of Land Act 1981 applies to a compulsory purchase by a gas transporter of land or rights subject, in the case of compulsory acquisition of a right by the creation of a new right, to s 28, Sch 3 (as amended): Gas Act 1986 Sch 3 para 4 (amended by virtue of the Utilities Act 2000 s 76(7)). The Compulsory Purchase Act 1965 has effect with the modifications necessary to make it applicable to the compulsory acquisition by a gas transporter of rights over land: see the Gas Act 1986 Sch 3 para 5 (amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(2)). For this purpose, specific adaptations are made of the Compulsory Purchase Act 1965 ss 7-9 (as amended), s 11 (as amended), s 20 (as amended), s 22, Sch 1 para 10(3), Sch 2 para 2(3), Sch 4 paras 2(3), 7(2): see the Gas Act 1986 Sch 3 paras 6-12 (amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(2)); and see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

6 Gas Act 1986 Sch 3 para 3 (as amended: see note 4 supra).

7 Ie for the purposes of the Acquisition of Land Act 1981: Gas Act 1986 Sch 3 para 2(1)(a). 'Common' includes any land subject to be inclosed under the Inclosure Acts 1845 to 1882, and any town or village green; 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or a disused burial ground; and 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: Acquisition of Land Act 1981 s 19(4) (as applied: see note 5

supra). The Secretary of State could properly consider the planned or likely developments or future occurrences which it was intended or predicted would or might affect either the acquired land or the land given up in deciding whether or not to issue a certificate under s 19: *Greenwich London Borough Council v Secretary of State for the Environment, Yates v Secretary of State for the Environment* [1993] Env LR 344, (1993) Times, 2 March. As to the Inclosure Acts 1845 to 1882 see COMMONS vol 13 (2009) PARA 419.

8 Gas Act 1986 Sch 3 para 2(1)(a), (2) (amended by the Gas Act 1995 s 10(1) Sch 3 para 56(c); and by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). The other land may also be acquired by agreement: Gas Act 1986 Sch 3 para 2(2) (as so amended).

9 See PARAS 997-1000 post.

10 Gas Act 1986 Sch 3 para 13 (amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(2)). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

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842. Gas mains and other works in streets, etc.

A gas transporter¹ may² execute the following kinds of works, that is to say:

- 1331 (1) placing pipes, conduits, service pipes³, cables, sewers and other works, and pressure governors⁴, ventilators and other apparatus, in or under any street⁵; and
- 1332 (2) from time to time repairing, altering or removing any such works or apparatus placed in or under any street, whether by him or by any other person⁶.

A gas transporter may⁷ also execute any works requisite for or incidental to the purposes of any such works, including opening or breaking up any street or any sewers, drains or tunnels within or under any street and removing or using all earth and materials in or under any street⁸. In the exercise of these powers a gas transporter is required to do as little damage as possible and to make compensation for any damage which is done⁹; and the Secretary of State¹⁰ must by regulations provide that, in such cases and to such extent as may be provided by the regulations, a gas transporter must pay, by way of compensation for any loss sustained by any person in consequence of the exercise of those powers, such sum as may be determined in accordance with the regulations¹¹.

A gas transporter may erect any one or more structures for housing any apparatus in any street with the consent of the street authority¹² and such consent may not be unreasonably withheld¹³. Any question as to whether or not such consent is unreasonably withheld is to be determined by arbitration¹⁴. For this purpose, consent is treated as being unreasonably withheld to the extent that the withholding is based on the ground that the structure ought to be erected elsewhere than in a street, if the transporter shows either that there is no reasonably practicable alternative to erecting it in a street or that all such alternatives would, on the balance of probabilities, involve greater danger to life or property¹⁵.

These provisions do not, however, empower a gas transporter to lay down or place any pipe or other works into, through or against any building or in any land not dedicated to the public use¹⁶, except, in relation to any street which has been laid out but not dedicated to the public use, for the sole purpose of conveying gas to any premises which abut on the street¹⁷. Except in cases of emergency arising from defects in any pipes or other works, certain streets¹⁸ may not be opened or broken up without the consent of the relevant authority¹⁹. The consent is not to be unreasonably withheld²⁰ and any question as to whether it has been is to be determined by arbitration²¹. Gas transporters may exercise these emergency powers notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant²². Other authorities²³, when carrying out their own works which may interfere with the works or property of a gas transporter, may only do so with that transporter's consent²⁴.

The existence of these statutory powers does not entitle a gas transporter to construct works or carry out certain other operations²⁵ under or over any part of the seashore lying below high water mark of ordinary spring tides in such a way that obstruction or danger to navigation is caused or is likely to result, unless the necessary statutory consent²⁶ has been obtained²⁷.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 le subject to the Gas Act 1986 s 9(3)(b), Sch 4 paras 1(2)-6 (as amended): see the text and notes 3-27 *infra*.

3 'Service pipe' means a pipe, other than a distribution main of a gas transporter, which is used for the purpose of conveying gas from such a main to any premises, and includes part of any such pipe: *ibid* s 48(1) (definition added by the Gas Act 1995 s 10(1), Sch 3 para 54(1)(j); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

4 'Pressure governors' are not defined in the Gas Act 1986; but see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F(b) (as amended), referring to 'apparatus for measuring, recording, controlling or varying the pressure, flow or volume of gas'; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 341.

5 'Street' means, irrespective of whether it is a thoroughfare, the whole or any part of any highway, road, lane, footway, alley or passage, any square or court and any land laid out as a way whether it is for the time being formed as a way or not: see the New Roads and Street Works Act 1991 s 48(1) (definition applied by the Gas Act 1986 s 9(3)(b), Sch 4 para 6 (respectively amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 119(1), (6)).

6 Gas Act 1986 Sch 4 para 1(1) (amended by the New Roads and Street Works Act 1991 Sch 8 para 119(2); the Gas Act 1995 s 10(1), Sch 3 para 57(2); the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)).

7 See note 2 *supra*.

8 Gas Act 1986 Sch 4 para 1(2) (amended by the New Roads and Street Works Act 1991 Sch 8 para 119(2); the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)).

9 Gas Act 1986 Sch 4 para 1(3) (amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)).

10 As to the Secretary of State see PARA 601 note 1 *ante*.

11 Gas Act 1986 Sch 4 para 1(4) (Sch 4 para 1(4), (5) added by the Gas Act 1995 Sch 3 para 57(3); amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)). No regulations may be so made which amend, or re-enact with modifications, regulations previously so made: Gas Act 1986 Sch 4 para 1(5) (as so added). In the exercise of this power, the Secretary of State has made the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996, SI 1996/491, which came into force on 22 March 1996 and have effect in relation to relevant works begun on or after that date: reg 1. Those regulations provide that where a gas transporter executes any relevant works which are not completed within the period of 28 days beginning with the day on which they were begun ('the works in question'), and any person conducting a small business, as respects that business, sustains, in consequence of the works in question, a loss of turnover during the period mentioned in reg 5(2), the gas transporter must pay to that person, by way of compensation for such loss, an amount calculated as provided in reg 5(3) unless the amount so calculated is less than £500 or does not exceed 2.5% of the annual turnover of the business: reg 5(1) (amended by virtue of the Utilities Act 2000 s 76(7)). The period referred to is a period of not less than 28 days beginning with the day on which the works in question were begun or, if later, either the day on which such loss was first so sustained or, where different, which immediately followed that on which the small business was last open for business before the day on which such loss was first so sustained, and ending with the day on which such loss was last so sustained or, where different, which immediately preceded that on which the small business was first open for business after the day on which such loss was last so sustained or, if earlier, the day ten days after the completion of the works in question: Gas (Street Works) (Compensation of Small Businesses) Regulations 1996, SI 1996/491, reg 5(2). The amount of the compensation must be calculated by determining A and B and then subtracting B from A, the amount so arrived at being the amount of the compensation, where (1) 'A' is the amount of the profit or loss that could reasonably have been expected to accrue to the small business during the period mentioned in reg 5(2) if the works in question had not been executed; and (2) 'B' is the amount of the profit or loss that accrued to that business during that period, a loss being treated as a negative amount: reg 5(3). No compensation referable to particular relevant works is so payable to a person unless (a) within three months of the completion of those works, he has reserved the right to claim such compensation by written notice, identifying the works in question, given to the transporter by which those works were executed; and (b) within six months of the completion of those works, he has provided that transporter with a statement of facts and a summary of evidence (including, where appropriate, extracts from accounts and other documents) sufficient to establish, *prima facie*: (i) that the person claiming compensation was such a person as is mentioned in reg 5(1)(b) who, as respects a small business, sustained such loss as is there mentioned; (ii) the annual turnover of the small business as respects which that loss was sustained and the annual turnover of any like business referred to in reg 3(2)(a); (iii) the period satisfying the criteria in reg 5(2) during which that loss was sustained; and (iv) the amount of the compensation for that loss calculated as provided in reg 5(3): reg 5(4). 'Relevant works' means street works within the meaning of the New Roads and Street Works Act 1991 s 48(3) (ie works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence, namely placing apparatus, or inspecting, maintaining, adjusting, repairing, altering or renewing

apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street), including works in respect of the reinstatement of a street required by s 70 (as amended); except that, where works in respect of the interim reinstatement of a street have been completed, it does not include any subsequent works in respect of the permanent reinstatement of the street: see the Gas (Street Works) (Compensation of Small Businesses) Regulations 1996, SI 1996/491, reg 2(1).

For these purposes, 'small business' means a business conducted at particular premises the annual turnover of which (determined as provided in reg 4) does not exceed the amount determined as mentioned in reg 3(4): reg 3(1). A business is not a small business for these purposes if the person conducting that business ('the business in question'), or any related person, conducts one or more like businesses at premises other than those at which the business in question is conducted, and the annual turnover of the business in question, when aggregated with the annual turnovers of each of the like businesses, exceeds the amount determined as mentioned in reg 3(4): reg 3(2). For the meaning of 'related person' see reg 3(3). For the purposes of the application of the 1996 Regulations in relation to particular relevant works, the amount referred to in reg 3(1) or (2) must be determined by reference to the year beginning with 1 March within which the date on which the relevant works in question were completed falls ('the year in question') and is to be, in the case of the year beginning with 1 March 1996, £1,000,000, or in the case of a subsequent year, that amount multiplied by the appropriate factor mentioned in reg 3(5) except that any fraction of £1,000 in that product is to be disregarded; and that factor is to be obtained by dividing the retail price index for the first month of the year in question by the retail price index for March 1996: reg 3(4), (5). As to the retail price index see reg 3(6). The annual turnover of a business must be determined (A) in the case of a business conducted by a person other than a company, by reference to the period of a year in respect of which the accounts of the business (or, if the business is part of a larger business and there are no separate accounts, the accounts of that larger business) are drawn up last ending before the date on which the relevant works in question were completed; or (B) in the case of a business conducted by a company, by reference to the financial year of that company last ending before that date, except that, in the case of a business conducted by a person other than a company, if the accounts for the period last ending before the date on which the relevant works in question were completed were for a period longer or shorter than a year or, in the case of a business conducted by a company, the financial year of that company last so ending was a period longer or shorter than a year, the annual turnover of the business must be determined proportionately by reference to the longer or shorter period in question; and where the business was not conducted throughout the period by reference to which the annual turnover would otherwise fall to be determined, or there were no accounts for a period ending, or no financial year ending, before the relevant works in question were completed, the annual turnover thereof must be taken to be such as, on reasonable assumptions and having regard to such information as is available, appears to be likely to be the annual turnover of the business: reg 4.

12 'Street authority' means the highway authority if the street is a maintainable highway and the street managers if it is not: New Roads and Street Works Act 1991 s 49(1) (applied by the Gas Act 1986 Sch 4 para 6 (as amended: see note 5 supra)). For the meanings of 'maintainable highway' and 'street managers' see the New Roads and Street Works Act 1991 ss 49(4), 86(1); and HIGHWAYS, STREETS AND BRIDGES.

13 Gas Act 1986 Sch 4 para 2(1) (amended by the New Roads and Street Works Act 1991 Sch 8 para 119(3); and by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)).

14 See the Gas Act 1986 Sch 4 para 2(2). Arbitration is to be by a single arbitrator appointed by the parties or, in default of agreement, by the Gas and Electricity Markets Authority ('GEMA'): Sch 4 para 2(2) (amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

15 Gas Act 1986 Sch 4 para 2(3) (amended by the Gas Act 1995 s 10(1), Sch 3 para 57(1)(b)).

16 Gas Act 1986 Sch 4 para 3(1) (amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)). As to rights of compulsory acquisition see PARA 841 ante.

17 Gas Act 1986 Sch 4 para 3(2) (amended by the New Roads and Street Works Act 1991 Sch 8 para 119(4); the Gas Act 1995 Sch 3 para 57(4); and the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1)). For the meaning of 'gas' see PARA 802 ante.

18 Is a street which (1) does not constitute for the purposes of the Highways Act 1980 a highway or part of a highway maintainable at the public expense; and (2) is under the control or management of, or maintainable by, any railway authority or navigation authority: Gas Act 1986 Sch 4 para 4(1) (Sch 4 para 4(1), (2) amended by the New Roads and Street Works Act 1991 Sch 8 para 119(2)).

19 Is the street, railway or navigation authorities: Gas Act 1986 Sch 4 para 4(1) (as amended: see note 18 supra). For the meaning of 'street authority' see note 12 supra. 'Railway authority' means any person or body of persons, whether incorporated or not, authorised by any enactment to construct, work or carry on a railway; and 'navigation authority' means any person or body of persons, whether incorporated or not, authorised by or

under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock: Sch 4 para 6.

20 Ibid Sch 4 para 4(1) (as amended: see note 18 supra).

21 See ibid Sch 4 para 4(2) (as amended: see note 18 supra). Arbitration is to be by a single arbitrator appointed by the parties or, in default of agreement, by the authority: Sch 4 para 4(2) (amended by virtue of the Utilities Act 2000 s 3(2)).

22 See the Electricity Act 1989 s 10(1), Sch 4 para 4(1)(a) (as amended); and PARA 1288 post. Licence holders under that Act may carry out similar works notwithstanding that they involve a temporary or permanent alteration of any gas pipe operated by a gas transporter: see Sch 4 para 3(1)(b) (as amended); and PARA 1288 post.

23 Eg the Environment Agency and water and sewerage undertakers.

24 See the Water Industry Act 1991 s 183, Sch 13 para 1(5)(e) (as amended); the Water Resources Act 1991 s 178, Sch 22 para 1(4)(e) (as amended); the Land Drainage Act 1991 s 67, Sch 6 para 1(1)(e) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARAS 490, 576.

25 For the specified operations see the Coast Protection Act 1949 s 34(1) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 533.

26 The necessary consent is that of the Secretary of State, or, in relation to Wales, of the Welsh Ministers: see ibid s 34(1) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 533.

27 See the Gas Act 1986 Sch 4 para 5(2).

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843. Restrictions on construction of pipelines.

A gas transporter¹ must not at any time execute within 23 metres from a pipeline² of another gas transporter (the 'other transporter') any works for the construction of a pipeline³ unless:

- 1333 (1) he has given the other transporter a notice⁴ stating that he intends to construct the pipeline;
- 1334 (2) he has consulted with that transporter as to exactly where the proposed pipeline is to be located, having regard to the location of other pipelines;
- 1335 (3) he has consulted with that transporter as to the manner in which the safety of the pipeline is to be secured and any escapes of gas, actual or suspected, from the pipeline are to be dealt with; and
- 1336 (4) where the existing pipeline is a relevant main⁵ of the other transporter, that transporter has consented in writing to the construction of the proposed pipeline, either unconditionally or subject to conditions⁶;

and conditions imposed under head (4) above may relate to matters arising after the construction of the proposed pipeline, including the use to be made of the pipeline⁷.

The above provisions do not apply if the proposed pipeline is required to enable a gas transporter to comply with any duty to connect premises imposed⁸ by the relevant statutory provision⁹.

If the other transporter:

- 1337 (a) refuses or fails to give consent under head (4) above; or
- 1338 (b) gives such consent subject to conditions,

consent may instead be given in writing by the Gas and Electricity Markets Authority ('GEMA')¹⁰ where it considers it appropriate to do so¹¹. Such consent may only be given unconditionally or, in a case falling within head (b) above, subject to the same conditions as were imposed by the other transporter¹².

A condition imposed on a gas transporter under the above provisions is enforceable by civil proceedings by the other transporter for an injunction or for any other appropriate relief¹³.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 For these purposes, 'pipeline' has the same meaning as in the Pipe-lines Act 1962 (see s 65 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559); Gas Act 1986 s 22A(3) (s 22A added by the Gas Act 1995 s 10(1), Sch 3 para 20).

3 For these purposes, 'construction', in relation to a pipeline, includes placing (Gas Act 1986 s 22A(3) (as added: see note 2 supra)); but the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipeline and the carrying out of surveying operations for the purpose of settling the route of a proposed pipeline is to be deemed not to constitute the execution of works for the construction of a pipeline (s 22A(4) (as so added)).

4 Such a notice must (1) specify the points between which the proposed pipeline is to run and be accompanied by a map (drawn to an appropriate scale) on which is delineated the route which it is proposed to take; (2) specify the length, diameter and operating pressure of the proposed pipeline and the kind of gas which it is designed to convey; and (3) contain such other particulars (if any) as may be prescribed: *ibid* s 22A(2) (as added: see note 2 *supra*). For the meaning of 'notice' see *PARA 804* note 6 *ante*; for the meaning of 'gas' see *PARA 802* *ante*; and for the meaning of 'prescribed' see *PARA 798* note 5 *ante*. At the date at which this title states the law, no particulars had been prescribed for these purposes.

5 For these purposes, 'relevant main' has the meaning given by *ibid* s 10(12) (as substituted and amended) (see *PARA 836* note 6 *ante*): s 22A(3) (as added (see note 2 *supra*); definition amended by the Utilities Act 2000 s 78(1), (4)).

6 Gas Act 1986 s 22A(1) (as added (see note 2 *supra*); amended by the Utilities Act 2000, ss 78(1), (2), 108, Sch 8). As to the enforcement of the requirements so imposed see *PARA 968* *et seq post*; and as to penalties for the contravention of such requirements see *PARA 972* *et seq post*.

7 Gas Act 1986 s 22A(1B) (s 22A(1A)-(1E) added by the Utilities Act 2000 s 78(1), (3)).

8 *le* any duty imposed by the Gas Act 1986 s 10(2) (as substituted and amended): see *PARA 836* *ante*.

9 *Ibid* s 22A(1A) (as added: see note 7 *supra*).

10 As to the establishment and general functions of the Gas and Electricity Markets Authority see *PARA 708* *et seq ante*; and as to the use of the abbreviation 'GEMA' in this context see *PARA 708* note 5 *ante*.

11 Gas Act 1986 s 22A(1C) (as added: see note 7 *supra*).

12 *Ibid* s 22A(1D) (as added: see note 7 *supra*).

13 *Ibid* s 22A(1E) (as added: see note 7 *supra*).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(i) Powers and Duties of Gas Transporters/D. WORKS, PIPELINES AND RIGHTS OVER LAND/(B) Environmental Impact Assessment of Pipeline Works/844. Introduction.

(B) ENVIRONMENTAL IMPACT ASSESSMENT OF PIPELINE WORKS

844. Introduction.

Pipeline works¹ by a gas transporter² required for the purposes of its undertaking and consisting of the laying underground of mains, pipes or other apparatus³ may require environmental impact assessment under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999⁴, as discussed below⁵. Other pipeline works⁶ may require such assessment under the Pipeline Works (Environmental Impact Assessment) Regulations 2000⁷ or the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁸, which are discussed elsewhere in this work⁹.

1 For these purposes, 'pipeline works' means the carrying out of building, engineering or other operations in land for the construction of a pipeline, not being emergency works; 'pipeline' means a pipeline, other than a small service pipe, within the meaning of the Pipe-lines Act 1962 s 65 (as amended) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 559) which is intended to convey gas; 'construction', in relation to a pipeline, includes placing and cognate expressions are to be construed accordingly; 'in', in a context referring to a pipeline or works or operations in land, includes a reference to a pipeline, works or operations under, over, across, along or upon it; 'small service pipe' means a pipeline, other than a distribution main of a gas transporter, not exceeding 500 metres in length which has a design operating pressure not exceeding 2 bar gauge and the purpose of which is the conveyance of gas from such a main to any premises, and includes part of any such pipeline; and 'distribution main', in relation to a gas transporter, means any main of the transporter through which the transporter is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (amended by virtue of the Utilities Act 2000 s 76(7)). 'Emergency works' means any works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent which are likely to cause danger to persons or property: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1).

'Gas' means (1) any substance in a gaseous state which consists wholly or mainly of (a) methane, ethane, propane, butane, hydrogen or carbon monoxide; (b) a mixture of two or more of those gases; or (c) a combustible mixture of one or more of those gases and air; and (2) any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013.25 millibars and is specified in an order made by the Secretary of State under the Gas Act 1986: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1). As to the Secretary of State see PARA 601 note 1 ante.

2 For the purposes of the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended), 'gas transporter' means the holder of a licence under the Gas Act 1986 s 7(1) (as substituted and amended) (see PARA 805 ante) except where the holder is acting otherwise than for purposes connected with (1) the carrying on of activities authorised by the licence; (2) the conveyance of gas through pipes which (a) are situated in an authorised area of his; or (b) are situated in an area which was an authorised area of his, or an authorised area of a previous holder of the licence, and were so situated at a time when it was such an area; or (3) the conveyance through pipes of gas which is in the course of being conveyed to or from a country or territory outside Great Britain: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (as amended: see note 1 supra). 'Authorised area', in relation to a gas transporter, means so much of any area specified in the licence granted to the transporter concerned under the Gas Act 1986 s 7 (as substituted and amended) or an extension of such licence as is not specified in a subsequent licence or extension granted under s 7 (as substituted and amended) to another person: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (as so amended).

3 ie pipeline works which fall within the class of development described as permitted development in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17,

Class F(a) (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 341. As to development not permitted by Sch 2 Pt 17, Class F (as amended) see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 343; as to the general conditions subject to which such development is permitted see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 255; as to the special conditions subject to which such development is permitted see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 342; and as to directions restricting permitted development see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 258 et seq.

4 See the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended); and PARA 845 et seq post. The 1999 Regulations in their amended form implement EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) (as amended by EC Council Directive 97/11/EC (OJ L73, 3.3.97, p 5) and European Parliament and EC Council Directive 2003/35 (OJ L156, 25.6.2003, p 17)) on the assessment of the effects of certain public and private projects on the environment in so far as it relates to proposed pipeline works by a gas transporter. The 1999 Regulations were made as the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, but are retitled as the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, by virtue of the Utilities Act 2000 s 76(7): see PARA 805 ante.

The Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as so amended) apply to pipeline works which fall within the class of development described as permitted development in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F(a) (as amended) (see note 3 supra) unless they were commenced by a gas transporter, or a gas transporter had invited tenders for their execution, before 15 July 1999 (see the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 1(1), (3)(a) (as so amended)) and except to the extent specified by reg 4 (pipeline works subject to planning permission in England and Wales: see PARA 845 post) (see reg 1(3)(b)). They do not extend to Northern Ireland: reg 1(2).

5 See PARA 845 et seq post.

6 For the purposes of the Pipeline Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, 'pipeline works' means the carrying out of building, engineering or other operations in land for the construction of a pipeline; 'pipeline' means a pipeline within the meaning of the Pipe-lines Act 1962 s 65 (as amended) the purpose of which is the conveyance of oil, gas or chemicals; 'in', in a context referring to a pipeline or works or operations in land, includes a reference to a pipeline, works or operations under, over, across, along or upon it; and 'construction', in relation to a pipeline, includes placing: Pipeline Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928, reg 2.

7 *Ie* under *ibid* regs 3-15, Schs 1, 2 (amended by SI 2007/1992): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) PARA 567.

8 *Ie* the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 488 et seq.

Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres are 'Schedule 1 developments' for the purposes of those regulations (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 489 at head (16) in the text); and oil and gas pipeline installations, unless they are Schedule 1 developments, where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge, are 'Schedule 2 developments' for those purposes (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 490 at head (10)(k) in the text).

As to the interaction between those regulations and the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended) see PARA 845 the text and notes 26-34 post.

9 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 567; TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 488 et seq.

UPDATE

844 Introduction

NOTE 4--Directive 85/337 further amended: European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114).

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845. Requirement for environmental statement.

Where a gas transporter¹ proposes to carry out any pipeline works²:

1339 (1) in respect of a pipeline with a diameter of more than 800 millimetres and a length of more than 40 kilometres or an extension to a pipeline which in itself meets those thresholds³, he must not⁴ commence such works without first giving the Secretary of State⁵ a notice of preparation of environmental statement⁶;

1340 (2) other than works of the kind described in head (1) above, in respect of a pipeline the whole or any part of which, or the whole or any part of any working width⁷ for which, will be within a sensitive area⁸, or which will have a design operating pressure exceeding 7 bar gauge⁹, he must not¹⁰ commence such works unless either:

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125. (a) in response to a request from the gas transporter, the Secretary of State has made an environmental determination¹¹ and that determination has not at the time of commencement of such works ceased to have effect¹²; or

126. (b) the gas transporter has given the Secretary of State a notice of preparation of environmental statement¹³.

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In any case, other than in response to a request for an environmental determination¹⁴, where it appears to the Secretary of State, having taken into account the selection criteria¹⁵, that a gas transporter proposes to carry out or is carrying out any pipeline works which are EIA development, and the gas transporter has not given a notice of preparation of environmental statement, the Secretary of State must¹⁶, giving his reasons for his opinion, in writing direct the gas transporter to prepare an environmental statement¹⁷, and must send a copy of the direction to the relevant planning authority¹⁸ and to such other persons as he thinks fit, together with, where necessary, documents sufficient to identify the proposed pipeline works and the land in which¹⁹ the proposed pipeline works would be carried out²⁰. Before making such a direction, the Secretary of State must consult the gas transporter who is proposing to carry out or is carrying out such works and such other persons as he thinks fit²¹.

Where:

1341 (i) the Secretary of State determines in response to a request for an environmental determination that the pipeline works in question are EIA development;

1342 (ii) the Secretary of State directs that an environmental statement be prepared²²; or

1343 (iii) the gas transporter gives the Secretary of State a notice of preparation of environmental statement,

the gas transporter must not commence or continue the pipeline works in question without first making an application for and obtaining the consent of the Secretary of State²³ to the carrying out of those works²⁴. Such an application for the consent of the Secretary of State to the carrying out of proposed pipeline works must be made by letter addressed to the Secretary of State, must be accompanied by a copy of the environmental statement and must include, or be accompanied by documents containing, the following information:

- 1344 (A) the name and address of the gas transporter;
- 1345 (B) the location of the proposed pipeline works; and
- 1346 (C) a brief description of the nature and purpose of the proposed pipeline works and of the main environmental consequences referred to in the environmental statement relating to the works²⁵.

The above provisions do not, however, apply, or will, as the case may be, cease to apply, in respect of any pipeline works in relation to which a direction has been given²⁶ that the deemed planning permission granted in respect of them²⁷ is not to apply²⁸. Where, in relation to proposed pipeline works, the Secretary of State makes an environmental determination or gives a direction that an environmental statement is required²⁹ before the date on which a direction is given that such deemed planning permission is not to apply³⁰, that determination or that direction that an environmental statement is required is, notwithstanding any provisions to the contrary in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999³¹, conclusive for the purposes of those regulations of the question of whether the pipeline works in question are, or are not, EIA development within the meaning of those regulations³² and is to be treated for the purposes of those regulations as if it were a direction by the Secretary of State under the relevant provision³³ of those regulations³⁴.

1 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

2 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and as to the pipeline works to which these provisions apply see PARA 844 note 4 ante. See also, however, the text and notes 26-34 infra.

3 I.e. pipeline works of the kind described in the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, Sch 3 Pt 1 (substituted by SI 2007/1996) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

4 I.e. subject to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, regs 3(5), 4 (as amended): see the text and notes 22-24, 26-34 infra.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(1) (as amended: see note 3 supra). 'Notice of preparation of environmental statement', in relation to proposed pipeline works, means a notice to the Secretary of State (1) stating that the gas transporter proposing to carry out the works in question will prepare and submit to the Secretary of State an environmental statement relating to those works; (2) including the information necessary to identify, or being accompanied by documents identifying, the proposed pipeline works, the land in which (see PARA 844 note 1 ante) the proposed pipeline works would be carried out and the nature and purpose of the works; and (3) indicating the main environmental consequences to which the gas transporter proposes to refer in his environmental statement: reg 2(1) (as so amended). 'Notice' means notice in writing and cognate expressions are to be construed accordingly (reg 2(1)); and references in the 1999 Regulations to proposed pipeline works include, in the case of pipeline works in respect of which the Secretary of State has made a direction under reg 3(3) (as amended) (direction that an environmental statement is required: see the text and notes 14-20 infra) after the works in question have already been commenced, references to any pipeline works necessary for the completion of those works (reg 2(2)). For the meaning of 'environmental statement', and as to the contents of such statements, see PARA 846 post.

Any notice or other document required or authorised to be given to or served on any person under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended) may be given or served by (a) delivering it to that person; or (b) leaving it at his proper address; or (c) sending it to his proper address by the recorded delivery service: reg 19(1). Any notice or other document required or authorised to be given to or served on any body corporate or unincorporated association other than a

partnership is to be duly given to or served on the secretary or clerk or other similar officer of that body: reg 19(2). Any notice or other document required or authorised to be given to or served on any partnership may be given to or served on a partner or a person having the control or management of the partnership business: reg 19(3). Subject to reg 19(5), (6), for these purposes the proper address of any person to whom or on whom any such notice or document is to be given or served is his last known address except that such address is to be (i) in the case of a body corporate or its secretary or clerk, the address of the registered office or principal office of the body corporate; (ii) in the case of an unincorporated association (other than a partnership) or its secretary or clerk, the address of the principal office of the association; and (iii) in the case of a partnership or a person having control or the management of the partnership business, the address of the principal office of the partnership; and for these purposes the principal office of a company registered outside Great Britain or of a partnership carrying on business outside Great Britain is its principal office within Great Britain: reg 19(4). If the person to be given or served with any such notice or document has furnished the person by whom the notice or document is to be given or served with an address pursuant to any provision of the 1999 Regulations, that address must also be treated for these purposes as his proper address: reg 19(5). Any notice or other document relating to pipeline works which is to be given to or served on a gas transporter, who has for the purposes of the Gas Act 1986 s 46 (as amended) (see PARA 980 post) fixed particular offices as appropriate offices in relation to notices concerning matters arising in particular areas, may be given or served by delivering it at or sending it in a prepaid letter to any office which is an appropriate office in relation to notices concerning matters arising in an area in which any part of the pipeline works is to be carried out: reg 19(6) (as so amended).

7 'Working width' means, in relation to a proposed pipeline, the area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for the construction or installation of the pipeline: *ibid* reg 2(1). For the meaning of 'construction' see PARA 844 note 1 ante.

8 'Sensitive area' means any of the following: (1) land notified under the Wildlife and Countryside Act 1981 s 28(1) (as substituted) (sites of special scientific interest: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674 et seq); (2) an area to which the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10, Table para (u)(ii) (as amended) applies (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 475 at head (21)(b) in the text); (3) land to which the Wildlife and Countryside Act 1981 s 29(3) (now repealed) (nature conservation orders) applied; (4) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq); (5) the Broads (see WATER AND WATERWAYS vol 101 (2009) PARA 735); (6) a property appearing on the World Heritage List kept under the UNESCO Convention for the Protection of the World Cultural and Natural Heritage (Cmnd 9424) (1972) art 11(2); (7) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010); (8) an area of outstanding natural beauty designated as such by an order made under the National Parks and Access to the Countryside Act 1949 s 87 (repealed) or the Countryside and Rights of Way Act 2000 s 82 (designation of areas of outstanding natural beauty) as confirmed by the Secretary of State, the National Assembly for Wales or the relevant Welsh Minister; (9) a European site within the meaning of the Conservation (Natural Habitats, etc) Regulations 1994, 1994/2716, reg 10 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729); Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (amended by virtue of the Countryside and Rights of Way Act 2000 s 93, Sch 15 Pt II).

9 *Ie* pipeline works of the kind described in the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, Sch 3 Pt 2.

10 See note 4 *supra*.

11 'Environmental determination', in relation to any proposed pipeline works, means a determination by the Secretary of State as to whether the proposed works are EIA development; and 'EIA development' means pipeline works which are likely to have significant effects on the environment by virtue of factors such as their nature, size or location: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1). As to such determinations see PARA 846 post. 'Effect' includes, except where the context otherwise requires, any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect: reg 2(1).

12 *Ie* in accordance with *ibid* reg 6(8) (determination to cease to have effect where works not commenced within five years): see PARA 846 post.

13 *Ibid* reg 3(2) (as amended: see note 3 *supra*).

14 'Request for an environmental determination' means a request for an environmental determination which is made to the Secretary of State in writing and is accompanied by the appropriate particulars; and 'appropriate particulars' means, in relation to a request for an environmental determination or a request under reg 7(1) (as amended) (pre-application opinion on content of environmental statement: see PARA 848 post): (1) a plan sufficient to identify the proposed pipeline works and the land in which the proposed pipeline works would be carried out; and (2) a brief description of the nature and purpose of the proposed pipeline works and what the gas transporter considers to be likely to be their main effects on the environment: *ibid* reg 2(1) (as amended:

see note 3 supra). The gas transporter making the request must supply the Secretary of State with such number of additional copies of the plan accompanying the request as the Secretary of State may reasonably require: regs 6(3), 7(4) (as so amended).

15 le the selection criteria set out in ibid Sch 2 paras 1-3. Those criteria are as follows (reg 2(1), Sch 2):

- 21 (1) characteristics of proposed pipeline works: the characteristics of proposed pipeline works must be considered having regard, in particular, to:
 10. (a) the size of the proposed pipeline works and of the proposed pipeline;
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 11. (b) the cumulation with other developments;
11
 12. (c) the use of natural resources;
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 13. (d) the production of waste;
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 14. (e) pollution and nuisances;
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 15. (f) the risk of accidents, having regard in particular to substances or technologies used;
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- 22 (2) location of proposed pipeline works: the environmental sensitivity of geographical areas likely to be affected by proposed pipeline works must be considered, having regard, in particular, to:
 16. (a) the existing land use;
16
 17. (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
17
 18. (c) the absorption capacity of the natural environment, paying particular attention to the following areas, ie: wetlands; coastal zones; mountain and forest areas; nature reserves and parks; areas classified or protected under member states' legislation; special protection areas designated by member states pursuant to EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) (as amended) on the conservation of wild birds: see ANIMALS vol 2 (2008) PARAS 994, 1006; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728) and EEC Council Directive 92/43 (OJ L206, 22.07.92, p 7) (as amended) on the conservation of natural habitats and wild fauna and flora (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 674); areas in which the environmental quality standards laid down in Community legislation have already been exceeded; densely populated areas; and landscapes of historical, cultural or archaeological significance;
18
- 23 (3) characteristics of the potential impact: the potential significant effects of proposed pipeline works must be considered in relation to criteria set out under heads (1)-(2) supra, and having regard in particular to:
 19. (a) the extent of the impact (geographical area and size of the affected population);
19
 20. (b) the transfrontier nature of the impact;
20
 21. (c) the magnitude and complexity of the impact;
21
 22. (d) the probability of the impact;
22
 23. (e) the duration, frequency and reversibility of the impact.
23

16 See note 4 supra.

17 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(3)(a) (as amended: see note 3 supra).

18 'Relevant planning authority' means in the case of proposed pipeline works the subject of (1) a request for an environmental determination; (2) a notice of preparation of environmental statement; or (3) a direction by the Secretary of State pursuant to *ibid* reg 3(3) (as amended), as the case may be, each local planning authority within whose area any of the works are proposed to be carried out; and 'local planning authority' means an authority which is a local planning authority for the purposes of the Town and Country Planning Act 1990 (see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 28 et seq): Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1).

19 For the meaning of 'in' in this context see PARA 844 note 1 ante.

20 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(3)(b). Where the Secretary of State sends a relevant planning authority a copy of a direction made pursuant to reg 3(3) (as amended), the relevant planning authority must ensure that a copy of the determination or direction and the documents sent with it are as soon as reasonably practicable made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept and that all such copies remain so available for a period of two years: reg 8. 'Register' means, in relation to proposed pipeline works in England and Wales, a register kept pursuant to the Town and Country Planning Act 1990 s 69 (as amended and prospectively substituted) (registers of applications etc: see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 466); and 'appropriate register' means the register on which particulars of a planning application for the relevant pipeline works would fall to be placed in the event of such an application being made: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1).

21 *Ibid* reg 3(4) (as amended: see note 3 supra).

22 *Ie* pursuant to *ibid* reg 3(3) (as amended): see the text and notes 14-20 supra.

23 *Ie* under *ibid* reg 14 (as amended): see PARA 853 post.

24 *Ibid* reg 3(5) (as amended: see note 3 supra).

25 *Ibid* reg 3(6) (as amended: see note 3 supra).

26 *Ie* pursuant to the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(1): see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 258.

27 *Ie* the planning permission granted by *ibid* art 3 (as amended): see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 255.

28 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 4(1).

29 See note 22 supra.

30 A direction given by the appropriate local planning authority pursuant to the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(1) which requires the approval of the Secretary of State (or of the Welsh Ministers: see PARA 601 note 1 ante) under that Order is not to be treated for these purposes as having been given until the date on which notice of such approval is served, or first published, as the case may be, by the authority in accordance with the provisions of art 5 (see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 259): Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 4(2).

31 *Ie* the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 488 et seq.

32 For the meaning of 'EIA development' for those purposes see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 488; and as to the gas pipelines constituting such development see PARA 844 note 8 ante.

33 *Ie* under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 6 (screening directions): see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 494.

34 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 4(2).

UPDATE

845 Requirement for environmental statement

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(i) Powers and Duties of Gas Transporters/D. WORKS, PIPELINES AND RIGHTS OVER LAND/(B) Environmental Impact Assessment of Pipeline Works/846. Requests to the Secretary of State for an environmental determination.

846. Requests to the Secretary of State for an environmental determination.

The following provisions apply where a gas transporter¹:

- 1347 (1) makes a request for an environmental determination before carrying out works of a specified kind²;
- 1348 (2) proposes to carry out pipeline works³ which are not of a specified kind⁴ but nevertheless, before commencing such works, makes a request for an environmental determination⁵.

The Secretary of State⁶ must⁷, having (a) taken into account the selection criteria⁸ and (b) consulted the relevant planning authority⁹, unless the gas transporter making the request has already conveyed the written views of the relevant planning authority concerned to the Secretary of State, make such environmental determination as he thinks fit and send a copy to the gas transporter who made the request¹⁰.

On receiving a request for an environmental determination the Secretary of State must, if he considers that he has not been provided with sufficient information to enable him to make a determination or to consult in accordance with head (b) above, notify the gas transporter making the request of the particular points on which he requires further information¹¹. If the relevant planning authority wishes to give any views to the Secretary of State, it must do so by a date no later than four weeks after the date on which it was consulted under head (b) above¹².

The Secretary of State must make an environmental determination in response to a request for it by a date no later than four weeks after whichever is the latest of:

- 1349 (i) the date of the receipt of the request by the Secretary of State;
- 1350 (ii) the date of receipt by him of further information pursuant to a notice requesting such information from the gas transporter¹³; or
- 1351 (iii) if the Secretary of State has consulted the relevant planning authority under head (b) above, the expiry of the period for the relevant planning authority to give its views to the Secretary of State¹⁴ or, if earlier, the date by which he has received the views of the relevant planning authority,

or by such later date as may be agreed in writing with the gas transporter¹⁵.

Where, in response to a request for an environmental determination, the Secretary of State determines that proposed pipeline works¹⁶ are EIA development¹⁷, he must provide with the determination a written statement of the reasons for his determination¹⁸. A determination made by the Secretary of State in response to a request for an environmental determination that proposed pipeline works are not EIA development ceases to have effect after the expiration of five years from the date on which the determination is made, unless the pipeline works to which it relates have been substantially begun before the expiration of that period¹⁹. Where the Secretary of State makes an environmental determination, he must forthwith send a copy of

the determination and the statement of reasons, if any, accompanying the determination to the relevant planning authority and to such other persons as he considers should receive a copy and must also send a copy of the relevant request and the documents which accompanied it²⁰.

1 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

2 Ie a request for an environmental determination as referred to in the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(2)(a) (as amended): see PARA 845 ante. For the meaning of 'request for an environmental determination', and as to the documents to accompany such a request, see PARA 845 note 14 ante.

3 For the meaning of 'pipeline works' see PARA 844 note 1 ante.

4 Ie which are not of a kind described in either the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, Sch 3 Pt 1 or Sch 3 Pt 2: see PARA 845 ante at heads (1)-(2) in the text.

5 Ibid reg 6(1) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Ie subject to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 6(4) (as amended): see the text and note 11 infra.

8 As to the selection criteria see PARA 845 note 15 ante.

9 For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

10 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 6(2) (as amended: see note 5 supra).

11 Ibid reg 6(4) (as amended: see note 5 supra).

12 Ibid reg 6(5).

13 Ie pursuant to a notice under ibid reg 6(4) (as amended): see the text and note 11 supra.

14 Ie in accordance with ibid reg 6(5): see the text and note 12 supra.

15 Ibid reg 6(6) (as amended: see note 5 supra).

16 For the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

17 For the meaning of 'EIA development' see PARA 845 note 11 ante.

18 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 6(7).

19 Ibid reg 6(8).

20 Ibid reg 6(9). Where the Secretary of State sends a relevant planning authority a copy of an environmental determination made pursuant to reg 6(1) (as amended), the relevant planning authority must ensure that a copy of the determination or direction and the documents sent with it are as soon as reasonably practicable made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept and that all such copies remain so available for a period of two years: reg 8. For the meaning of 'register' and 'appropriate register' see PARA 845 note 20 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(i) Powers and Duties of Gas Transporters/D. WORKS, PIPELINES AND RIGHTS OVER LAND/(B) Environmental Impact Assessment of Pipeline Works/847. Contents of environmental statement.

847. Contents of environmental statement.

An 'environmental statement' means a statement prepared in respect of proposed pipeline works¹ which includes such information of the following descriptions² as is relevant, taking into account the specific characteristics of the pipeline works or type of pipeline works proposed and the environmental features likely to be affected, and which the gas transporter³ can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile⁴, namely:

- 1352 (1) a description of the proposed pipeline works, including in particular:
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 127. (a) a description of the physical characteristics of the proposed pipeline works and the proposed pipeline, and the land-use requirements during the construction⁵ and operational phases;
 128. (b) a description of the main characteristics of the production processes proposed, for instance, the nature and quality of the materials to be used;
 129. (c) an estimate, by type and quantity, of expected residues and emissions (including, without limitation, water, air and soil pollution, noise, vibration, light, heat, and radiation) resulting from the proposed pipeline works and the proposed pipeline when in operation⁶;
- 881353 (2) a description of the aspects of the environment likely to be significantly affected by the proposed pipeline works, including in particular population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors⁷;
- 1354 (3) a description of the likely significant effects⁸ of the proposed pipeline works on the environment which may result from:
89
 130. (a) the existence of the proposed pipeline works or the proposed pipeline;
 131. (b) the use of natural resources;
 132. (c) the emission of pollutants, the creation of nuisances and the elimination of waste,
- 901355 and a description of the forecasting methods used to assess the effects on the environment⁹;
- 1356 (4) a non-technical summary of the information provided under heads (1) to (3) above¹⁰;
- 1357 (5) an indication of any difficulties¹¹ encountered by the gas transporter in compiling the required information¹².

In every case, an environmental statement must include the following:

- 1358 (i) a description of the pipeline works proposed, comprising information about the route, the design and size of the pipeline works;
- 1359 (ii) a description of the measures envisaged in order to prevent, reduce and, if possible, offset significant adverse effects;
- 1360 (iii) the data required to identify and assess the main effects which the pipeline works are likely to have on the environment;
- 1361 (iv) an outline of the main alternatives studied by the gas transporter and an indication of the main reasons for choosing the pipeline works proposed, taking into account the environmental effects;
- 1362 (v) a non-technical summary of the information provided under heads (i) to (iv) above¹³.

1 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

2 Ie of the descriptions referred to in the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1), Sch 1 (as amended): see heads (1)-(5) in the text.

3 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

4 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

5 For the meaning of 'construction' see PARA 844 note 1 ante.

6 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, Sch 1 para 1.

7 Ibid Sch 1 para 2.

8 For the meaning of 'effect' see PARA 845 note 11 ante.

9 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, Sch 1 para 3.

10 Ibid Sch 1 para 4.

11 Ie technical deficiencies or lack of know-how: ibid Sch 1 para 5.

12 Ibid Sch 1 para 5 (as amended: see note 4 supra).

13 Ibid reg 2(1) (as amended: see note 4 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(i) Powers and Duties of Gas Transporters/D. WORKS, PIPELINES AND RIGHTS OVER LAND/(B) Environmental Impact Assessment of Pipeline Works/848. Pre-application requests to the Secretary of State for an opinion as to content of environmental statement.

848. Pre-application requests to the Secretary of State for an opinion as to content of environmental statement.

The following provisions apply where a gas transporter¹, either at the same time as making a request for an environmental determination² or at any other time before applying to the Secretary of State³ for his consent to the carrying out of proposed pipeline works⁴, makes a request to the Secretary of State accompanied by the appropriate particulars⁵ for the Secretary of State's opinion in writing as to the information to be provided in the environmental statement⁶ to be submitted⁷ by the gas transporter to the Secretary of State⁸. The Secretary of State must⁹ give an opinion in response to such a request, having first:

- 1363 (1) taken into account:
- 91
- 133. (a) the specific characteristics of the particular proposed pipeline works;
- 134. (b) the specific characteristics of pipeline works of the type concerned;
- 135. (c) the environmental features likely to be affected by the pipeline works; and
- 136. (d) the extent to which the gas transporter who made the request may reasonably be required to compile the information, having regard, inter alia, to current knowledge and methods of assessment; and
- 92
- 1364 (2) consulted the gas transporter who made the request and the consultation bodies¹⁰.

On receiving such a request the Secretary of State must, if he considers that he has not been provided with sufficient information to enable him to give an opinion on the questions raised or to consult in accordance with head (2) above, notify the gas transporter making the request of the particular points on which he requires further information¹¹. If the gas transporter and the consultation bodies wish to give any views to the Secretary of State, they must do so by a date no later than four weeks after the date on which they were consulted under head (2) above¹².

The Secretary of State must give an opinion in response to such a request no later than four weeks after whichever is the latest of:

- 1365 (i) the date of the receipt of the request by the Secretary of State;
- 1366 (ii) the date of receipt by him of further information pursuant to a notice to the gas transporter requesting such information¹³; or
- 1367 (iii) the expiry of the period for the gas transporter and the consultation bodies to give their views to the Secretary of State¹⁴ or, if earlier, the date by which he has received the views of the gas transporter and all the consultation bodies consulted under head (2) above,

or by such later date as may be agreed in writing with the gas transporter¹⁵.

Where the Secretary of State has given an opinion in response to such a request, he is not precluded from requiring of the gas transporter to whom that opinion was given further

information in connection with any environmental statement that may be submitted by the gas transporter in connection with the same, or substantially the same, pipeline works as were referred to in the request¹⁶.

1 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

2 For the meaning of 'request for an environmental determination' see PARA 845 note 14 ante; and for the meaning of 'environmental determination' see PARA 845 note 11 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

5 For the meaning of 'appropriate particulars' see PARA 845 note 14 ante.

6 For the meaning of 'environmental statement' see PARA 847 ante.

7 *Ie* under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 *et seq* ante, PARA 849 *et seq* post.

8 *Ibid* reg 7(1) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)). Where the Secretary of State has given an opinion in response to a request pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 7(1), he must forthwith send to the relevant planning authority, any other consultation body and such other persons he considers appropriate (1) a copy of that opinion; and (2) a copy of the relevant request and the documents which accompanied it: reg 7(8) (added by SI 2007/1996). As to the consultation bodies see note 10 *infra*. Where the Secretary of State sends a relevant planning authority a copy of an opinion given in response to a request made pursuant to reg 7(1) (as amended), the relevant planning authority must ensure that a copy of the opinion and the documents sent with it are as soon as reasonably practicable made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept and that all such copies remain so available for a period of two years: reg 8 (amended for this purpose by SI 2007/1996). For the meaning of 'register' and 'appropriate register' see PARA 845 note 20 ante.

9 *Ie* subject to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 7(3) (as amended): see the text and note 11 *infra*.

10 *Ibid* reg 7(2) (as amended: see note 8 *supra*). 'The consultation bodies', in relation to proposed pipeline works, means (1) the relevant planning authority; (2) in the case of proposed pipeline works in England, the Countryside Commission, English Nature and the Environment Agency; (3) in the case of proposed pipeline works in Wales, the Countryside Council for Wales and the Environment Agency; and (4) any other body designated by statutory provision as having specific environmental responsibilities which the Secretary of State considers is likely to have an interest in the pipeline works in question: reg 2(1) (definition amended by SI 2007/1996; and by virtue of the Countryside and Rights of Way Act 2000 s 73(2)). For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

11 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 7(3) (as amended: see note 8 *supra*).

12 *Ibid* reg 7(5) (as amended: see note 8 *supra*).

13 *Ie* the notice under *ibid* reg 7(3) (as amended): see the text and note 11 *supra*.

14 *Ie* in accordance with *ibid* reg 7(5) (as amended): see the text and note 12 *supra*.

15 *Ibid* reg 7(6) (as amended: see note 8 *supra*).

16 *Ibid* reg 7(7) (as amended: see note 8 *supra*).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(i) Powers and Duties of Gas Transporters/D. WORKS, PIPELINES AND RIGHTS OVER LAND/(B) Environmental Impact Assessment of Pipeline Works/849. Information and publicity.

849. Information and publicity.

Where the Secretary of State¹ determines in response to a request for an environmental determination² that proposed pipeline works³ are EIA development⁴, receives a notice of preparation of environmental statement⁵ or directs that such a statement be prepared⁶, he must:

- 1368 (1) notify the consultation bodies⁷ of the name and address of the gas transporter⁸ concerned and of the duty imposed on them⁹ to make information available to the gas transporter; and
- 1369 (2) inform the gas transporter in writing of the names and addresses of the consultation bodies so notified¹⁰.

Any consultation body so notified that a gas transporter is to submit an environmental statement¹¹ must¹², if so requested in writing by the gas transporter, enter into consultation with the gas transporter to determine whether the body has in its possession any information which it or the gas transporter considers relevant to the preparation of an environmental statement and which, but for these provisions, could not readily be obtained by the gas transporter, and if it has such information, the body must make it available to the gas transporter¹³. A reasonable charge reflecting the cost of making the relevant information available may be made by any body supplying it¹⁴. Nothing in these provisions, however, requires the disclosure of any information which is by virtue of any rule of the law of any part of Great Britain subject to any obligation of confidentiality¹⁵.

In any case where a gas transporter has made an application to the Secretary of State for consent to the carrying out of proposed pipeline works, accompanied by an environmental statement relating to those works, the following provisions apply¹⁶. The gas transporter must serve on the consultation bodies as soon as is reasonably practicable:

- 1370 (a) a copy of the application for consent¹⁷, the environmental statement and any supplementary information¹⁸; and
- 1371 (b) a notice stating that representations may be made to the Secretary of State by a date specified in the notice which must be at least 28 days after the date on which the application for consent, the environmental statement and any supplementary information were served on the body,

and he must inform the Secretary of State in writing of the names and addresses of every such body on whom he has served copies, and the dates on which they were served, in each case no later than seven days after the date of such service¹⁹. The gas transporter must also, as soon as is reasonably practicable, publish a notice²⁰ containing the prescribed information²¹.

The gas transporter must:

- 1372 (i) at least seven days before the date on which the above-mentioned notice is to be first published, supply free of charge to the relevant planning authority²² a copy of the application for consent, the environmental statement and any

- supplementary information for the purposes of inspection by members of the public²³ and notify the authority of the intended date of first publication;
- 1373 (ii) make available at an address in Great Britain enough copies of the application for consent, the environmental statement and any supplementary information to be likely to satisfy all reasonable demands for copies²⁴; and
- 1374 (iii) subject to head (ii) above and to the receipt by the gas transporter of any sum by way of charge²⁵, supply during the prescribed period²⁶ to any person on request a copy of the application for consent, the environmental statement and any supplementary information²⁷.

The relevant planning authority must make available premises at which copies of the application for consent, the environmental statement and any supplementary information may be inspected by members of the public free of charge at all reasonable hours for a period commencing on the date of first publication notified to it by the gas transporter in accordance with head (i) above and expiring²⁸ on the prescribed date²⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'request for an environmental determination' see PARA 845 note 14 ante; and for the meaning of 'environmental determination' see PARA 845 note 11 ante.

3 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

4 For the meaning of 'EIA development' see PARA 845 note 11 ante.

5 For the meaning of 'notice of preparation of environmental statement' see PARA 845 note 6 ante.

6 Ie pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(3) (as amended): see PARA 845 ante.

7 For the meaning of 'the consultation bodies' see PARA 848 note 10 ante.

8 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

9 Ie by the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 9(2) (as amended): see the text and notes 11-13 infra.

10 Ibid reg 9(1) (amended by SI 2007/1996; the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

11 As to environmental statements and their contents see PARA 847 ante.

12 Ie subject to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 9(3): see the text and note 14 infra.

13 Ibid reg 9(2) (as amended: see note 10 supra).

14 Ibid reg 9(3).

15 Ibid reg 9(4). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

16 Ibid reg 10(1) (as amended: see note 10 supra).

17 'Application for consent' means an application made by a gas transporter to the Secretary of State for his consent to the carrying out of proposed pipeline works: *ibid* reg 2(1) (definition added by SI 2007/1996).

18 'Supplementary information' means information which is (1) provided to the Secretary of State by the applicant in order to supplement the environmental statement; and (2) submitted to the Secretary of State no later than 14 days after the date of receipt by the Secretary of State of the environmental statement: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 2(1) (definition added by SI 2007/1996).

19 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10(2) (reg 10(2)-(4) substituted by SI 2007/1996).

20 The gas transporter must publish the notice in two successive weeks (1) in the Gazette; and (2) in one or more local newspapers circulating in each area in which the proposed pipeline works would be carried out: Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10(4) (as substituted: see note 19 supra). 'The Gazette' means (a) in relation to proposed pipeline works along a route lying wholly in England and Wales, the London Gazette; and (b) in relation to pipeline works along a route lying partly in England and Wales and partly in Scotland, the London Gazette and the Edinburgh Gazette: reg 2(1) (definition added by SI 2007/1996).

21 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10(3) (as substituted: see note 19 supra). The notice must state: (1) the gas transporter's name and address and that he is an applicant for consent under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended), for proposed pipeline works; (2) the location and the nature of the proposed pipeline works and, where relevant, the fact that such works would be likely to have a significant effect on the environment in another EEA state; (3) that an environmental statement has been prepared and that a copy of the application for consent, the environmental statement and any supplementary information may be inspected by members of the public at all reasonable hours; (4) the address of the relevant planning authority premises referred to in reg 10(6) (as amended) (see the text and notes 28-29 infra) at which the application for consent, the environmental statement and any supplementary information may be inspected and the latest date (being a date not less than 28 days after the date on which the notice is to be last published, pursuant to reg 10(4) (as substituted) (see note 20 supra) on which they will be available for inspection; (5) the address in Great Britain referred to in reg 10(5)(b) (as amended) (see head (ii) in the text) at which copies of the application for consent, the environmental statement and any supplementary information may be obtained and that copies of the environmental statement may be obtained there and, subject to reg 12 (as amended) (charges), specify the amount of any charge to be made for a copy of the statement; (6) that any person wishing to make representations in relation to the application for consent should make them in writing to the Secretary of State by the date stated in accordance with head (4) supra and specify the address to which any such representations should be sent; (7) the nature of possible decisions to be taken in response to the application for consent; and (8) the arrangements made for consulting the public pursuant to reg 10 (as amended): reg 10(3) (as so substituted). The gas transporter must provide the Secretary of State with copies of each of the newspapers in which the notice referred to in reg 10(3) (as substituted) appeared, in each case no later than seven days after the date of publication of those newspapers: reg 10(7) (as amended (see note 10 supra); also amended by SI 2007/1996).

A gas transporter may make (a) the supply to a member of the public of a copy of an environmental statement, any supplementary information or any further information in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10 (as amended) (publicity for environmental statements) and reg 11 (as amended) (further information and evidence respecting environmental statements: see PARA 850 post); and (2) the supply to the consultation bodies of any copy, in excess of one, of an environmental statement, any supplementary information or any further information in accordance with reg 10(2) (as substituted) or reg 11(3) (as amended), conditional on the receipt by the gas transporter, in relation to each supply, of a reasonable sum (in case of dispute, to be determined by the Secretary of State) calculated by reference to the cost of printing and distributing copies of the environmental statement, any supplementary information or any further information, as the case may be: reg 12 (as amended (see note 10 supra); also amended by SI 2007/1996). 'Further information' is to be construed in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(1) (as amended) (see PARA 850 post): reg 2(1) (definition added by SI 2007/1996).

22 For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

23 Ie in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10(6) (as amended): see the text and notes 28-29 infra.

24 Ie pursuant to ibid reg 10(3)(e) (as substituted): see note 21 head (5) supra.

25 Ie any sum referred to in ibid reg 10(3)(e) (as substituted): see note 21 head (5) supra.

26 Ie the period referred to in ibid reg 10(6) (as amended).

27 Ibid reg 10(5) (as amended (see note 10 supra); regs 10(5), (6) also amended by SI 2007/1996).

28 Ie expiring on the date stated in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 10(3)(d) (as substituted): see note 21 head (4) supra.

29 Ibid reg 10(6) (as amended: see notes 10, 27 supra).

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850. Further information and evidence respecting environmental statements.

Where the Secretary of State¹ has been provided with an environmental statement² he may in writing require the gas transporter³ to provide in respect of such statement such further information as he may specify ('further information')⁴; and where, in the opinion of the Secretary of State, any further information ought to have been included in the environmental statement in question, the Secretary of State must notify the gas transporter and the relevant planning authority⁵ in writing accordingly, specifying the information in question, and the following provisions apply in respect of such further information⁶:

- 1375 (1) the gas transporter must serve a copy of the further information on the consultation bodies⁷, together with a notice⁸ referring to the material previously served on that body and stating that further representations may be made in writing to the Secretary of State by a date specified in the notice which must be at least 28 days after the date on which the further information and notice were served on the body and the gas transporter must inform the Secretary of State in writing of the names and addresses of every such body on whom he has served those documents, and the dates on which they were served⁹;
- 1376 (2) the gas transporter and the relevant planning authority must make available to the public copies of the application for consent¹⁰, the environmental statement and any supplementary information¹¹ in the same way as they each previously made available the application, the environmental statement and any supplementary information for the period commencing on the date of first publication of the notice referred to in head (3) below and expiring on a date not less than 28 days after the date on which the notice is to be last published, in each case pursuant to head (3) below¹²;
- 1377 (3) the gas transporter must publish a notice containing the prescribed information¹³ in two successive weeks in the Gazette¹⁴ and in one or more local newspapers circulating in each area in which the proposed pipeline works would be carried out¹⁵;
- 1378 (4) the gas transporter must provide the Secretary of State with copies of each of the newspapers and of the Gazette in which the notice referred to in head (3) above appeared, in each case no later than seven days after the date of publication of those newspapers and that Gazette¹⁶.

The Secretary of State may in writing require a gas transporter to produce such evidence as he may reasonably require in support of anything contained in the gas transporter's environmental statement¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to environmental statements and their contents see PARA 847 ante.

3 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

4 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(1) (reg 11(1), (2), (4), (7) amended by SI 2007/1996; the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

5 For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

6 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(2) (as amended: see note 4 supra).

7 For the meaning of 'the consultation bodies' see PARA 848 note 10 ante.

8 For the meaning of 'notice', and as to service of notices, see PARA 845 note 6 ante.

9 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(3) (as amended: see note 4 supra).

10 For the meaning of 'application for consent' see PARA 849 note 17 ante.

11 For the meaning of 'supplementary information' see PARA 849 note 18 ante.

12 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(4) (as amended: see note 4 supra).

13 A notice so published must (1) refer to the previous notice in respect of the application for consent, the environmental statement and any supplementary information and state that further information has been provided; (2) state that a copy of the application for consent, the environmental statement, any supplementary information and the further information may be inspected by members of the public at all reasonable hours; (3) give the address at which copies of those documents may be inspected and the latest date (being a date not less than 28 days after the date on which the notice is to be last published pursuant to *ibid* reg 11(5) (as substituted)) on which they will be available for inspection; (4) give the address at which copies of the application for consent, the environmental statement, any supplementary information and the further information may be obtained and state that copies of those documents may be obtained there and, subject to reg 12 (as amended) (charges: see PARA 849 note 21 ante), specify the amount of any charge to be made for a copy of the statement or information; and (5) state that any person wishing to make representations about the application for consent should make them in writing to the Secretary of State by a date not less than 28 days after the date on which the notice is to be last published pursuant to reg 11(5) (as substituted) and specify the address to which any such representations should be sent: reg 11(6) (reg 11(5), (6) substituted by SI 2007/1996).

14 For the meaning of 'the Gazette' see PARA 849 note 20 ante.

15 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11(5) (as substituted: see note 13 supra).

16 See *ibid* reg 11(7) (as amended see note 4 supra).

17 *Ibid* reg 11(8) (as amended: see note 4 supra).

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851. Projects affecting other states.

Where in the case of any pipeline works¹ proposed to be carried out in Great Britain² the Secretary of State³ determines in response to a request for an environmental determination⁴ that proposed pipeline works⁵ are EIA development⁶, or receives a notice of preparation of environmental statement⁷ or directs that an environmental statement be prepared⁸ and:

1379 (1) it appears to the Secretary of State that such works are likely to have significant effects⁹ on the environment of another member state; or

1380 (2) another member state which considers its environment is likely to be significantly affected by such works so requests,

the Secretary of State must send the member state in question as soon as possible, and no later than the date on which the environmental statement in respect of the proposed pipeline works is made available to the public (except in a case where a request is made by a member state after that date):

1381 (a) a description of the proposed pipeline works, together with any available information on the possible significant effects of the proposed pipeline works on the environment of the other member state; and

1382 (b) a notice¹⁰ explaining the nature of the decision to be taken as to whether or not to grant consent for the carrying out of the proposed pipeline works and informing the member state in question that it may within such reasonable period as may be specified in the notice request to participate in the procedure relating to the taking of the decision pursuant to the relevant¹¹ regulations¹².

Where another member state requests to participate in the procedure¹³ in relation to particular proposed pipeline works, the Secretary of State must, save to the extent that he has not already done so, send that member state:

1383 (i) a copy of the application for consent¹⁴;

1384 (ii) the environmental statement in respect of the proposed pipeline works; and

1385 (iii) to the extent that it is not included in the items referred to in head (i) or head (ii) above, and subject to the exception relating to confidentiality¹⁵, any other available information which is relevant to that procedure¹⁶.

He must also enter into consultations with the member state concerned, for such reasonable period as may have been agreed with that member state, regarding, inter alia, the possible significant effects of the proposed pipeline works on the environment of that member state and the measures envisaged to reduce or eliminate such effects¹⁷.

Where it appears to the Secretary of State that the carrying out of any proposed pipeline works of the kind referred to above¹⁸ would be likely to have a significant effect on the environment of an EEA state¹⁹ other than a member state, or such EEA state which considers that its

environment is likely to be significantly affected by such works so requests, the Secretary of State must send the state in question the environmental statement relating to the pipeline works in question at the same time as it is made available to the public²⁰ or, where a request is made after the date on which the environmental statement is made available to the public, as soon as reasonably practicable after receipt of the request by the Secretary of State²¹.

Nothing in the above provisions requires the disclosure by the Secretary of State of any information which is by virtue of any rule of the law of any part of Great Britain subject to any obligation of confidentiality²².

Where the Secretary of State notifies a gas transporter²³ that the above requirements to notify either a member state or an EEA state which is not a member state apply²⁴ in respect of a particular application for consent, the gas transporter, in any case where he has not already done so, must not make available to the public²⁵ the items referred to in the provision regarding publicity for an environmental statement²⁶ until the Secretary of State has notified the gas transporter that he has sent to the EEA state concerned the appropriate²⁷ information²⁸.

1 For the meaning of 'pipeline works' see PARA 844 note 1 ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'request for an environmental determination' see PARA 845 note 14 ante; and for the meaning of 'environmental determination' see PARA 845 note 11 ante.

5 For the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

6 For the meaning of 'EIA development' see PARA 845 note 11 ante.

7 For the meaning of 'notice of preparation of environmental statement' see PARA 845 note 6 ante.

8 *Ie* pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 3(3) (as amended): see PARA 845 ante.

9 For the meaning of 'effect' see PARA 845 note 11 ante.

10 For the meaning of 'notice', and as to service of notices, see PARA 845 note 6 ante.

11 *Ie* pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 *et seq* ante, PARA 853 *et seq* post.

12 *Ibid* reg 13(1) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

13 *Ie* the procedure under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 *et seq* ante, PARA 853 *et seq* post.

14 For the meaning of 'application for consent' see PARA 849 note 17 ante.

15 *Ie* subject to *ibid* reg 13(4): see the text and note 22 *infra*.

16 *Ibid* reg 13(2)(a) (amended by SI 2007/1996).

17 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 13(2)(b).

18 *Ie* of the kind referred to in *ibid* reg 13(1): see the text and notes 1-12 *supra*.

19 'EEA state' means a member state, Norway, Iceland or Liechtenstein: *ibid* reg 2(1) (definition substituted by SI 2007/1996).

20 See note 11 *supra*.

21 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 13(3).

22 Ibid reg 13(4).

23 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

24 Ie the provisions of either the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 13(1) (see the text and notes 1-12 supra) or reg 13(3) (see the text and notes 18-21 supra) apply.

25 Ie under ibid reg 10 (as amended): see PARA 849 ante.

26 Ie the items referred to in ibid reg 10 (as amended): see PARA 849 ante.

27 Ie either the information referred to in ibid reg 13(1)(i), (ii) (see heads (a), (b) in the text) or reg 13(3) (see the text and notes 18-21 supra), as appropriate.

28 Ibid reg 13(5) (as amended (see note 12 supra); also amended by SI 2007/1996).

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852. Additional information and publicity.

Where additional information¹ is received by the Secretary of State², he must serve a copy of the additional information on the consultation bodies³ and either:

- 1386 (1) in any case where the additional information is provided to the Secretary of State by the applicant, notify the applicant that the information has been served on the consultation bodies; or
- 1387 (2) in any case where the additional information is provided to the Secretary of State by a person other than the applicant, serve a copy of the additional information on the applicant⁴.

Where the applicant has been notified that additional information has been served on the consultation bodies in accordance with head (1) above, or has been served with a copy of the additional information pursuant to head (2) above, the applicant must:

- 1388 (a) publish a notice⁵ containing the prescribed information⁶; and
- 1389 (b) serve a copy of that notice on the Secretary of State⁷.

Where the Secretary of State receives a notice which has been served on him by the gas transporter⁸ pursuant to head (b) above, he must serve a copy of that notice on the consultation bodies⁹. The Secretary of State must not determine the application for consent until the later of:

- 1390 (i) 14 days after the last date on which a copy of the notice published pursuant to head (a) above was so served by the Secretary of State; or
- 1391 (ii) the date stated in the notice so published as the date by which any person may make representations to the Secretary of State in relation to the additional information¹⁰.

1 'Additional information' means information which (1) is made available to the Secretary of State after the date on which the application for consent accompanied by an environmental statement is received by the Secretary of State and before determination by the Secretary of State of the application for consent pursuant to the Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(1) (as amended) (see PARA 853 post); (2) is of material relevance to the environmental statement; and (3) is not further information or supplementary information: reg 2(1) (definition added by SI 2007/1996). For the meaning of 'application for consent' see PARA 849 note 17 ante; for the meaning of 'environmental statement' see PARA 847 ante; for the meaning of 'further information' see PARA 850 ante; and for the meaning of 'supplementary information' see PARA 849 note 18 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'the consultation bodies' see PARA 848 note 10 ante.

4 Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11A(1) (reg 11A added by SI 2007/1996).

5 The notice must be published in two successive weeks in the Gazette and in one or more local newspapers circulating in each area in which the proposed pipeline works would be carried out: Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11A(4) (as added: see note 4 supra). The gas transporter must provide the Secretary of State with copies of each of the newspapers and Gazettes in which that notice appeared in each case no later than seven days after the date of publication of that newspaper or Gazette: reg 11A(7) (as so added). For the meaning of 'the Gazette' see PARA 849 note 20 ante.

6 The notice must: (1) describe the application for consent in question and state that the Secretary of State has received additional information; (2) identify the relevant planning authority on whom the Secretary of State is required to serve a copy of the additional information; (3) state that that relevant planning authority is required to take steps to ensure that the additional information is made available for inspection by the public at all reasonable hours; (4) state that requests for copies of the additional information may be sent to the Secretary of State and specify an address for that purpose; (5) state a date not less than four weeks after the date on which the notice is to be last published in accordance with *ibid* reg 11A(4) (as added) (see note 5 supra) by which any person may make representations to the Secretary of State in relation to the additional information and specify the address to which any such representations are to be sent; and (6) state that the requirements set out in heads (2)-(4) supra will also apply in respect of any additional information received by the Secretary of State after the date of the notice: reg 11A(5) (as added: see note 4 supra). For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

7 *Ibid* reg 11A(2) (as added: see note 4 supra). Regulation 11A(2)-(5) (as added) does not apply where a notice containing the information specified in reg 11A(5) (as added: see note 6 supra) has previously been published by the applicant in accordance with reg 11A(4) (as added (see note 5 supra) and served on the Secretary of State pursuant to reg 11A(2) (as added): reg 11A(6) (as so added).

8 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

9 Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 11A(3) (as added: see note 4 supra).

10 *Ibid* reg 11A(8) (as added: see note 4 supra).

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853. Consent to pipeline works.

In any case where a gas transporter¹ has made an application to the Secretary of State², accompanied by an environmental statement³, for his consent to the carrying out of proposed pipeline works⁴, the Secretary of State may⁵:

- 1392 (1) being satisfied that the prescribed requirements as to consultation and publicity, further information and additional information⁶ have been substantially met; and
- 1393 (2) after considering:
 - 93 137. (a) the environmental statement and any supplementary information⁷;
 - 138. (b) any further information or additional information;
 - 139. (c) any representations made by the consultation bodies⁸ in respect of the proposed pipeline works; and
 - 140. (d) any opinions expressed by the public; and
- 94 1394 (3) after having regard both to the effect⁹ of the proposed pipeline works on the environment and to the desirability of those works being carried out in the interests of the development and maintenance of an efficient and economical system for the conveyance of gas¹⁰ as respects the gas transporter's authorised area¹¹,

consent to the carrying out of the proposed pipeline works either unconditionally or subject to such conditions as he considers appropriate or refuse consent to such works; and he must state in his decision that he has taken the matters mentioned in head (2) above into consideration¹².

In any case where another member state has, in relation to an application for consent¹³, requested¹⁴ to participate in the procedure under the relevant regulations¹⁵, the Secretary of State must not grant any consent for such works pursuant to the above provisions unless he:

- 1395 (i) is satisfied that the prescribed requirements regarding projects affecting other states¹⁶ have been complied with;
- 1396 (ii) has communicated to that member state the response that he proposes to make to the application for consent, including information as to any measures envisaged to reduce or eliminate any possible significant effects of the proposed pipeline works on the environment of the other member state;
- 1397 (iii) is satisfied that the member state concerned has been consulted regarding the proposed pipeline works for such reasonable period as may have been agreed with that member state¹⁷ and in particular that it has been afforded a reasonable opportunity to make representations regarding the pipeline works in question and the proposed response referred to in head (ii) above, and that an opportunity has been afforded to the public in that member state and to those authorities which by reason of their particular environmental responsibilities in that member state are likely to be interested in the proposed pipeline works to forward

- to the Secretary of State within a reasonable time representations regarding the prescribed information¹⁸; and
- 1398 (iv) has taken into consideration any representations made by the member state, members of the public and authorities in that member state and any information regarding the proposed pipeline works supplied by any of them¹⁹.

Any consent given by the Secretary of State²⁰ to the carrying out of the proposed works ceases to have effect after the expiration of five years beginning with the date on which the consent is given unless the pipeline works to which it relates have been substantially begun before the expiration of that period²¹.

The Secretary of State must notify the gas transporter, the relevant planning authority²², other consultation bodies, any EEA state²³ which has been sent a copy of the environmental statement²⁴ and such other persons as the Secretary of State considers appropriate, in writing of his decision²⁵; and must provide to such persons together with that notification a statement containing:

- 1399 (A) the content of the decision and any conditions attached to it;
- 1400 (B) a summary of the concerns and opinions expressed by the persons affected or likely to be affected by, or having an interest in, the procedure for consent to development;
- 1401 (C) in the light of those concerns and opinions, the main reasons and considerations upon which the Secretary of State's decision is based;
- 1402 (D) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the proposed pipeline works; and
- 1403 (E) an explanation of the right of a person aggrieved by a decision of the Secretary of State to make an application²⁶ to the court²⁷.

The gas transporter must, no later than 14 days after the date of that notification, inform the public of the decision by publishing a notice containing the prescribed information²⁸ in the Gazette²⁹ and in one or more local newspapers circulating in each area in which the proposed pipeline works would be carried out³⁰. The gas transporter must satisfy all reasonable requests made during the prescribed period³¹ for copies of the statement³². The gas transporter must also provide the Secretary of State with copies of each of the newspapers and the Gazettes in which the above-mentioned notices appeared, in each case by a date no later than seven days after the date of publication of those newspapers or the Gazettes³³.

Where the Secretary of State sends a relevant planning authority the statement referred to above³⁴, the relevant planning authority must take steps to ensure that a copy of the statement is as soon as reasonably practicable made available for public inspection at all reasonable hours and free of charge at the place where the appropriate register³⁵, or relevant section of that register, is kept and that that copy remains so available for a period of two years³⁶.

1 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 As to environmental statements and their contents see PARA 847 ante.

4 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

5 le subject to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(2): see the text and notes 13-18 infra.

6 le the requirements of *ibid* regs 10, 11 (as amended) and reg 11A (as added): see PARAS 849-850, 852 ante. For the meaning of 'further information' see PARA 850 ante; and for the meaning of 'additional information' see PARA 852 note 1 ante.

7 For the meaning of 'supplementary information' see PARA 849 note 18 ante.

8 For the meaning of 'the consultation bodies' see PARA 848 note 10 ante.

9 For the meaning of 'effect' see PARA 845 note 11 ante.

10 For the meaning of 'gas' for these purposes see PARA 844 note 1 ante.

11 For the meaning of 'authorised area' for these purposes see PARA 844 note 2 ante.

12 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(1) (reg 14(1), (2), (4), (6) amended by SI 2007/1996; the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

13 For the meaning of 'application for consent' see PARA 849 note 17 ante.

14 le in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 13(2) (as amended): see PARA 851 ante.

15 le the procedure under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 et seq ante, PARA 854 et seq post.

16 le the requirements of *ibid* reg 13(1), (2) (as amended): see PARA 851 ante.

17 le pursuant to *ibid* reg 13(2)(b): see PARA 851 ante.

18 le the information referred to in *ibid* reg 13(1), (2) (as amended) (information to be supplied to other member states): see PARA 851 ante.

19 *Ibid* reg 14(2) (as amended: see note 12 supra).

20 le pursuant to *ibid* reg 14(1) (as amended): see the text and notes 1-12 supra.

21 *Ibid* reg 14(3).

22 For the meaning of 'relevant planning authority' see PARA 845 note 18 ante.

23 For the meaning of 'EEA state' see PARA 851 note 18 ante.

24 le pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 13 (as amended) (projects affecting other states): see PARA 851 ante.

25 *Ibid* reg 14(4)(a) (as amended: see note 12 supra).

26 le pursuant to *ibid* reg 16: see PARA 854 post.

27 *Ibid* reg 14(4)(b) (as amended: see note 12 supra).

28 The notice must state (1) the content of the decision and any conditions attached to it; and (2) an address in Great Britain at which copies of the statement by the Secretary of State referred to in *ibid* reg 14(4) (b) (as amended) may be obtained and that such copies may be obtained free of charge by making a request to the gas transporter during a period of not less than eight weeks immediately following the date on which the notice is to be last published pursuant to reg 14(5) (as substituted): reg 14(5A) (reg 14(5A), (5B) added by SI 2007/1996).

29 For the meaning of 'the Gazette' see PARA 849 note 20 ante.

30 Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(5) (substituted by SI 2007/1996).

31 le the period of eight weeks referred to in the Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(5A)(b) (as added): see note 28 head (2) supra.

32 *Ibid* reg 14(5B) (as added: see note 28 supra).

33 Ibid reg 14(6) (as amended: see note 12 *supra*).

34 Ie the statement referred to in *ibid* reg (4)(b) (as amended): see heads (A)-(E) in the text.

35 For the meaning of 'appropriate register' see PARA 845 note 20 *ante*.

36 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(7).

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854. Applications to the court by persons aggrieved or by the Secretary of State.

On the application of any person aggrieved¹ by:

- 1404 (1) the grant of consent² in respect of any proposed pipeline works³; or
- 1405 (2) the attaching by the Secretary of State⁴ of a condition to such a consent⁵,

the court⁶ may grant an order quashing the grant of consent or, as the case may be, the attaching by the Secretary of State of the condition where it is satisfied that the consent was granted or, as the case may be, the condition was attached in contravention of the requirement to consider the environmental statement and other matters⁷ or that the interests of the applicant have been substantially prejudiced⁸ by a failure to comply with any other requirement⁹ of the relevant regulations¹⁰. Such an application to the court must be made no later than six weeks after the date of last publication¹¹ by the gas transporter¹² of details of the consent or, as the case may be, the relevant condition¹³.

The court may by interim order, pending the determination of any question referred to above, stay the operation of the consent or, as the case may be, the relevant condition on such terms as it may think fit¹⁴.

If a gas transporter carries out pipeline works:

- 1406 (a) without all applicable requirements of the relevant regulations¹⁵ having first been complied with; or
- 1407 (b) without any necessary consent of the Secretary of State¹⁶, or in breach of a condition attached¹⁷ to such a consent,

the court may, on the application of the Secretary of State, make an order restraining the gas transporter from proceeding or continuing with the works or compelling him to the performance of any act required of him by any such condition¹⁸. The court may¹⁹, in addition to making such an order, make an order requiring:

- 1408 (i) the removal, so far as is practicable in all the circumstances, of any pipeline works already carried out without any such requirements as are mentioned in head (a) above having been complied with, or without any such consent or in breach of any such condition as is mentioned in head (b) above; and
- 1409 (ii) where it orders the removal of any works, the reinstatement of the site where the works had been carried out²⁰;

but the court must not make such an order in respect of a breach of any such condition as is mentioned in head (b) above where it is satisfied that:

- 1410 (A) the breach in question was due to circumstances beyond the control of the gas transporter and the breach could not reasonably have been prevented by the gas transporter; or
- 1411 (B) the breach occurred as a result of anything required to be done as a matter of urgency for the purposes of securing the safety of any person²¹.

Where the gas transporter fails to comply with an order made pursuant to this power to order removal and reinstatement²² within such time as may be specified in it or, in default of such specification, within a reasonable time of the making of the order, the Secretary of State may himself take the action required by the order and the reasonable costs and expenses of doing so are recoverable as a debt from the gas transporter²³. Where the Secretary of State takes such action, that action is to be without prejudice to any consequences which may flow from the gas transporter's failure to comply with the order²⁴.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 Ie under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14 (as amended): see PARA 853 ante.

3 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Ie under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(1) (as amended): see PARA 853 ante.

6 For these purposes, 'the court' means, in respect of proposed pipeline works in England and Wales, the High Court: *ibid* reg 15(1)(a). Where, however, the proposed pipeline works are situated both in England and in Scotland, either the High Court or the Court of Session has jurisdiction: see reg 15(1)(b), (2).

7 Ie in contravention of *ibid* reg 14(1)(b) (consideration of environmental statement etc): see PARA 853 ante at head (2) in the text. As to environmental statements and their contents see PARA 847 ante.

8 For a discussion of 'substantial prejudice' in the context of a failure to follow procedural requirements under the Town and Country Planning Act 1990 see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 46 note 13.

9 Ie any other requirement of the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 et seq ante, PARA 855 post.

10 *Ibid* reg 16(1) (the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

11 Ie pursuant to the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(5) (as amended): see PARA 853 ante.

12 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

13 Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 16(2) (as amended: see note 10 supra).

14 *Ibid* reg 16(3).

15 Ie all applicable requirements of the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended).

16 Ie under *ibid* reg 14 (as amended): see PARA 853 ante.

17 Ie under *ibid* reg 14(1) (as amended): see PARA 853 ante.

18 *Ibid* reg 17(1) (as amended: see note 10 supra).

19 Ie subject to *ibid* reg 17(3) (as amended): see the text and note 21 infra.

- 20 Ibid reg 17(2).
- 21 Ibid reg 17(3) (as amended: see note 10 supra).
- 22 Ie pursuant to ibid reg 17(2): see the text and notes 19-20 supra.
- 23 Ibid reg 17(4) (as amended: see note 10 supra).
- 24 Ibid reg 17(5) (as amended: see note 10 supra).

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855. Offences.

Any person who intentionally or recklessly¹ submits to the Secretary of State²:

- 1412 (1) an environmental statement³;
- 1413 (2) supplementary information⁴;
- 1414 (3) appropriate particulars⁵;
- 1415 (4) additional information⁶; or
- 1416 (5) any information required to be submitted by virtue of any provision of the relevant regulations⁷,

which is false or misleading in a material particular is guilty of an offence⁸.

A gas transporter⁹ who:

- 1417 (a) intentionally acts in breach of the terms of a condition imposed on a consent¹⁰; or
- 1418 (b) carries out any proposed pipeline works¹¹ without any necessary consent of the Secretary of State granted in accordance with the relevant regulations¹²,

is guilty of an offence¹³; but it is a defence to a charge under head (a) above for the gas transporter to show:

- 1419 (i) that he took all reasonable steps and exercised all due diligence to avoid committing the offence; or
- 1420 (ii) that the acts in question were attributable to anything required to be done as a matter of urgency for the purposes of securing the safety of any person¹⁴.

No proceedings for any such offence may be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions, or by the Secretary of State or a person authorised by him in that behalf¹⁵. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine¹⁶.

Where any such offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly¹⁷.

¹ For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11

² As to the Secretary of State see PARA 601 note 1 ante.

3 As to environmental statements and their contents see PARA 847 ante; and as to the requirement for such statements see PARA 845 ante.

4 For the meaning of 'supplementary information' see PARA 849 note 18 ante.

5 For the meaning of 'appropriate particulars' see PARA 845 note 14 ante.

6 For the meaning of 'additional information' see PARA 852 note 1 ante.

7 le any provision of the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended): see PARA 844 et seq ante.

8 Ibid reg 18(1) (amended by SI 2007/1996); the 1999 Regulations retitled and amended by virtue of the Utilities Act 2000 s 76(7)).

9 For the meaning of 'gas transporter' for these purposes see PARA 844 note 2 ante.

10 le a condition imposed by virtue of the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672, reg 14(1) (as amended): see PARA 853 ante.

11 For the meaning of 'pipeline works' see PARA 844 note 1 ante; and for the meaning of references to proposed pipeline works see PARA 845 note 6 ante.

12 le granted in accordance with the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672 (as amended). As to the granting of consent see PARA 853 ante.

13 Ibid reg 18(2) (as amended: see note 8 supra).

14 Ibid reg 18(3) (as amended: see note 8 supra).

15 Ibid reg 18(7).

16 Ibid reg 18(4). As to the statutory maximum see PARA 689 note 2 ante.

17 Ibid reg 18(5). Where the affairs of a body corporate are managed by its members, reg 18(5) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 18(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(ii) The Gas Code/856. Introduction.

(ii) The Gas Code

856. Introduction.

The gas code which is set out in Schedule 2B to the Gas Act 1986¹ makes provision with regard to the rights and obligations of licence holders² and consumers³ and other related matters⁴. In so far as those provisions apply in relation to a gas transporter, gas supplier⁵ or gas shipper⁶, they have effect subject to any conditions of his licence⁷.

1 le the Gas Act 1986 s 8B, Sch 2B (paras 1-29) (as added and amended): see PARA 857 et seq post.

2 For the meaning of 'licence holder' see PARA 789 note 9 ante.

3 For the purposes of the gas code, 'consumer' means a person who is supplied with gas conveyed to particular premises ('his premises') by a gas transporter: Gas Act 1986 Sch 2B para 1(1) (added by the Gas Act 1995 s 9(2), Sch 2; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante. For the meaning of 'gas transporter' see PARA 805 ante.

4 See the Gas Act 1986 s 8B (added by the Gas Act 1995 s 9(1)).

5 For the meaning of 'gas supplier' see PARA 807 ante.

6 For the meaning of 'gas shipper' see PARA 807 ante.

7 Gas Act 1986 Sch 2B para 1(2) (as added and amended: see note 3 supra).

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857. General provisions of the gas code relating to meters.

Every consumer¹ must take his supply through a meter the use of which does not contravene² the statutory requirements for testing and stamping³ and which is of a type appropriate for registering the quantity of gas supplied⁴. In default of the consumer's doing so or agreeing to do so, the gas transporter⁵ may disconnect⁶ or, as the case may be, refuse to connect his premises and any relevant gas supplier⁷ may cut off the supply of gas⁸ to his premises⁹.

Every consumer must at all times, at his own expense, keep all meters which belong to him, or which are lent or hired to him and are owned otherwise than by the gas transporter or a relevant gas supplier, and by which the quantity of gas supplied is registered, in proper order for correctly registering the quantity of gas¹⁰. In default of the consumer's doing so, the gas transporter may disconnect his premises and any relevant gas supplier may cut off the supply of gas to his premises¹¹.

In the case of any consumer, the gas transporter or any relevant gas supplier must at all times, without charge to the consumer, keep any meter which is owned by him and is lent or hired to the consumer in proper order for correctly registering the quantity of gas supplied¹²; but this is without prejudice to any remedy the transporter or supplier may have against the consumer for failure to take proper care of the meter¹³.

In the case of any consumer, the gas transporter, any relevant gas supplier and any relevant gas shipper¹⁴ has power to remove, inspect and reinstall any meter by which the quantity of gas supplied is registered and must, while any such meter is removed, fix a substitute meter on the premises¹⁵. The cost of removing, inspecting and reinstalling a meter and of fixing a substitute meter must¹⁶ be defrayed by the transporter, supplier or shipper¹⁷. Where, however, such a meter is removed for the purpose of being examined by a meter examiner¹⁸, the expenses incurred in removing, examining and reinstalling the meter and fixing a substitute meter are to be defrayed as follows:

- 1421 (1) if the examination is carried out at the request of any person and the meter is found in proper order¹⁹, by that person;
- 1422 (2) if the meter is not so found, by the person required²⁰ to keep the meter in proper order²¹.

Where a consumer is supplied with gas through a meter at a rate not exceeding 2,196,000 kilowatt hours²² a year, the register of the meter is to be prima facie evidence of the quantity of gas supplied²³; but where the meter is found, when examined by a meter examiner²⁴, to register erroneously to a degree exceeding the degree permitted by the relevant regulations²⁵, the meter is to be deemed to have registered erroneously to the degree so found since the relevant date²⁶, except in a case where it is proved to have begun to do so on some later date²⁷.

Where a meter is to be used to register the quantity of gas supplied to a consumer and:

- 1423 (a) gas has not previously been conveyed by the gas transporter to the consumer's premises;
- 1424 (b) a new or substituted pipe is to be laid between the transporter's main and the meter; or

1425 (c) the meter is to be installed in a different position,

the meter must²⁸ be installed as near as practicable to the gas transporter's main, but within a building comprised in the premises²⁹. The meter may, however, be installed otherwise than within a building comprised in the premises if it is installed either in accommodation of a type and construction approved by the gas transporter by an approval given in relation to premises generally, or to any class or description of premises, or in a separate meter house or other accommodation outside a building comprised in the premises which is approved by the transporter in the case of those particular premises³⁰. If these requirements are not complied with, the gas transporter may refuse to connect or, as the case may be, disconnect the consumer's premises³¹.

Where, in the case of any consumer, the gas transporter or a relevant gas supplier, for the purpose of meeting the needs of a disabled person, alters the position of any gas meter which is owned by the transporter or supplier and is lent or hired to the consumer, or replaces such a meter with one which has been specially adapted, the transporter or supplier must not charge the consumer for the alteration or replacement³².

1 For the meaning of 'consumer' see PARA 856 note 3 ante.

2 For the meaning of 'contravention' and cognate expressions see PARA 779 note 3 ante.

3 I.e. the requirements of the Gas Act 1986 s 17 (as substituted and amended): see PARAS 947-949 post.

4 Ibid s 8B, Sch 2B para 2(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B paras 1-6 amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2). In the absence of the consumer's evidence to the contrary the court must accept the accuracy of the meter: *Cresswell v Gas Light and Coke Co* (1897) 61 JP 699. As to the determination of disputes under these provisions see now para 965 post.

5 For the meaning of 'gas transporter' see PARA 805 ante.

6 For these purposes, 'connect', in relation to any premises, means connect to a main of a gas transporter, whether directly or by means of a service pipe, and 'disconnect' and 'reconnect' have corresponding meanings except that they also include discontinuing or, as the case may be, resuming the conveyance of gas to the premises: Gas Act 1986 Sch 2B para 1(1) (as added and amended: see note 4 supra).

7 'Relevant gas supplier', in relation to a consumer, means any gas supplier who is supplying him with gas conveyed to his premises: ibid Sch 2B para 1(1) (as added: see note 4 supra). For the meaning of 'gas supplier' see PARA 807 ante.

8 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

9 Gas Act 1986 Sch 2B para 2(2) (as added and amended: see note 4 supra). As to the determination of disputes under these provisions see PARA 965 post.

10 Ibid Sch 2B para 3(1) (as added and amended: see note 4 supra). Nothing in Sch 2B para 3 (as added and amended) applies in relation to any meter which, in pursuance of an agreement falling within s 17(14) (as substituted) (see PARA 947 post), is used for ascertaining the quantity of gas supplied to a consumer if either (1) the agreement was entered into before the appointed day; or (2) the gas transporter and each relevant gas shipper have agreed that the meter should be kept in proper order by a person other than the consumer: Sch 2B para 3(8) (as so added and amended). 'The appointed day' means the day appointed under the Gas Act 1995 s 18(2) (ie 1 March 1996: see the Gas Act 1995 (Appointed Day and Commencement) Order 1996, SI 1996/218, art 2): Gas Act 1986 Sch 2B para 1(1) (as so added). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

11 Ibid Sch 2B para 3(2) (as added and amended: see note 4 supra). See also note 10 supra.

12 Ibid Sch 2B para 3(3) (as added and amended: see note 4 supra). See also note 10 supra.

13 Ibid Sch 2B para 3(4) (as added: see note 4 supra). See also note 10 supra.

14 'Relevant gas shipper', in relation to a consumer, means any gas shipper who has made arrangements in pursuance of which gas is conveyed to the consumer's premises: *ibid* Sch 2B para 1(1) (as added: see note 4 *supra*). For the meaning of 'gas shipper' see PARA 807 *ante*.

15 *Ibid* Sch 2B para 3(5)(a), (b) (as added and amended: see note 4 *supra*). See also note 10 *supra*.

16 *Ie* subject to *ibid* Sch 2B para 3(6) (as added): see the text and notes 18-21 *infra*.

17 *Ibid* Sch 2B para 3(5) (as added and amended: see note 4 *supra*). See also note 10 *supra*.

18 *Ie* in accordance with *ibid* s 17 (as substituted and amended): see PARAS 947-949 *post*.

19 A meter is found in proper order for these purposes if it is found to register correctly or to register erroneously to a degree not exceeding the degree permitted by regulations under *ibid* s 17 (as substituted and amended): Sch 2B para 3(7) (as added: see note 4 *supra*). See also note 10 *supra*.

20 *Ie* by *ibid* Sch 2B para 3(1) or Sch 2B para 3(3) (as added and amended): see the text and notes 10, 12 *supra*.

21 *Ibid* Sch 2B para 3(6) (as added: see note 4 *supra*). See also note 10 *supra*.

22 As to the Secretary of State's power to substitute a lower number of kilowatt hours see PARA 836 note 6 *ante*. For the meaning of 'kilowatt hour' see PARA 807 note 6 *ante*.

23 Gas Act 1986 s 48(2A)(a) (added by the Gas Act 1995 Sch 3 para 54(4)); Gas Act 1986 Sch 2B para 4(1), (2) (as added: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*.

24 *Ie* a meter examiner appointed under *ibid* s 17 (as substituted and amended): see PARAS 947-949 *post*.

25 *Ie* regulations under *ibid* s 17 (as substituted and amended): see PARAS 947-949 *post*.

26 For these purposes, 'the relevant date' means (1) the penultimate date on which, otherwise than in connection with the examination, the register of the meter was ascertained; or (2) if regulations so provide, such other date as may be determined by or under the regulations: *ibid* Sch 2B para 4(4) (as added: see note 4 *supra*).

27 *Ibid* Sch 2B para 4(3) (as added: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*.

28 *Ie* subject to *ibid* Sch 2B para 5(3) (as added and amended): see the text and note 30 *infra*.

29 *Ibid* Sch 2B para 5(1), (2) (as added and amended: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*.

30 *Ibid* Sch 2B para 5(3) (as added and amended: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*.

31 *Ibid* Sch 2B para 5(4) (as added and amended: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*.

32 *Ibid* Sch 2B para 6 (as added and amended: see note 4 *supra*). As to the determination of disputes under these provisions see PARA 965 *post*; as to the enforcement of the requirements imposed under them see PARA 968 *et seq post*; and as to penalties for the contravention of such requirements see PARA 972 *et seq post*.

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858. Recovery of gas charges etc; use of prepayment meters.

Where a demand in writing is made by a gas supplier¹ for the payment of any of the charges due to him from a consumer² in respect of the supply of gas³ to any premises of his ('the premises') and the consumer does not pay those charges within 28 days after the making of the demand, then if the supplier is a relevant supplier⁴, he may, after giving not less than seven days' notice of his intention, either install a prepayment meter on the premises in place of the existing meter or cut off the supply to the premises by disconnecting the service pipe⁵ at the meter or by such other means as he thinks fit⁶. The supplier may recover any expenses incurred in so doing from the consumer⁷. If the supplier is not a relevant supplier but another supplier ('the new supplier') is such a supplier, and the supplier has assigned to the new supplier his right to recover any of the charges due to him from the consumer, the above powers apply as if any reference to the supplier were a reference to the new supplier⁸. The powers conferred by the above provisions are not, however, exercisable as respects any charges or deposit the amount of which is genuinely in dispute⁹.

A prepayment meter installed by an authorised supplier¹⁰ through which a consumer takes his supply of gas must not be used to recover a sum unless:

- 1426 (1) the sum is owed to an authorised supplier in respect of the supply of gas to the premises on which the meter is installed or in respect of the provision of the meter; or
- 1427 (2) the recovery of the sum in that manner is permitted by both regulations made by the Gas and Electricity Markets Authority ('GEMA')¹¹ and such an agreement as is described below¹² between the consumer and the person to whom the sum is owed¹³.

An agreement is such an agreement if:

- 1428 (a) the person to whom the sum is owed is a person who is authorised by regulations made by the Authority to enter into such agreements¹⁴;
- 1429 (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
- 1430 (c) the agreement complies with the requirements specified for these purposes by regulations made by the Authority¹⁵.

The agreement must state in writing:

- 1431 (i) the name of the customer;
- 1432 (ii) any charges that the customer will be required to pay in addition to those recovered under the relevant regulation¹⁶;
- 1433 (iii) the amount of each element of the sum owed¹⁷ and to what it relates;
- 1434 (iv) the repayment rate¹⁸ and repayment amount¹⁹;
- 1435 (v) the date at which the sum owed would be fully repaid if each repayment amount is made at the repayment rate; and

1436 (vi) that the gas supplier warrants that he has, orally, provided the customer with the required²⁰ details²¹;

and must include written terms to the following effect:

- 1437 (A) that the customer can give a notice of cancellation to the gas supplier;
- 1438 (B) where notice of cancellation is given the agreement is to be treated as if it had not been made;
- 1439 (C) notice of cancellation can be given orally or in writing and must be given within seven working days beginning with the day on which the customer receives written terms of the agreement;
- 1440 (D) that the repayment rate and repayment amount has been calculated by the gas supplier to take into account the customer's ability to pay the total of all charges to be recovered through the prepayment meter;
- 1441 (E) that the customer has agreed to the repayment rate and repayment amount;
- 1442 (F) that the repayment rate and repayment amount can be varied either at the customer's request and if agreed by the gas supplier, or by the supplier in accordance with head (D) above and with prior notice given to the customer; and
- 1443 (G) either party can terminate the agreement on provision of 30 days' oral or written notice²².

The sums that regulations under these provisions may permit the recovery of through a prepayment meter include sums owed to a person other than an authorised supplier, sums owed in respect of premises other than the premises on which the meter is installed and sums owed in respect of matters other than the supply of gas²³. A prepayment meter may be used to recover a sum that is owed to a gas supplier by a customer in respect of any of the following, namely the supply of gas to any premises previously owned or occupied by the customer and the provision of a gas meter at any premises previously owned or occupied by the customer²⁴; and any sum recoverable through a prepayment meter by virtue of head (1) above may be consolidated with a sum so specified and recovered under the relevant²⁵ regulations²⁶.

1 For the meaning of 'gas supplier' see PARA 807 ante.

2 For the meaning of 'consumer' see PARA 856 note 3 ante.

3 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

4 For the meaning of 'relevant gas supplier' see PARA 857 note 7 ante.

5 For the meaning of 'service pipe' see PARA 842 note 3 ante.

6 Gas Act 1986 s 8B, Sch 2B para 7(1), (3)(a), (b) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B para 7(1), (3) amended by the Utilities Act 2000 s 84(1), (3)).

7 Gas Act 1986 Sch 2B para 7(3) (as added and amended: see note 6 supra).

8 Ibid Sch 2B para 7(4) (as added: see note 6 supra).

9 Ibid Sch 2B para 7(5) (as added: see note 6 supra). As to charges for gas see PARA 869 et seq post.

10 For the meaning of 'authorised supplier' see PARA 797 note 3 ante.

11 Before making such regulations the Authority must consult (1) the Gas and Electricity Consumer Council; (2) all authorised suppliers; and (3) such other persons as the Authority considers appropriate; and the approval of the Secretary of State is required for the making of such regulations: Gas Act 1986 Sch 2B para 6A(4), (5) (Sch 2B para 6A added by the Utilities Act 2000 s 84(1), (2); substituted by the Energy Act 2004 s 181(1)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; as to the establishment and

general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to the Secretary of State see PARA 601 note 1 ante.

12 Ie an agreement falling within the Gas Act 1986 Sch 2B para 6A(2) (as substituted): see the text and notes 14-15 infra.

13 Ibid Sch 2B para 6A(1) (as substituted: see note 11 supra).

14 Ie a gas supplier: see the Gas (Prepayment Meter) Regulations 2006, SI 2006/2011, reg 4(1).

15 Gas Act 1986 Sch 2B para 6A(2) (as substituted: see note 11 supra).

16 Ie under the Gas (Prepayment Meter) Regulations 2006, SI 2006/2011, reg 3: see the text and notes 24-26 infra.

17 Ie under ibid reg 3.

18 For these purposes, 'repayment rate' means the frequency with which instalments are to be paid towards the repayment of the sum owed under ibid reg 3: reg 2.

19 For these purposes, 'repayment amount' means the amount of each instalment to be paid towards the repayment of the sum owed under ibid reg 3: reg 2.

20 Ie the details required under ibid reg 4(3). Those details are (1) other means of payment available to the customer; (2) the operation of the prepayment meter, particularly as regards the recovery of debt and charging for ongoing consumption; and (3) the implications of failing to make any payments in full or in part when they fall due under the agreement: reg 4(3). For these purposes, 'prepayment meter' means a gas prepayment meter installed by an authorised supplier through which the customer takes his supply of gas: reg 2.

21 Ibid reg 4(2). A gas supplier may not recover the sum specified in reg 3 by means of a prepayment meter unless it has previously entered into an agreement with the customer which complies with reg 4(2), (4): reg 4(1).

22 Ibid reg 4(4); and see note 21 supra.

23 Gas Act 1986 Sch 2B para 6A(3) (as substituted: see note 11 supra).

24 Gas (Prepayment Meter) Regulations 2006, SI 2006/2011, reg 3(1). Thus, where the gas supplier also supplies electricity to the premises, sums owing in respect of electricity may not be recovered through a gas prepayment meter. Contrast the position with regard to an electricity prepayment meter, which may be used to recover certain sums owed to a gas supplier: see the Electricity (Prepayment Meter) Regulations 2006, SI 2006/2010, reg 3(1); and PARA 1190 post.

25 Ie under the Gas (Prepayment Meter) Regulations 2006, SI 2006/2011.

26 Ibid reg 3(2).

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859. Deemed contracts in certain cases.

Where a gas supplier¹ supplies gas² to a consumer³ otherwise than in pursuance of a contract, the supplier is to be deemed to have contracted with the consumer for the supply of gas as from the time ('the relevant time') when he began so to supply gas to the consumer⁴.

Where:

- 1444 (1) the owner⁵ or occupier of any premises takes a supply of gas which has been conveyed to those premises by a gas transporter⁶ in pursuance of arrangements made with the transporter by a gas shipper⁷, or by a person authorised to make the arrangements by an exemption⁸;
- 1445 (2) that supply is not made by a gas supplier, or by a person authorised to make it by an exemption⁹; and
- 1446 (3) a supply of gas so conveyed has been previously made by a gas supplier,

the owner or occupier is to be deemed to have contracted with the appropriate supplier¹⁰ for the supply of gas as from the time ('the relevant time') when he began to take such a supply; but nothing in this provision is to be taken to afford a defence in any criminal proceedings¹¹.

The express terms and conditions of a contract which, by virtue of the above provisions¹², is deemed to have been made must be provided for by a scheme made under these provisions¹³. Each gas supplier must make, and from time to time revise, a scheme for determining the terms and conditions which are to be incorporated in the contracts which are to be deemed¹⁴ to have been made¹⁵. The terms and conditions so determined may include terms and conditions for enabling the gas supplier to determine, in any case where the meter is not read immediately before the relevant time, the number of kilowatt hours¹⁶ which are to be treated as supplied to the consumer, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with:

- 1447 (a) the time when the meter is first read after the relevant time; or
- 1448 (b) the time when the supplier ceases to supply gas to the consumer, or the owner or occupier ceases to take a supply of gas,

whichever is the earlier¹⁷. Such a scheme may make different provisions for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme¹⁸.

As soon as practicable after a gas supplier makes such a scheme, or a revision of such a scheme, he must:

- 1449 (i) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;
- 1450 (ii) send a copy of the scheme or revision to the Gas and Electricity Markets Authority ('GEMA')¹⁹ and to the Gas and Electricity Consumer Council²⁰; and

1451 (iii) if so requested by any other person, send such a copy to that person without charge to him²¹.

1 For the meaning of 'gas supplier' see PARA 807 ante.

2 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

3 For the meaning of 'consumer' see PARA 856 note 3 ante.

4 Gas Act 1986 s 8B, Sch 2B para 8(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2).

5 For the meaning of 'owner' see PARA 836 note 3 ante.

6 For the meaning of 'gas transporter' see PARA 805 ante.

7 For the meaning of 'gas shipper' see PARA 807 ante.

8 Ie an exemption granted under the Gas Act 1986 s 6A (as added and amended): see PARA 804 ante.

9 Ie by an exemption granted under the Gas Act 1986 s 6A (as added and amended) (see PARA 804 ante) or, until a day to be appointed (see note 11 infra) an exception contained in Sch 2A (as added; prospectively repealed) (see PARA 804 ante).

10 For these purposes, 'the appropriate supplier' means (1) the gas supplier who previously supplied gas to the premises or, if more than one, the gas supplier who last supplied gas to the premises; or (2) where that supplier's licence has been assigned generally, or has been assigned so far as relating to the premises, the person to whom the licence was so assigned; or (3) where that supplier's licence has been revoked on his application, or has been so restricted on his application as to exclude the premises, the gas supplier with whom that supplier made arrangements for securing continuity of supply to the premises: *ibid* Sch 2B para 8(3) (as added: see note 4 supra). For the meaning of 'licence' see PARA 789 note 9 ante.

11 *Ibid* Sch 2B para 8(2) (as added (see note 4 supra); prospectively amended by the Utilities Act 2000 s 108, Sch 8 (so as to remove the reference to the Gas Act 1986 Sch 2A (see note 9 supra)), as from a day to be appointed under the Utilities Act 2000 s 110(2); at the date at which this title states the law, no such day had been appointed).

12 Ie by virtue of the Gas Act 1986 Sch 2B para 8(1) or (2) (as added and amended): see the text and notes 1-11 supra.

13 *Ibid* Sch 2B para 8(7) (as added: see note 4 supra).

14 See note 12 supra.

15 Gas Act 1986 Sch 2B para 8(8) (as added (see note 4 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 23(b), Sch 8).

16 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

17 Gas Act 1986 s 48(2A)(b) (added by the Gas Act 1995 Sch 3 para 54(4)); Gas Act 1986 Sch 2B para 8(9) (as added: see note 4 supra).

18 *Ibid* Sch 2B para 8(10) (as added: see note 4 supra).

19 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

20 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

21 Gas Act 1986 Sch 2B para 8(11) (as added (see note 4 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 23(c); and by virtue of s 3(2)).

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860. Wrongful taking of gas or restoration of supply; improper use of gas.

Where any person takes a supply of gas¹ which is in the course of being conveyed by a gas transporter², the transporter is entitled to recover from that person the value³ of the gas so taken⁴.

Where:

- 1452 (1) any person at premises which have been reconnected⁵ in contravention of the prohibition on doing so without the relevant consent⁶ takes a supply of gas which has been conveyed to those premises⁷ by the gas transporter; and
- 1453 (2) the supply is taken otherwise than in pursuance of a contract made with a gas supplier⁸, or deemed to have been made with such a supplier⁹,

the transporter is entitled to recover from that person the value of the gas so taken¹⁰.

Each gas transporter must make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the number of kilowatt hours¹¹ represented by a supply of gas taken in such circumstances as are mentioned above¹² is to be determined for the relevant statutory¹³ purposes¹⁴.

Where a consumer's¹⁵ premises have been disconnected¹⁶ by a gas transporter, or a supply of gas to a consumer's premises has been cut off by a gas supplier¹⁷, otherwise than in the exercise of a specified statutory power relating to safety¹⁸, no person must, without the relevant consent¹⁹, reconnect the premises or restore the supply²⁰. If any person acts in contravention of this provision, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale²¹; and the transporter or supplier may again disconnect the premises or, as the case may be, cut off the supply²².

If a consumer improperly uses or deals with gas so as to interfere with the efficient conveyance of gas by the gas transporter, whether to the consumer or to any other person, the transporter may, if he thinks fit, disconnect the consumer's premises²³.

1 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 'Value', in relation to any gas taken in such circumstances as are mentioned in the Gas Act 1986 s 8B, Sch 2B para 9(1) or (2) (as added and amended) (see the text and notes 1-2 supra, 4-10 infra), means the amount which, if the gas had been taken in such circumstances as are mentioned in Sch 2B para 8(2) (as added and amended) (see PARA 859 ante), could reasonably be expected to have been payable in respect of the gas under a contract deemed to have been made by virtue of Sch 2B para 8(2) (as added and amended): Sch 2B para 9(5) (Sch 2B added by the Gas Act 1995 s 9(2), Sch 2).

4 Gas Act 1986 Sch 2B para 9(1) (as added (see note 3 supra); Sch 2B paras 9(1)-(3), 11(1), 18 amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

5 For the meaning of 'reconnected' see PARA 857 note 6 ante.

6 ie in contravention of the Gas Act 1986 Sch 2B para 11(1) (as added and amended): see the text and notes 15-20 infra. For the meaning of 'contravention' see PARA 779 note 3 ante.

7 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

8 For these purposes, 'gas supplier' includes a person authorised to supply gas by an exemption granted under the Gas Act 1986 s 6A (as added and amended) (see PARA 804 ante) or, until a day to be appointed, an exception contained in Sch 2A (as added; prospectively repealed) (see PARA 804 ante): Sch 2B para 9(5) (as added (see note 3 supra); prospectively amended, so as to remove the reference to an exception contained in Sch 2A, by the Utilities Act 2000 s 108, Sch 8, as from a day to be appointed under s 110(2); at the date at which this title states the law, no such day had been appointed).

9 le by virtue of the Gas Act 1986 Sch 2B para 8 (as added and amended) (see PARA 859 ante) or the Gas Act 1995 Sch 5 para 19 (transitional provisions relating to former tariff customers of former public gas suppliers).

10 Gas Act 1986 Sch 2B para 9(2) (as added and amended: see notes 3-4 supra).

11 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

12 le in the Gas Act 1986 Sch 2B para 9(1) or (2) (as added and amended): see the text and notes 1-10 supra.

13 le for the purposes of ibid Sch 2B para 9(1) or (2) (as added and amended): see the text and notes 1-10 supra.

14 Ibid s 48(2A)(b) (added by the Gas Act 1995 Sch 3 para 54(4)); Gas Act 1986 Sch 2B para 9(3) (as added and amended: see notes 3-4 supra). Schedule 2B para 8(10), (11) (as added and amended (see PARA 859 ante) applies in relation to such a scheme as it applies in relation to a scheme Sch 2B para 8 (as added and amended): Sch 2B para 9(4) (as added: see note 3 supra).

15 For the meaning of 'consumer' see PARA 856 note 3 ante.

16 For the meaning of 'disconnect' see PARA 857 note 6 ante.

17 For the meaning of 'gas supplier' see PARA 807 ante.

18 le in exercise of a power conferred by (1) the Gas Act 1986 Sch 2B para 20, 21 or 22 (all repealed); (2) regulations under s 18(2) (as amended) (see PARA 900 post) or s 18A(1) (as added and amended) (see PARA 902 post); or (3) regulations under the Health and Safety at Work etc Act 1974 s 15 (as amended) (health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424).

19 For these purposes, 'the relevant consent' means (1) where the premises are reconnected, the consent of the gas transporter to whose main the reconnection is made; (2) where the supply is restored, the consent of the supplier who cut off the supply, or the consent of a person who is or is about to become a relevant gas supplier: Gas Act 1986 Sch 2B para 11(3) (as added and amended: see notes 3-4 supra). For the meaning of 'relevant gas supplier' see PARA 857 note 7 ante.

20 Ibid Sch 2B para 11(1) (as added and amended: see notes 3-4 supra).

21 Ibid Sch 2B para 11(2)(a) (as added: see note 3 supra). As to the standard scale see PARA 613 note 11 ante.

22 Ibid Sch 2B para 11(2)(b) (as added: see note 3 supra).

23 Ibid Sch 2B para 18 (as added and amended: see notes 3-4 supra).

UPDATE

860 Wrongful taking of gas or restoration of supply; improper use of gas

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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861. Injury to gas fittings and interference with meters.

If any person intentionally or by culpable negligence:

1454 (1) injures or allows to be injured any gas fitting¹ provided by a gas transporter² or gas supplier³, or any service pipe⁴ by which any premises are connected to such a transporter's main;

1455 (2) alters the index to any meter used for measuring the quantity of gas conveyed or supplied⁵ by such a transporter or supplier; or

1456 (3) prevents any such meter from duly registering the quantity of gas conveyed or supplied,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁶.

In the case of any such offence, the transporter or supplier may disconnect⁷ the premises of, or cut off the supply of gas to, the person so offending⁸.

Where any person is prosecuted for an offence under head (2) or head (3) above, the possession by him of artificial means for causing an alteration of the index of the meter or, as the case may be, for preventing the meter from duly registering is, if the meter was in his custody or under his control, to be prima facie evidence that the alteration or prevention was intentionally caused by him⁹.

1 'Gas fittings' means gas pipes and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, motive power and other purposes for which gas can be used: Gas Act 1986 s 48(1). For the meaning of 'gas' see PARA 802 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 For the meaning of 'gas supplier' see PARA 807 ante.

4 For the meaning of 'service pipe' see PARA 842 note 3 ante.

5 For the meaning of references to the supply of gas, see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

6 Gas Act 1986 s 8B, Sch 2B para 10(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B para 10(1) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the standard scale see PARA 613 note 11 ante.

7 For the meaning of 'disconnect' see PARA 857 note 6 ante.

8 Gas Act 1986 Sch 2B para 10(2) (as added: see note 6 supra).

9 Ibid Sch 2B para 10(3) (as added: see note 6 supra).

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862. Failure to notify connection or disconnection of service pipe or disconnection of meter.

No person must connect¹ any meter with a service pipe² through which gas³ is conveyed to any premises⁴ by a gas transporter⁵, or disconnect⁶ any meter from any such pipe, unless he has given:

- 1457 (1) in a case where gas is supplied⁷ to the premises by a relevant gas supplier⁸ whose name and address are known to him, to the supplier; and
- 1458 (2) in any other case, to the transporter,

so that it is received by the supplier or transporter at least 48 hours before he does so, notice⁹ in the prescribed form¹⁰ of his intention to do so¹¹. Such a notice must¹² contain:

- 1459 (a) details of the time and place of the proposed connection or disconnection; and
- 1460 (b) such other information as may be prescribed¹³.

In so far, however, as it is not reasonably practicable for such a notice to contain any information required by head (b) above, it is to be a sufficient compliance with that requirement if the information is given to the relevant gas supplier or, as the case may be, the gas transporter within 48 hours after the connection or disconnection is effected¹⁴.

If any person acts in contravention¹⁵ of these provisions, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁶.

Where any meter through which gas has been supplied to any premises is completely disconnected, that is to say, is disconnected both from the service pipe and from all other pipes within the premises, then except in so far as it is not reasonably practicable for him to do so, the person making the disconnection must¹⁷:

- 1461 (i) ascertain the name and address of the owner¹⁸ of the meter; and
- 1462 (ii) inform that owner of the disconnection and of the address at which the meter will be available for collection¹⁹.

If any person fails to comply with this requirement, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale²⁰. These provisions do not, however, apply where the meter:

- 1463 (A) is disconnected for the purposes of an examination²¹ or an inspection²²; or
- 1464 (B) is disconnected for a particular purpose, whether repair or repositioning of the meter, detection of a gas leak or otherwise, and is intended to be reconnected²³.

1 For the meaning of 'connect' see PARA 857 note 6 ante.

- 2 For the meaning of 'service pipe' see PARA 842 note 3 ante.
- 3 For the meaning of 'gas' see PARA 802 ante.
- 4 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.
- 5 For the meaning of 'gas transporter' see PARA 805 ante.
- 6 For the meaning of 'disconnect' see PARA 857 note 6 ante.
- 7 For the meaning of references to the supply of gas see PARA 802 ante.
- 8 For the meaning of 'relevant gas supplier' see PARA 857 note 7 ante.
- 9 For the meaning of 'notice' see PARA 804 note 6 ante; and as to service of notices see PARA 980 post.
- 10 For the prescribed form of notice see the Gas Meters (Information on Connection and Disconnection) Regulations 1996, SI 1996/450, reg 2, Schedule (amended by virtue of the Utilities Act 2000 s 76(7)). For the meaning of 'prescribed' see PARA 798 note 5 ante.
- 11 Gas Act 1986 s 8B, Sch 2B para 12(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B para 12(1), (3) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).
- 12 *Ie* subject to the Gas Act 1986 Sch 2B para 12(3) (as added and amended): see the text and note 14 *infra*.
- 13 *Ibid* Sch 2B para 12(2) (as added: see note 11 *supra*).
- 14 *Ibid* Sch 2B para 12(3) (as added and amended: see note 11 *supra*).
- 15 For the meaning of 'contravention' see PARA 779 note 3 ante.
- 16 Gas Act 1986 Sch 2B para 12(4) (as added: see note 11 *supra*). As to the standard scale see PARA 613 note 11 ante.
- 17 *Ie* subject to *ibid* Sch 2B para 13(2) (as added): see the text and notes 21-23 *infra*.
- 18 For the meaning of 'owner' see PARA 836 note 3 ante.
- 19 Gas Act 1986 Sch 2B para 13(1), (3) (as added: see note 11 *supra*).
- 20 *Ibid* Sch 2B para 13(4) (as added: see note 11 *supra*).
- 21 *Ie* under *ibid* s 17 (as substituted and amended): see PARAS 947-949 post.
- 22 *Ie* under *ibid* Sch 2B para 3(5) (as added and amended): see PARA 857 ante.
- 23 *Ibid* Sch 2B para 13(2) (as added: see note 11 *supra*). For the meaning of 'reconnect' see PARA 857 note 6 ante.

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863. Disconnection on failure to maintain shipping arrangements.

Where:

- 1465 (1) any arrangements for the conveyance of gas¹ by a gas transporter² to a consumer's³ premises at a rate reasonably expected to exceed 73,200 kilowatt hours⁴ a year have been made by a gas shipper⁵, or by a person authorised to make the arrangements by an exemption⁶; and
- 1466 (2) those arrangements have ceased to operate and have not been replaced by arrangements made for the like purpose,

the transporter may, after giving 21 days' notice⁷ to the relevant persons, disconnect⁸ the premises⁹. The relevant persons for these purposes are:

- 1467 (a) the occupier, or the owner¹⁰ of the premises if they are unoccupied; and
- 1468 (b) any gas supplier¹¹ who, to the knowledge of the transporter, has contracted to supply gas to the premises¹².

In the case of unoccupied premises the owner of which is unknown to the gas transporter and cannot be ascertained after diligent inquiry, the notice so required to be given to the occupier or owner may given by affixing it upon a conspicuous part of the premises¹³.

1 For the meaning of 'gas' see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 For the meaning of 'consumer' see PARA 856 note 3 ante.

4 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

5 For the meaning of 'gas shipper' see PARA 807 ante.

6 ie an exemption granted under the Gas Act 1986 s 6A (as added and amended): see PARA 804 ante.

7 For the meaning of 'notice' see PARA 804 note 6 ante; and as to the service of notice see PARA 980 post.

8 For the meaning of 'disconnect' see PARA 857 note 6 ante.

9 Gas Act 1986 s 8B, Sch 2B para 14(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B para 14(1), (3) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)); and see also the Gas Act 1986 s 48(2A)(a) (added by the Gas Act 1995 Sch 3 para 54(4)).

10 For the meaning of 'owner' see PARA 836 note 3 ante.

11 For the meaning of 'gas supplier' see PARA 807 ante.

12 Gas Act 1986 Sch 2B para 14(2) (as added: see note 9 supra). For the meaning of references to the supply of gas see PARA 802 ante.

13 Ibid Sch 2B para 14(3) (as added and amended: see note 9 supra).

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864. Gas transporter's duties to maintain service pipes and alter, adjust or replace burners.

A gas transporter¹ must carry out any necessary work of maintenance, repair or renewal of any service pipe² by which gas³ is conveyed by him to a consumer's⁴ premises⁵, whether or not the service pipe was supplied and laid at the transporter's expense⁶. The cost of any work carried out in accordance with this provision is to be defrayed as follows:

- 1469 (1) if the work was made necessary by any intentional act or culpable negligence of the consumer and the transporter so requires, by the consumer;
1470 (2) in any other case, by the transporter⁷.

Where there is a change in the properties of any gas which is conveyed by a gas transporter to a consumer's premises at a rate not exceeding 2,196,000 kilowatt hours⁸ a year, it is the duty of the gas transporter to take without charge to the consumer such steps as may be necessary to alter, adjust or replace the burners in appliances at the premises which burn that gas in such manner as to secure that the gas can be burned with safety and efficiency⁹.

1 For the meaning of 'gas transporter' see PARA 805 ante.

2 For the meaning of 'service pipe' see PARA 842 note 3 ante.

3 For the meaning of 'gas' see PARA 802 ante.

4 For the meaning of 'consumer' see PARA 856 note 3 ante.

5 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

6 Gas Act 1986 s 8B, Sch 2B para 15(1) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B paras 15(1), 16(1), (2) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of the requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

7 Gas Act 1986 Sch 2B para 15(2) (as added: see note 6 supra). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of the requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

8 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante. As to the Secretary of State's power to set a lower limit of the number of kilowatt hours see PARA 836 note 6 ante.

9 Gas Act 1986 s 48(2A)(a) (added by the Gas Act 1995 Sch 3 para 54(4)); Gas Act 1986 Sch 2B para 16(1), (2) (as added and amended: see note 6 supra). As to the determination of disputes under these provisions see PARA 965 post; as to the enforcement of the requirements imposed under them see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

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865. Use of antifluatuators and valves.

A consumer¹ is not entitled to use a compressor, or any apparatus for using compressed air² or extraneous gas³, unless he has given to the gas transporter⁴ not less than 14 days' notice⁵ of his intention to do so; but this does not apply to the use of any compressor or apparatus which was lawfully in use immediately before the appointed day⁶.

Where a consumer uses gas⁷ for working or supplying a compressor, that is to say:

- 1471 (1) an engine, gas compressor or other similar apparatus; or
- 1472 (2) any apparatus liable to produce in any main of the gas transporter a pressure less than atmospheric pressure,

he must, if so required by the transporter by notice, fix in a suitable position and keep in use an appliance provided by him which will effectually prevent inconvenience being caused to persons by reason that he and they are supplied with gas conveyed through the same system⁸.

Where a consumer uses for or in connection with the consumption of gas:

- 1473 (a) any air at high pressure ('compressed air'); or
- 1474 (b) any gaseous substance not conveyed by the gas transporter ('extraneous gas'),

he must, if so required (other than for the purpose of preventing danger) by the transporter by notice, fix in a suitable position and keep in use an appliance provided by him which will effectually prevent the admission of the compressed air or extraneous gas into the service pipe⁹ or into any main through which gas is conveyed by the transporter¹⁰.

Where a person is required by the above provisions to keep in use any appliance, he must at his own expense keep it in proper order and repair, and repair, renew or replace it if it is not in proper order or repair¹¹.

If a consumer makes default in complying with any of the above provisions, or with the relevant safety regulation¹² or directions made thereunder, the gas transporter may disconnect¹³ the consumer's premises¹⁴. The gas transporter also has power to disconnect, remove, test and replace any appliance which a consumer is so required¹⁵ to keep in use; and any expenses incurred by the transporter under this provision must, if the appliance is found in proper order and repair, be paid by the transporter, but otherwise must be paid by the consumer¹⁶.

1 For the meaning of 'consumer' see PARA 856 note 3 ante.

2 See head (a) in the text.

3 See head (b) in the text.

4 For the meaning of 'gas transporter' see PARA 805 ante.

5 For the meaning of 'notice' see PARA 804 note 6 ante; and as to the service of notice see PARA 980 post.

6 Gas Act 1986 s 8B, Sch 2B para 17(4) (s 8B, Sch 2B added by the Gas Act 1995 s 9(1), (2), Sch 2; the Gas Act 1986 Sch 2B para 17 amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). For the meaning of 'the appointed day' see PARA 857 note 10 ante.

7 For the meaning of 'gas' see PARA 802 ante.

8 Gas Act 1986 Sch 2B para 17(1) (as added and amended (see note 6 supra); also amended by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 41(2)(a)). For the meaning of references to the supply of gas, see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

9 For the meaning of 'service pipe' see PARA 842 note 3 ante.

10 Gas Act 1986 Sch 2B para 17(2) (as added and amended (see note 6 supra); also amended by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 41(2)(b)).

11 Gas Act 1986 Sch 2B para 17(3) (as added: see note 6 supra).

12 In the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 38: see PARA 945 post.

13 For the meaning of 'disconnect' see PARA 857 note 6 ante.

14 Gas Act 1986 Sch 2B para 17(5) (as added and amended (see note 6 supra); also amended by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 41(2)(c)).

15 As required by the Gas Act 1986 Sch 2B para 17 (as added and amended) or by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 38.

16 Gas Act 1986 Sch 2B para 17(6) (as added and amended (see note 6 supra); also amended by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 41(2)(c)).

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866. Restoration of supply where consumer in default.

Where:

- 1475 (1) a consumer's¹ premises have been disconnected² by a gas transporter³ in pursuance of specified provisions of the gas code⁴; or
- 1476 (2) a supply of gas⁵ to a consumer's premises has been cut off by a gas supplier⁶ in pursuance of other specified provisions of that code⁷,

the transporter or supplier is not to be under any obligation to reconnect⁸ the consumer's premises or, as the case may be, resume the supply of gas to the consumer's premises until the consumer either is no longer an owner⁹ or occupier of the premises or he has:

- 1477 (a) made good the default, or remedied the matter, in consequence of which the premises were disconnected or the supply was cut off; and
- 1478 (b) paid the reasonable expenses of disconnecting and reconnecting the premises or, as the case may be, of cutting off the supply and restoring the supply¹⁰.

1 For these purposes, 'consumer', in relation to a disconnection or cutting off under the Gas Act 1986 s 8B, Sch 2B para 11(2)(b) (as added) (see PARA 860 ante), means (1) the owner of the premises at the time when the reconnection was made, or the supply was restored, without the relevant consent (a) if the premises were unoccupied at that time; or (b) if that reconnection or restoration of supply was made by him or on his behalf; and (2) the occupier of the premises at that time in any other case; and 'relevant consent' has the same meaning as in Sch 2B para 11 (as added and amended): Sch 2B para 19(3) (Sch 2B para 19 added by the Gas Act 1995 s 9(2), Sch 2). For the meaning of 'consumer' generally see PARA 856 note 3 ante.

2 For the meaning of 'disconnect' see PARA 857 note 6 ante.

3 For the meaning of 'gas transporter' see PARA 805 ante.

4 Ie in pursuance of the Gas Act 1986 Sch 2B para 2(2)(a) (as added and amended) (see PARA 857 ante), Sch 2B para 3(2)(a) (as added and amended) (see PARA 857 ante), Sch 2B para 5(4) (as added and amended) (see PARA 857 ante), Sch 2 para 10(2) (as added) (see PARA 861 ante), Sch 2B para 11(2)(b) (as added) (see PARA 860 ante), Sch 2B para 14(1) (as added and amended) (see PARA 863 ante), Sch 2B para 17(5) (as added and amended) (see PARA 865 ante), or Sch 2B para 18 (as added and amended) (see PARA 860 ante).

5 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

6 For the meaning of 'gas supplier' see PARA 807 ante.

7 Ie in pursuance of the Gas Act 1986 Sch 2B para 2(2)(b) (as added) (see PARA 857 ante), Sch 2B para 3(2) (b) (as added) (see PARA 857 ante), Sch 2B para 7(3) or (4) (as added and amended) (see PARA 858 ante), Sch 2B para 10(2) (as added) (see PARA 861 ante) or Sch 2B para 11(2)(b) (as added) (see PARA 860 ante).

8 For the meaning of 'reconnect' see PARA 857 note 6 ante.

9 For the meaning of 'owner' see PARA 836 note 3 ante.

10 Gas Act 1986 Sch 2B para 19(1), (2) (as added (see note 1 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(ii) The Gas Code/867. Powers of entry under the gas code.

867. Powers of entry under the gas code.

Any officer¹ authorised by a gas transporter² may at all reasonable times, on the production of some duly authenticated document showing his authority, enter a consumer's³ premises for the purpose of:

- 1479 (1) inspecting gas fittings⁴;
- 1480 (2) ascertaining the quantity of gas conveyed to the premises⁵;
- 1481 (3) exercising the power conferred on the transporter to remove, inspect and reinstall a meter⁶;
- 1482 (4) performing the duty imposed on the transporter to maintain service pipes⁷ or alter, adjust or replace burners⁸;
- 1483 (5) exercising the power conferred on the transporter to disconnect, remove, test and replace any antifluctuator or valve⁹;
- 1484 (6) in the case of premises where the transporter has reason to believe that a compressor or compressed air or extraneous gas¹⁰ is being used, inspecting the premises and ascertaining whether the relevant statutory requirements¹¹ are being complied with¹².

Any officer authorised by a relevant gas supplier¹³ or relevant gas shipper¹⁴ may at all reasonable times, on the production of some duly authenticated document showing his authority, enter a consumer's premises for the purpose of:

- 1485 (a) inspecting gas fittings;
- 1486 (b) ascertaining the quantity of gas supplied or conveyed to the premises; or
- 1487 (c) exercising a power to remove, inspect and reinstall a meter¹⁵ or to install a prepayment meter¹⁶ and testing gas fittings, and making any adjustments required for their safe operation, after the exercise of the power¹⁷.

Where:

- 1488 (i) a gas transporter or gas supplier¹⁸ is authorised by any provision of the Gas Act 1986 to disconnect¹⁹ any premises, or, as the case may be, to cut off or discontinue the supply of gas²⁰ to any premises;
- 1489 (ii) a person occupying premises supplied with gas by a gas supplier ceases to require a supply of gas; or
- 1490 (iii) a person entering into occupation of any premises previously supplied with gas by a gas supplier does not take a supply of gas,

any officer authorised by the gas transporter or gas supplier may, after 24 hours' notice²¹ to the occupier, or to the owner of the premises if they are unoccupied, at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of either disconnecting the premises, or cutting off or discontinuing the supply of gas to the premises, or removing any meter or other gas fitting owned by the transporter or supplier²². The notice so required to be given may, in the case of unoccupied premises the

owner of which is unknown to the gas transporter or gas supplier and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous part of the premises not less than 48 hours before the premises are entered²³.

Where a consumer's premises have been disconnected by a gas transporter, or a supply of gas to a consumer's premises has been cut off by a gas supplier, otherwise than in the exercise of a power conferred by specified safety regulations²⁴, any officer authorised by the gas transporter or gas supplier may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of ascertaining whether the premises have been reconnected, or the supply has been restored, without the relevant consent²⁵.

Where:

1491 (A) a person occupying premises supplied with gas through a meter or other gas fitting owned by a gas transporter or gas supplier ceases to take a supply through that meter or fitting; or

1492 (B) a person entering into occupation of any premises previously supplied with gas through a meter or other gas fitting so owned does not take a supply of gas through that meter or fitting,

any officer authorised by the gas transporter or gas supplier may, after 24 hours' notice to the occupier, or to the owner of the premises if they are unoccupied, at all reasonable times and on production of some duly authenticated document showing his authority, enter the premises for the purpose of removing the meter or other gas fitting²⁶.

Any officer authorised by a gas transporter may, after seven clear days' notice to the occupier of any premises, or to the owner of any premises which are unoccupied, at all reasonable times and on production of some duly authenticated document showing his authority, enter the premises for the purpose of either placing a new pipe in the place of any existing pipe which has already been lawfully placed or repairing or altering any such existing pipe²⁷. The notice so required to be given may, in the case of unoccupied premises the owner of which is unknown to the gas transporter and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous part of the premises²⁸. In cases of emergency arising from defects in any pipes entry may be made under the above power without the notice so required to be given, but notice of the entry and the justification for it must then be given as soon as possible after the occurrence of the emergency²⁹.

No officer must be authorised by a gas transporter, gas supplier or gas shipper to exercise any of the above powers of entry unless either the transporter, supplier or shipper has taken all reasonable steps to ensure that he is a fit and proper person to exercise those powers³⁰. Where in pursuance of any powers of entry so conferred, entry is made on any premises by an officer authorised by a gas transporter, gas supplier or gas shipper, the officer must ensure that the premises are left no less secure by reason of the entry and the transporter, supplier or shipper must make good, or pay compensation for, any damage caused by the officer, or by any person accompanying him in entering the premises, in taking any authorised action³¹ therein or in making the premises secure³². Any officer exercising such powers of entry may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes³³ of securing the premises³⁴.

If any person intentionally obstructs any officer exercising such powers of entry, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale³⁵.

The Rights of Entry (Gas and Electricity Boards) Act 1954, which restricts rights of entry to premises, except in a case of emergency, so that either the occupier's consent or a justice's warrant is required³⁶, applies in relation to any of the above powers of entry³⁷.

- 1 'Officer', in relation to any person, includes any servant or agent of that person, and any officer or servant of such an agent: Gas Act 1986 s 48(1) (definition added by the Gas Act 1995 s 10(2), Sch 3 para 54(1)).
- 2 For these purposes, any reference to any officer authorised by any person includes, in relation to an officer who is an officer or servant of an agent of that person, an officer, who, in accordance with the terms of any written authority given by that person to the agent, is authorised by the agent on behalf of that person: Gas Act 1986 s 48(1A) (added by the Gas Act 1995 s 10(1), Sch 3 para 54(2)). For the meaning of 'gas transporter' see PARA 805 ante; and as to authorisation for these purposes see further the text and note 30 infra.
- 3 For the meaning of 'consumer' see PARA 856 note 3 ante.
- 4 For the meaning of 'gas fittings' see PARA 861 note 1 ante.
- 5 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.
- 6 Ie the power conferred by the Gas Act 1986 s 8B, Sch 2B para 3(5) (as added and amended): see PARA 857 ante.
- 7 Ie the duty imposed by ibid Sch 2B para 15 (as added and amended): see PARA 864 ante. For the meaning of 'service pipe' see PARA 842 note 3 ante.
- 8 Ie the duty imposed by ibid Sch 2B para 16 (as added and amended): see PARA 864 ante.
- 9 Ie the power conferred by ibid Sch 2B para 17(6) (as added and amended): see PARA 865 ante.
- 10 For these purposes, 'compressor', 'compressed air' and 'extraneous gas' have the same meanings as in ibid Sch 2B para 17 (as added and amended) (see PARA 865 ante); Sch 2B para 23(3) (Sch 2B added by the Gas Act 1995 s 9(2), Sch 2).
- 11 Ie the provisions of the Gas Act 1986 Sch 2B para 17 (as added and amended): see PARA 865 ante.
- 12 Ibid Sch 2B para 23(1) (as added (see note 10 supra); Sch 2B paras 23-28 amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the exercise of these powers of entry see the text and notes 31-37 infra.
- 13 For these purposes, any reference to a relevant gas supplier includes a reference to a person who has been or is about to become such a supplier: Gas Act 1986 Sch 2B para 23(3) (as added: see note 10 supra). For the meaning of 'relevant gas supplier' see PARA 857 note 7 ante; and as to authorisation for these purposes see note 2 supra and the text and note 30 infra.
- 14 For these purposes, any reference to a relevant gas shipper includes a reference to a person who has been or is about to become such a shipper: Gas Act 1986 Sch 2B para 23(3) (as added: see note 10 supra). For the meaning of 'relevant gas shipper' see PARA 857 note 14 ante; and as to authorisation for these purposes see note 2 supra and the text and note 30 infra.
- 15 Ie a power conferred by ibid Sch 2B para 3(5) (as added and amended): see PARA 857 ante.
- 16 Ie a power conferred by ibid Sch 2B para 7(3)(a) (as added and amended): see PARA 858 ante.
- 17 Ibid Sch 2B para 23(2) (as added (see note 10 supra); amended by the Utilities Act 2000 s 84(1), (4)). As to the exercise of these powers of entry see the text and notes 31-37 infra.
- 18 For the meaning of 'gas supplier' see PARA 807 ante.
- 19 For the meaning of 'disconnect' see PARA 857 note 6 ante.
- 20 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.
- 21 For the meaning of 'notice' see PARA 804 note 6 ante; and as to the service of notice see PARA 980 post.
- 22 Gas Act 1986 Sch 2B para 24(1), (2) (as added and amended: see notes 10, 12 supra).
- 23 Ibid Sch 2B para 24(3) (as added and amended: see notes 10, 12 supra). As to the exercise of these powers of entry see the text and notes 31-37 infra.

24 Ie a power conferred by (1) the Gas Act 1986 Sch 2B para 20, 21 or 22 (all repealed); (2) regulations under s 18(2) (as amended) (see PARA 900 post) or s 18A(1) (as added and amended) (see PARA 902 post); or (3) regulations under the Health and Safety at Work etc Act 1974 s 15 (as amended) (health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424).

25 Gas Act 1986 Sch 2B para 25(1), (2) (as added and amended: see notes 10, 12 supra). As to the exercise of these powers of entry see the text and notes 31-37 infra. For these purposes, 'the relevant consent' has the same meaning as in Sch 2B para 11 (as added and amended) (see PARA 860 ante): Sch 2B para 25(3) (as so added).

26 Ibid Sch 2B para 26(1), (2) (as added and amended: see notes 10, 12 supra). As to the exercise of these powers of entry see the text and notes 31-37 infra. Schedule 2B para 24(3) (as added and amended) (see the text and note 23 supra) applies for these purposes as it applies for the purposes of Sch 2B para 24(3) (as added and amended): Sch 2B para 26(3) (as so added and amended).

27 Ibid Sch 2B para 27(1) (as added and amended: see notes 10, 12 supra). As to the exercise of these powers of entry see the text and notes 31-37 infra.

28 Ibid Sch 2B para 27(2) (as added and amended: see notes 10, 12 supra).

29 Ibid Sch 2B para 27(3) (as added and amended: see notes 10, 12 supra). If the Secretary of State is satisfied that any of the provisions of Sch 2B para 27(3) (as so added and amended) have been or will be superseded by regulations under s 18 (as amended) (see PARA 900 post) or s 18A (as added and amended) (see PARA 902 post), he may by order made by statutory instrument provide that those provisions shall cease to have effect as from such date after the coming into force of the regulations as may be specified in the order: Gas Act 1995 s 9(4).

30 Gas Act 1986 Sch 2B para 28(1) (as added and amended: see notes 10, 12 supra).

31 Ie any action authorised by ibid Sch 2B (as added and amended): see PARA 856 et seq ante; the text and notes 1-30 supra; and PARA 868 post.

32 Ibid Sch 2B para 28(2) (as added and amended: see notes 10, 12 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

33 Ie for the purposes of ibid Sch 2B para 28(2) (as added and amended): see the text and note 32 supra.

34 Ibid Sch 2B para 28(3) (as added: see note 10 supra).

35 Ibid Sch 2B para 28(4) (as added: see note 10 supra). As to the standard scale see PARA 613 note 11 ante. See, however, the Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(3); and PARA 773 ante.

36 See PARAS 773-774 ante.

37 Gas Act 1986 Sch 2B para 28(5) (as added: see note 10 supra).

UPDATE

867 Powers of entry under the gas code

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(ii) The Gas Code/868. Gas meters and fittings not to be subject to distress.

868. Gas meters and fittings not to be subject to distress.

Any gas meter which is connected to a service pipe¹, and any gas fitting² in a consumer's³ premises which is owned by a gas transporter⁴ or gas supplier⁵ and is marked or impressed with a sufficient mark or brand indicating its owner:

1493 (1) is not to be subject to distress or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession it may be; and

1494 (2) is to be deemed not to be a landlord's fixture⁶, notwithstanding that it may be fixed or fastened to any part of the premises in which it may be situated⁷.

1 For the meaning of 'service pipe' see PARA 842 note 3 ante.

2 For the meaning of 'gas fitting' see PARA 861 note 1 ante.

3 For the meaning of 'consumer' see PARA 856 note 3 ante.

4 For the meaning of 'gas transporter' see PARA 805 ante.

5 For the meaning of 'gas supplier' see PARA 807 ante.

6 As to landlord's fixtures see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173.

7 Gas Act 1986 s 8B, Sch 2B para 29(1) (added by the Gas Act 1995 s 9(1), (2), Sch 2; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(iii) Charges for Gas/A. CALORIFIC VALUES OF GAS CONVEYED BY GAS TRANSPORTERS/869. Methods of calculating kilowatt hours.

(iii) Charges for Gas

A. CALORIFIC VALUES OF GAS CONVEYED BY GAS TRANSPORTERS

869. Methods of calculating kilowatt hours.

Except in prescribed cases¹, the number of kilowatt hours² conveyed by a gas transporter³ to premises⁴, or to pipeline systems operated by other gas transporters, must be calculated in the prescribed manner⁵:

- 1495 (1) on the basis of calorific values of the gas⁶ determined by the transporter in accordance with regulations under these provisions, or so determined by another gas transporter and adopted by the transporter in accordance with such regulations⁷; or
- 1496 (2) if and to the extent that regulations under these provisions so provide and the transporter thinks fit, on the basis of declared calorific values⁸ of the gas⁹.

Regulations under these provisions must be made by the Gas and Electricity Markets Authority ('GEMA')¹⁰ with the consent of the Secretary of State¹¹. They may make provision as to the manner in which prescribed information with respect to the making of calculations in accordance with the regulations is to be made available to other licence holders¹² and to the public¹³.

Such regulations made for the purposes of head (1) above may make provision:

- 1497 (a) for requiring determinations of calorific values of gas conveyed by gas transporters to be made on the basis of samples of gas taken at such places or premises, at such times and in such manner as the Authority may direct¹⁴;
- 1498 (b) for requiring such determinations to be made at such places or premises, at such times and in such manner as the Authority may direct¹⁵;
- 1499 (c) as to the manner in which the results of such determinations are to be made available to other licence holders and to the public¹⁶;
- 1500 (d) for requiring such premises, apparatus and equipment as the Authority may direct to be provided and maintained by gas transporters for the purpose of making such determinations¹⁷;
- 1501 (e) for requiring gas transporters to carry out tests of apparatus and equipment so provided and maintained by them¹⁸; and
- 1502 (f) for requiring the results of such tests to be notified to the Authority or to any person appointed for the relevant statutory purposes¹⁹, and to be made available to other licence holders and to the public²⁰.

Such regulations made for the purposes of head (2) above may make provision:

- 1503 (i) for requiring declarations of calorific values of gas conveyed by gas transporters to be made at such times and in such manner as the Authority may direct²¹;
 - 1504 (ii) as to the times when such declarations are to take effect, and as to the manner in which the calorific values declared are to be made available to other licence holders and to the public²²;
 - 1505 (iii) for imposing requirements on gas transporters as to the correlation between:
- 95
- 141. (A) the calorific values of the gas conveyed by them for any period; and
 - 142. (B) the calorific values declared by them for that period²³;
- 96
- 1506 (iv) for requiring gas transporters to carry out tests of gas for the purpose of ascertaining whether they are complying with the requirements of regulations made by virtue of head (iii) above²⁴;
 - 1507 (v) for requiring such tests to be carried out at such places or premises, at such times and in such manner as the Authority may direct²⁵; and
 - 1508 (vi) for requiring the results of such tests to be notified to the Authority or to any person appointed for the relevant statutory purposes²⁶, and to be made available to other licence holders and to the public²⁷.

The Authority may by notice in writing require a gas transporter to give to the Authority, or to any person appointed by it for the purpose, within such time and at such place as may be specified in the notice, such information²⁸ as the Authority may reasonably require for the purpose of making regulations under the above provisions, or under the provisions relating to the appointment of persons to test apparatus and gas conveyed by gas transporters²⁹ or of giving directions under such regulations³⁰. A gas transporter is not, however, to be so required to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court³¹.

Any gas transporter contravening any provision of the relevant regulations³² is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale³³.

1 For the meaning of 'prescribed' see PARA 798 note 5 ante. The cases so prescribed are the following cases, namely (1) where gas continues to be conveyed through a pipe to particular premises and the number of therms or kilowatt hours conveyed through that pipe to those premises was, immediately before the commencement of the relevant regulations (ie 1 March 1996: see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 1), calculated on the basis of calorific values determined by means of apparatus provided and maintained only for purposes connected with the conveyance of gas through that pipe to those premises; (2) where an agreement between a gas transporter and a relevant licence holder or the owner or occupier of particular premises provides for the number of kilowatt hours conveyed through a pipe to those premises to be calculated on the basis of calorific values determined by means of apparatus provided and maintained only for purposes connected with the conveyance of gas through that pipe to those premises: reg 2(4) (regs 2-14 amended by virtue of the Utilities Act 2000 ss 3(2), 76(7)). 'Relevant licence holder', in relation to a gas transporter, means (a) another gas transporter operating a pipeline system to which gas is conveyed through pipes by the transporter; or (b) a gas shipper who has arranged with the transporter for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by the transporter: Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 2(1) (as so amended).

2 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

3 For the meaning of 'gas transporter' see PARA 805 ante.

4 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

5 Ie in accordance with the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439 (as amended). Except in the cases prescribed by reg 2(4) (as amended) (see note 1 supra), the number of kilowatt

hours conveyed by a gas transporter to a take off point must be calculated in accordance with Pt II (regs 3-6) (as amended) or, where a gas transporter makes or adopts a declaration of calorific value in accordance with reg 8(1) (as amended) in respect of an area in which the take off point is situated, Pt III (regs 7-10) (as amended): reg 2(3) (as amended (see note 1 supra); also amended by SI 1997/937). 'Take off point', in relation to a gas transporter, means any premises to which gas is conveyed by the transporter or any point at which gas conveyed by the transporter enters any pipeline system operated by another gas transporter: Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 2(1).

6 For the purposes of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante; the text and notes 1-5 supra, 7-31 infra; and PARA 870 et seq post), 'calorific value', in relation to any gas, means the number of megajoules (gross) which would be produced by (1) the combustion of one cubic metre of the gas measured at a temperature of 15°C and a pressure of 1013.25 millibars; or (2) if regulations under s 12 (as substituted and amended) so provide, the combustion of 1 kg of the gas, containing in either case, if the Gas and Electricity Markets Authority ('GEMA') so determines, such an amount of water vapour as is specified in the determination: s 12(2) (s 12 substituted by the Gas Act 1995 s 10(1), Sch 3 para 6; the Gas Act 1986 s 12(2) amended for these purposes by virtue of the Utilities Act 2000 s 3(2)).

7 Gas Act 1986 s 12(1)(a) (as substituted (see note 6 supra); s 12(1), (2), (4)-(7) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post. As to such determination see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, Pt II (regs 3-6) (as amended (see note 1 supra); also amended by SI 1997/937).

8 'Declared calorific value', in relation to any gas conveyed by a gas transporter, means a calorific value declared by the transporter in accordance with regulations under the Gas Act 1986 s 12 (as substituted and amended), or so declared by another gas transporter and adopted by the transporter in accordance with such regulations: s 12(2) (as substituted and amended: see notes 6-7 supra).

9 Ibid s 12(1)(b) (as substituted: see note 6 supra). As to such declaration see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, Pt III (regs 7-10) (as amended (see note 1 supra); also amended by SI 1997/937). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

10 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

11 Gas Act 1986 s 12(1) (as substituted (see note 6 supra); amended by virtue of the Utilities Act 2000 s 3(2)).

12 For the meaning of 'licence holder' see PARA 789 note 9 ante.

13 Gas Act 1986 s 12(3) (as substituted: see note 6 supra). See the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, regs 5, 6(d), (g), 8 (as amended). Any question as to whether any office of a gas transporter is reasonably accessible to the public must be determined by the Authority: Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 16 (as amended: see note 1 supra).

14 Gas Act 1986 s 12(4)(a) (as substituted and amended (see notes 6-7 supra); also amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(a) (as amended: see note 1 supra).

15 Gas Act 1986 s 12(4)(b) (as substituted (see note 6 supra); amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(b) (as amended: see note 1 supra).

16 Gas Act 1986 s 12(4)(c) (as substituted: see note 6 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(d) (substituted by SI 1997/937).

17 Gas Act 1986 s 12(4)(d) (as substituted and amended (see notes 6-7 supra); also amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(c) (as amended: see note 1 supra).

18 Gas Act 1986 s 12(4)(e) (as substituted and amended: see notes 6-7 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(e).

19 le appointed under the Gas Act 1986 s 13(1) (as substituted and amended): see PARA 870 post.

20 Gas Act 1986 s 12(4)(c) (as substituted (see note 6 supra); amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 6(f), (g) (reg 6(f) (as amended (see note 1 supra)); reg 6(g) substituted by SI 1997/937).

21 Gas Act 1986 s 12(5)(a) (as substituted and amended (see notes 6-7 supra); also amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 8(1), (2) (as amended: see note 1 supra).

22 Gas Act 1986 s 12(5)(b) (as substituted: see note 6 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 8(3), (4) (as amended: see note 1 supra).

23 Gas Act 1986 s 12(5)(c) (as substituted and amended: see notes 6-7 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 9(1), (2) (as amended: see note 1 supra).

24 Gas Act 1986 s 12(5)(d) (as substituted and amended: see notes 6-7 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 10(1) (as amended: see note 1 supra).

25 Gas Act 1986 s 12(5)(e) (as substituted and amended (see notes 6-7 supra); also amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 10(1) (as amended: see note 1 supra).

26 See note 19 supra.

27 Gas Act 1986 s 12(5)(f) (as substituted (see note 6 supra); amended by virtue of the Utilities Act 2000 s 3(2)); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 10(2) (as amended (see note 1 supra); also amended by SI 1997/937).

28 For the meaning of 'information' see PARA 792 note 8 ante.

29 Ie under the Gas Act 1986 s 13 (as substituted and amended): see PARA 870 post.

30 Ibid s 12(6) (as substituted and amended (see notes 6-7 supra); also amended by virtue of the Utilities Act 2000 s 3(2)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

31 Ibid s 12(7) (as substituted and amended: see notes 6-7 supra).

32 Ie the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439 (as amended): see the text and notes 1, 5, 7, 9, 13-27 supra; and PARA 870 post.

33 Ibid reg 15 (as amended: see note 1 supra).

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870. Calorific values; tests of apparatus etc.

The Gas and Electricity Markets Authority ('GEMA')¹ must appoint competent and impartial persons:

- 1509 (1) to carry out tests of apparatus and equipment provided and maintained by gas transporters² in pursuance of regulations made for the relevant statutory purposes³ for the purpose of ascertaining whether they comply with the regulations;
- 1510 (2) to carry out tests of gas conveyed by gas transporters⁴ where the number of kilowatt hours⁵ falls to be calculated on the basis of declared calorific values⁶ for the purpose of ascertaining whether the transporters are complying with the requirements of the relevant regulations⁷; and
- 1511 (3) generally to assist the Authority in exercising its relevant⁸ statutory functions⁹.

Regulations under these provisions, which must be made by the Authority with the consent of the Secretary of State¹⁰, may make provision:

- 1512 (a) for requiring such tests as are mentioned in head (2) above to be carried out at such places or premises as the Authority may direct¹¹;
- 1513 (b) for requiring such premises, apparatus and equipment as the Authority may direct to be provided and maintained by gas transporters for the purpose of carrying out such tests¹²;
- 1514 (c) for requiring samples of gas to be taken by gas transporters at such places or premises, at such times and in such manner as the Authority may direct¹³; and
- 1515 (d) for requiring samples of gas so taken to be provided by gas transporters, for the purpose of carrying out such tests, at such places or premises, at such times and in such manner as the Authority may direct¹⁴.

Such regulations may also make provision:

- 1516 (i) for persons representing the gas transporter concerned to be present during the carrying out of such tests as are mentioned in heads (1) and (2) above¹⁵;
- 1517 (ii) as to the manner in which the results of such tests are to be made available to other licence holders¹⁶ and to the public¹⁷; and
- 1518 (iii) for conferring powers of entry on property owned or occupied by gas transporters for the purpose of carrying out such tests and otherwise for the relevant statutory purposes¹⁸.

There must be paid out of money provided by Parliament to persons appointed to carry out the functions under heads (1) to (3) above who are members of the Authority's staff such remuneration and such allowances as may be determined by the Authority with the approval of the Treasury, and such pensions as may be so determined may be paid out of money provided

by Parliament to or in respect of such persons¹⁹. Every person who is a gas transporter during any period must pay to the Authority such proportion (if any) as the Authority may determine of:

- 1519 (A) any sums so paid by the Authority in respect of that period; and
- 1520 (B) such part of the Authority's other expenses for that period as it may with the consent of the Treasury determine to be attributable to its relevant statutory functions²⁰;

and any such liability to pay to the Authority sums on account of pensions²¹ must, if the Authority so determines, be satisfied by way of contributions calculated, at such rate as may be determined by the Treasury, by reference to remuneration²². Any sums received by the Authority under these provisions must be paid into the Consolidated Fund²³.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 Ie regulations made by virtue of the Gas Act 1986 s 12(4)(d) (as substituted and amended): see PARA 869 ante at head (d) in the text.

4 For the meaning of 'gas' see PARA 802 ante; for the meaning of 'gas transporter' see PARA 805 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

5 For the meaning of 'kilowatt hour' see PARA 807 note 6 ante.

6 Ie falls to be calculated in accordance with the Gas Act 1986 s 12(1)(b) (as substituted): see PARA 869 ante at head (2) in the text.

7 Ie regulations made by virtue of ibid s 12(5)(c) (as substituted and amended): see PARA 869 ante at head (iii) in the text.

8 Ie its functions under, or under regulations made under, ibid s 12 (as substituted and amended) (see PARA 869 ante) or s 13 (as substituted and amended) (see the text and notes 1-7 supra, 9-23 infra).

9 Ibid s 13(1) (s 13 substituted by the Gas Act 1995 s 10(1), Sch 3 para 7; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)); and see also the Gas Act 1986 s 48(2A)(b) (added by the Gas Act 1995 Sch 3 para 54(4)).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 Gas Act 1986 s 13(2)(a) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 11(1) (regs 11-14 amended by virtue of the Utilities Act 2000 s 76(7)).

12 Gas Act 1986 s 13(2)(b) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 11(2) (as amended: see note 11 supra).

13 Gas Act 1986 s 13(2)(c) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 11(3) (as amended: see note 11 supra).

14 Gas Act 1986 s 13(2)(d) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 11(3) (as amended: see note 11 supra).

15 Gas Act 1986 s 13(3)(a) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 12 (as amended: see note 11 supra).

16 For the meaning of 'licence holder' see PARA 789 note 9 ante.

17 Gas Act 1986 s 13(3)(b) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 13 (as amended (see note 11 supra); also amended by SI 1997/937).

18 Gas Act 1986 s 13(3)(c) (as substituted and amended: see note 9 supra); and see the Gas (Calculation of Thermal Energy) Regulations 1996, SI 1996/439, reg 14 (as amended (see note 11 supra); also amended by SI 2002/3130). The statutory purposes referred to in the text are the purposes of the Gas Act 1986 ss 12, 13 (as substituted and amended).

19 Ibid s 13(4) (as substituted and amended: see note 9 supra).

20 Ie its functions under ibid ss 12, 13 (as substituted and amended).

21 Ie whether paid by the Authority under ibid s 13(4) (as substituted and amended) or otherwise.

22 Ibid s 13(5) (as substituted and amended: see note 9 supra).

23 Ibid s 13(6) (as substituted and amended: see note 9 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

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B. ADJUSTMENT OF CHARGES

871. Adjustment of charges to help disadvantaged groups of customers.

If the Secretary of State¹ considers that members of any group (a 'disadvantaged group') of customers² of authorised suppliers³ are treated less favourably than other customers of theirs as respects charges for gas⁴, he may make an order containing a scheme for the adjustment of charges for gas with a view to eliminating or reducing the less favourable treatment⁵. The scheme may include:

- 1521 (1) provision for the adjustment of charges by authorised shippers⁶ or authorised transporters⁷, as well as by suppliers; and
- 1522 (2) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group, as well as by persons who are⁸.

The scheme must:

- 1523 (a) describe the disadvantaged group;
- 1524 (b) specify the persons whose charges are covered by the scheme; and
- 1525 (c) set out the basis of the adjustment of the charges⁹;

and if the scheme does not relate to the whole of Great Britain¹⁰, it must specify the area or areas to which it relates¹¹.

The scheme may:

- 1526 (i) require authorised suppliers, authorised shippers or authorised transporters to supply information¹² of any specified description, in any specified form, to any other such persons; and
- 1527 (ii) provide for the modification¹³ of conditions of licences¹⁴,

for the purpose of facilitating the implementation of the scheme¹⁵.

Before making such an order, the Secretary of State must give notice¹⁶:

- 1528 (A) stating that he proposes to make an order and setting out its effect;
- 1529 (B) stating the reasons why he proposes to make the order; and
- 1530 (C) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed order may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁷. The notice must be given by serving a copy of it on the persons whose charges are covered by the proposed order and by publishing it in such manner as the Secretary of State considers

appropriate for bringing the proposed order to the attention of other persons likely to be affected by it¹⁸. An order may not be made under these provisions unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament¹⁹. The Secretary of State may by order require authorised suppliers, authorised shippers or authorised transporters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of such an order²⁰.

Such an order is to continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period²¹.

The Gas and Electricity Markets Authority ('GEMA')²² must monitor the effect of such orders and report its findings to the Secretary of State whenever he directs it to do so²³. It may require authorised suppliers, authorised shippers or authorised transporters to supply to the Authority, in any specified form, such information as it requires for carrying out that duty²⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, references to customers do not include customers of a description excluded by an order made by the Secretary of State: Gas Act 1986 s 41B(6) (ss 41A, 41B added by the Utilities Act 2000 s 98).

3 For the meaning of 'authorised supplier' see PARA 797 note 3 ante.

4 For the meaning of 'gas' see PARA 802 ante.

5 Gas Act 1986 s 41A(1) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post. At the date at which this title states the law, no such order had been made.

6 For these purposes, 'authorised shipper' means a person authorised by a licence or exemption to arrange with any gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipeline system operated by that transporter: *ibid* s 41B(7) (as added: see note 2 supra). For the meanings of 'licence' and 'exemption' see PARA 789 notes 9, 19 ante; and for the meaning of 'gas transporter' see PARA 805 ante.

7 For the meaning of 'authorised transporter' see PARA 835 note 5 ante.

8 *Ibid* s 41A(2) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

9 *Ibid* s 41A(3) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

10 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

11 Gas Act 1986 s 41A(4) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

12 For the meaning of 'information' see PARA 792 note 8 ante.

13 For the meaning of 'modification' see PARA 778 note 7 ante.

14 As to the conditions of licences see PARAS 809-811 ante.

15 Gas Act 1986 s 41A(5) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

16 For the meaning of 'notice' see PARA 804 note 6 ante; and as to the service of notice see PARA 980 post.

17 Gas Act 1986 s 41B(1) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

18 Ibid s 41B(2) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

19 Ibid s 41A(6) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

20 Ibid s 41B(4) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

21 Ibid s 41B(3) (as added: see note 2 supra).

22 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

23 Gas Act 1986 s 41B(5)(a) (as added: see note 2 supra).

24 Ibid s 41B(5)(b) (as added: see note 2 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

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C. BILLING DISPUTES

872. Billing disputes.

Power is prospectively conferred on the Secretary of State¹ to make provision by regulations² for billing disputes³ to be referred to the Gas and Electricity Markets Authority ('GEMA')⁴ for determination in accordance with the regulations⁵. Such regulations may only be made after consulting the Authority and persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations⁶.

Such regulations may provide that where a billing dispute is referred to the Authority it may either determine the dispute or appoint an arbitrator to determine it⁷. Any person so determining a billing dispute must give his reasons for reaching his decision with respect to the dispute in such manner as may be specified in the regulations⁸. The regulations may also provide that disputes may be so referred to the Authority only by prescribed persons⁹ and for any determination to be final and enforceable as if it were a judgment of a county court¹⁰.

Except in such circumstances, if any, as may be prescribed, the Authority or an arbitrator appointed by it must not determine any billing dispute which is the subject of proceedings before any court or with respect to which judgment has been given by any court; and neither party to a billing dispute which has been referred to the Authority for determination¹¹ may commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations¹².

The Authority's powers to require information¹³ are also to be exercisable for any purpose connected with the determination of any billing dispute referred¹⁴ to the Authority¹⁵.

As from a day to be appointed¹⁶, no gas supplier may commence proceedings before any court in respect of any charge in connection with the provision by him of gas supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner as may be prescribed, of his intention to commence proceedings, the customer's rights by virtue of the above provisions, and such other matters, if any, as may be prescribed¹⁷.

1 Ie by the Gas Act 1986 s 15A (added by the Competition and Service (Utilities) Act 1992 s 17 as from a day to be appointed under s 56(3); and subsequently amended (see notes 3, 5, 17 *infra*)). At the date at which this title states the law, no such day had been appointed and these provisions had not been brought into force. As to the Secretary of State see PARA 601 note 1 *ante*.

2 As to the making of regulations generally see PARA 778 *ante*.

3 For these purposes, 'billing dispute' means a dispute between a gas supplier and a customer of his concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of gas supply services: Gas Act 1986 s 15A(2) (as added (see note 1 *supra*); amended by the Gas Act 1995 s 10(1), Sch 3 para 10(1), (2); and by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 7(a)). For the meaning of 'gas supplier' see PARA 807 *ante*; and for the meanings of 'gas', and references to the supply of gas, see PARA 802 *ante*.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* *ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.

- 5 Gas Act 1986 s 15A(1) (as added (see note 1 supra); s 15A(1), (3), (4), (6), (7), (9) amended by virtue of the Utilities Act 2000 s 3(2)). At the date at which this title states the law, no such regulations had been made.
- 6 Gas Act 1986 s 15A(3) (as added and amended: see notes 1, 5 supra).
- 7 Ibid s 15A(4) (as added and amended: see notes 1, 5 supra).
- 8 Ibid s 15A(5) (as added: see note 1 supra).
- 9 Ibid s 15A(6)(a) (as added and amended: see notes 1, 5 supra). For the meaning of 'prescribed' see PARA 798 note 5 ante.
- 10 Ibid s 15A(6)(b) (as added: see note 1 supra).
- 11 Ie in accordance with regulations under ibid s 15A (as added and amended).
- 12 Ibid s 15A(7) (as added and amended: see notes 1, 5 supra).
- 13 Ie under ibid s 38 (as amended): see PARA 798 ante.
- 14 See note 11 supra.
- 15 Gas Act 1986 s 15A(9) (as added and amended: see notes 1, 5 supra).
- 16 As to the appointed day see note 1 supra.
- 17 Gas Act 1986 s 15A(8) (as added (see note 1 supra); amended by the Gas Act 1995 s 10(1), Sch 3 para 10(1), (2); and by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 7(a)).

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(iv) Standards of Performance; Service Standards and Remuneration

A. PROCEDURES FOR PRESCRIBING OR DETERMINING STANDARDS OF PERFORMANCE

873. Procedures to be followed by the Gas and Electricity Markets Authority.

Before prescribing standards of performance in regulations with regard to individual cases¹, or determining overall standards of performance², the Gas and Electricity Markets Authority ('GEMA')³ must:

- 1531 (1) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
 - 1532 (2) publish a notice⁴ of its proposals and consider any representations which are duly made in respect of those proposals; and
 - 1533 (3) consult the Gas and Electricity Consumer Council⁵ and the following persons or bodies⁶, namely:
- 97
- 143. (a) gas suppliers⁷ in the case of standards of performance relating to them⁸, or gas transporters⁹ and gas suppliers, in the case of standards of performance relating to gas transporters¹⁰; and
 - 144. (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination¹¹.
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The notice required by head (2) above is a notice:

- 1534 (i) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
- 1535 (ii) stating the reasons why it proposes to prescribe or determine those standards of performance; and
- 1536 (iii) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations with respect to the proposals may be made¹².

A notice so required must be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals¹³.

The Authority must make arrangements for securing that such notices and relevant regulations¹⁴ and determinations¹⁵ are made available to the public by whatever means it considers appropriate¹⁶.

- 1 le under the Gas Act 1986 s 33A (as added and amended) (see PARA 874 post) or s 33AA (as added) (see PARA 875 post).
- 2 le under ibid s 33B (as added and amended) (see PARA 892 post) or s 33BA (as added) (see PARA 893 post).
- 3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 4 le in accordance with the Gas Act 1986 s 33BAA(2), (3) (as added); see the text and notes 12-13 infra. For the meaning of 'notice' see PARA 804 note 6 ante; and as to publication by the Authority see PARA 793 note 5 ante.
- 5 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.
- 6 Gas Act 1986 s 33BAA(1) (ss 33BAA added by the Utilities Act 2000 s 92).
- 7 For the meaning of 'gas supplier' see PARA 807 ante.
- 8 le in the case of standards of performance under the Gas Act 1986 s 33A (as added and amended) (see PARA 874 post) or s 33B (as added and amended) (see PARA 892 post).
- 9 For the meaning of 'gas transporter' see PARA 805 ante.
- 10 le in the case of standards of performance under the Gas Act 1986 s 33AA (as added) (see PARA 875 post) or 33BA (as added) (see PARA 893 post).
- 11 Ibid s 33BAA(4) (as added: see note 6 supra).
- 12 Ibid s 33BAA(2) (as added: see note 6 supra).
- 13 Ibid s 33BAA(3) (as added: see note 6 supra).
- 14 le regulations under ibid s 33A (as added and amended) (see PARA 874 post) or 33AA (as added) (see PARA 875 post).
- 15 le determinations under ibid s 33B (as added and amended) (see PARA 892 post) or s 33BA (as added) (see PARA 893 post).
- 16 Ibid s 33BAA(5) (as added: see note 6 supra).

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B. STANDARDS OF PERFORMANCE IN INDIVIDUAL CASES

(A) POWERS TO PRESCRIBE STANDARDS

874. Power to prescribe standards of performance in individual cases in relation to gas suppliers.

The Gas and Electricity Markets Authority ('GEMA')¹ may make regulations prescribing such standards of performance in connection with the activities of gas suppliers², so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases³. Such regulations may only be made with the consent of the Secretary of State⁴.

Such regulations may:

- 1537 (1) prescribe circumstances in which gas suppliers are to inform customers or potential customers of their rights under these provisions or their rights under the provisions⁵ relating to standards of performance in individual cases with regard to gas transporters⁶;
- 1538 (2) prescribe such standards of performance in relation to any duty arising under head (1) above as, in the Authority's opinion, ought to be achieved in all cases⁷;
- 1539 (3) prescribe circumstances in which gas suppliers are to be exempted from any requirements of the regulations or of these provisions⁸; and
- 1540 (4) if the Authority is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers, make different provision with respect to different gas suppliers⁹.

If a gas supplier fails to meet a prescribed¹⁰ standard, that supplier must make to any customer or potential customer who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations¹¹. The making of such compensation in respect of any failure to meet a prescribed standard does not, however, prejudice any other remedy which may be available in respect of the act or omission which constituted that failure¹².

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'gas supplier' see PARA 807 ante.

3 Gas Act 1986 s 33A(1) (s 33A(1), (2) substituted by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 13(a)). In the exercise of this power, the Authority has made the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, which came into force on 1 May 2005: see reg 1(1) (amended by SI 2005/1136). As to the standards prescribed by those regulations see PARA 876 et seq post.

4 Gas Act 1986 s 33A(2) (as substituted: see note 3 supra). As to the Secretary of State see PARA 601 note 1 ante.

5 le their rights under *ibid* s 33AA (as added): see PARA 875 post.

6 *Ibid* s 33A(3)(a) (s 33A added by the Competition and Service (Utilities) Act 1992 s 11; the Gas Act 1986 s 33(3)(a) amended by the Gas Act 1995 s 10(1), Sch 3, para 34(3)(a); the Utilities Act 2000 ss 90(1)(a), 108, Sch 6 Pt I paras 1, 13(b)). For the meaning of 'gas transporter' see PARA 805 ante.

7 Gas Act 1986 s 33A(3)(b) (as added (see note 6 supra); amended by virtue of the Utilities Act 2000 s 3(2)).

8 Gas Act 1986 s 33A(3)(c) (as added (see note 6 supra); amended by the Gas Act 1995 Sch 3 para 34(3)(a)).

9 Gas Act 1986 s 33A(3)(d) (as added (see note 6 supra); amended by the Gas Act 1995 Sch 3, para 34(3)(a), (c); and by virtue of the Utilities Act 2000 s 3(2)).

10 For the meaning of 'prescribed' see PARA 798 note 5 ante.

11 Gas Act 1986 s 33A(4) (as added (see note 6 supra); amended by the Gas Act 1995 Sch 3 para 34(4)(a); and by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 13(c)).

12 Gas Act 1986 s 33A(5) (as added: see note 6 supra). As to the Authority's power to impose penalties for failure to meet the prescribed standards see PARA 972 et seq post.

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875. Power to prescribe standards of performance in individual cases in relation to gas transporters.

The Gas and Electricity Markets Authority ('GEMA')¹ may make regulations prescribing such standards of performance in connection with the activities of gas transporters², so far as affecting customers or potential customers of gas suppliers³, as in the Authority's opinion ought to be achieved in individual cases⁴. Such regulations may only be made with the consent of the Secretary of State⁵.

The regulations may:

- 1541 (1) prescribe circumstances in which gas transporters are to inform customers or potential customers of gas suppliers of their rights under these provisions⁶;
- 1542 (2) prescribe such standards of performance in relation to any duty arising under head (1) above as, in the Authority's opinion, ought to be achieved in all cases⁷;
- 1543 (4) make provision as to the manner in which compensation under these provisions is to be made⁸;
- 1544 (4) prescribe circumstances in which gas transporters are to be exempted from any requirements of the regulations or of these provisions⁹; and
- 1545 (5) if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters, make different provision with respect to different gas transporters¹⁰.

If a gas transporter fails to meet a prescribed¹¹ standard, he must make to any customer or potential customer of a gas supplier who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations¹². The making of such compensation in respect of any failure to meet a prescribed standard does not, however, prejudice any other remedy which may be available in respect of the act or omission which constituted that failure¹³.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 For the meaning of 'gas supplier' see PARA 807 ante.

4 Gas Act 1986 s 33AA(1) (s 33AA added by the Utilities Act 2000 s 90(2)). In the exercise of this power, the Authority has made the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, which came into force on 1 May 2005: see reg 1(1) (amended by SI 2005/1136). As to the standards prescribed by those regulations see PARA 876 et seq post.

5 Gas Act 1986 s 33AA(2) (as added: see note 4 supra). As to the Secretary of State see PARA 601 note 1 ante.

6 Ibid s 33AA(4)(a) (as added: see note 4 supra).

- 7 Ibid s 33AA(4)(b) (as added: see note 4 supra).
- 8 Ibid s 33AA(4)(c) (as added: see note 4 supra). Provision so made may (1) require or permit compensation to be made on behalf of gas transporters by gas suppliers to customers or potential customers; (2) require gas suppliers to provide services to gas transporters in connection with the making of compensation under these provisions: s 33AA(5) (as so added).
- 9 Ibid s 33AA(4)(d) (as added: see note 4 supra).
- 10 Ibid s 33AA(4)(e) (as added: see note 4 supra).
- 11 For the meaning of 'prescribed' see PARA 798 note 5 ante.
- 12 Gas Act 1986 s 33AA(3) (as added: see note 4 supra).
- 13 Ibid s 33AA(6) (as added: see note 4 supra). As to the Authority's power to impose penalties for failure to meet the prescribed requirements see PARA 972 et seq post.

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(B) PRESCRIBED STANDARDS

876. Meter disputes.

The following provisions apply where a gas supplier¹ is notified by a domestic customer²:

- 1546 (1) that the customer considers that an appropriate meter³ is or may have been operating outside the margins of error⁴; or
- 1547 (2) that circumstances exist which a gas supplier might reasonably expect to have been caused by the meter operating outside the margins of error⁵.

In such a case, where the gas supplier is reasonably satisfied that he is unable to provide an explanation to the customer of the probable reason for the matters so notified without visiting the customer's premises⁶, and the gas supplier:

- 1548 (a) fails within the prescribed period⁷ from the applicable date⁸ to offer to visit the customer's premises to investigate the matter during a specified time⁹; or
- 1549 (b) fails to visit the customer's premises during the specified time¹⁰,

the gas supplier must, except in any of the specified circumstances¹¹, pay¹² to the customer the prescribed sum¹³.

In such a case where the gas supplier is not reasonably satisfied as mentioned above¹⁴, and the supplier fails to dispatch to the customer¹⁵ an explanation of the probable reason for the matter so notified within the prescribed period¹⁶ from the receipt of the notification, he must pay to the customer the prescribed sum¹⁷, except in any of the specified circumstances¹⁸.

1 For these purposes, 'gas supplier' means, in relation to any premises, a gas supplier who supplies to those premises gas which is conveyed thereto (or, where the premises are secondary sub-deduct premises, to the relevant primary sub-deduct premises) by a gas transporter; 'gas transporter' means the holder of a licence under the Gas Act 1986 s 7 (as substituted and amended) (see PARA 805 ante); 'primary sub-deduct premises' means premises to which gas is conveyed by a gas transporter before being conveyed to secondary sub-deduct premises; and 'secondary sub-deduct premises' means premises to which gas is conveyed in pursuance of an exemption from s 5(1)(a) (as substituted and amended) (see PARA 803 ante) granted under s 6A (as added and amended) (see PARA 804 ante), for supply by the gas supplier: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

2 'Customer' means an owner or occupier of premises in Great Britain who is supplied or requires to be supplied with gas conveyed to those premises through pipes; 'domestic customer' means a customer supplied or requiring to be supplied with gas at domestic premises (but excluding such customer in so far as he is supplied or requires to be supplied at premises other than domestic premises); and 'domestic premises' means premises at which a supply is taken or to be taken wholly or mainly for domestic purposes: *ibid* reg 3(1). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

For these purposes, where a person is a customer in respect of more than one premises, a reference in a regulation to 'customer' is a reference to that person in respect of each of the premises in relation to which he is a customer to which the regulation applies (reg 3(4)(b)); and any reference to a customer includes, except in relation to the entitlement to any payment due from a relevant operator under the 2005 Regulations, any person having apparent authority to represent the customer unless the context otherwise requires (reg 3(4)(d)).

'Apparent authority' means that the name and address of the customer has been provided to the relevant operator together with confirmation that the relevant person is acting on behalf of the customer: reg 3(1).

3 'Appropriate meter' means a meter stamped in accordance with the provisions of the Gas Act 1986 s 17 (as substituted and amended) (see PARAS 947-949 post) or regulations made pursuant to that provision: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

4 'Margins of error' means, in relation to a meter, its operation outside the standards prescribed pursuant to the Gas (Meters) Regulations 1983, SI 1983/684 (as amended) (see PARAS 947-949 post): Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

5 Ibid reg 4(1). For the purpose of reg 4, where the requirements of reg 4(1) are satisfied after 4 pm on a working day or at any time on any other day, they are to be deemed to have been satisfied on the next following working day: reg 14. 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

6 Ie where ibid reg 4(3) applies.

7 'Prescribed period' means in relation to any paragraph or sub-paragraph of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended) the period specified in Sch 1 Pt I col 2 opposite the reference to that paragraph or sub-paragraph in Sch 1 Pt I col 1: reg 3(1). The prescribed period for the purposes of head (a) in the text is seven working days: see Sch 1 Pt I cols 1, 2.

8 'Applicable date' means, in relation to each occasion upon which a regulation applies, the day upon which that regulation first applies, or, where a prescribed period in a paragraph of a regulation is expressed in hours, the time on that day when that regulation first applies: ibid reg 3(1).

9 See ibid reg 4(2), (3). 'Specified time' means (1) unless head (2) infra applies, a part (which has been specified by the relevant operator) of a day (which has also been specified by the relevant operator) within the prescribed period from the applicable date, being either a part which falls either wholly before one o'clock in the afternoon or wholly after noon or, in respect of a gas supplier only, a part not exceeding two hours; or (2) such part of a day (whether or not within that period) as is requested by the customer and agreed with the relevant operator, such agreement not to be unreasonably withheld; provided that (a) a part of a day may be a specified time for the purpose of a regulation notwithstanding that it was requested, agreed or specified prior to the time at which that regulation first applied; and (b) the gas supplier is not obliged to agree part of a day less than two hours: ibid reg 3(1).

10 See ibid reg 4(3), (4)(a).

11 Ie any of the circumstances described in ibid reg 4(5). Those circumstances are each of the circumstances described in reg 13 (see PARA 877 post) provided that, in relation to reg 13(6) (see PARA 877 post at head (4) in the text), the gas supplier gave the customer not less than one working day's prior warning (whether or not in writing) that he would be unable to visit during the specified time or the circumstances referred to in reg 13(6) occurred at a time when it was not reasonably practicable to give such a warning: reg 4(5).

12 'Pay' includes crediting the account of the customer for charges incurred or to be incurred in respect of the supply of gas or in respect of the provision of any gas meter, and 'payment' is to be construed accordingly: ibid reg 3(1).

13 Ibid reg 4(2), (3), (4)(a). For the purposes of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended), 'prescribed sum' means where the customer is a domestic customer, the amount in Sch 1 Pt I col 3, or where the customer is a non-domestic customer, the amount in Sch 1 Pt I col 4: reg 3(1). The prescribed sum for the purposes of heads (a), (b) in the text is £20: see Sch 1 Pt I col 3.

14 Ie where ibid reg 4(3) does not apply.

15 For these purposes, any reference to the dispatch by a relevant operator of an explanation or reply within a particular period does not require that the explanation or reply (if in writing) is received by the customer within that period and is satisfied if the relevant operator provides the explanation or reply orally to the customer within that period: ibid reg 3(4)(c). 'Relevant operator' means the relevant gas transporter or, as the case may be, gas supplier according to the circumstances of the relevant customer's case; and 'relevant gas transporter' means, in relation to a customer, the gas transporter to whose pipeline system the premises of the customer are directly connected, or who has a duty to connect those premises under the Gas Act 1986 s 10 (as substituted and amended) (see PARAS 836-837 ante), or in relation to secondary sub-deduct premises, the gas transporter to whose pipeline system the primary sub-deduct premises are directly connected, or would be directly connected in accordance with the duty to connect under s 10 (as substituted and amended): Gas

(Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1). 'Pipeline system' means pipes upstream of any emergency control valve owned by the relevant gas transporter and used for the purpose of conveying gas: reg 3(1).

16 The prescribed period for this purpose is five working days: *ibid* Sch 1 Pt I cols 1, 2.

17 The prescribed period for this purpose is £20: see *ibid* Sch 1 Pt I col 3.

18 *Ibid* reg 4(4)(b). As to the specified circumstances see note 11 *supra*.

UPDATE

876 Meter disputes

NOTES--SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

NOTE 1--Definition of 'gas transporter' omitted: SI 2008/696.

NOTE 2--Definition of 'apparent authority' amended: SI 2008/696.

NOTE 7--Definition of 'prescribed period' amended: SI 2008/696.

NOTE 13--Definition of 'prescribed sum' amended: SI 2008/696.

NOTE 15--Definition of 'relevant operator' substituted: SI 2008/696.

NOTE 17--For 'prescribed period' read 'prescribed sum'.

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877. Exemptions.

The following are the general circumstances in which there is no obligation to pay compensation under the Gas (Standards of Performance) Regulations 2005¹:

- 1550 (1) the customer² informs the relevant operator³ before the contravention time⁴ that the customer does not wish the relevant operator to take any action, or any further action in relation to the matter⁵;
- 1551 (2) the customer agrees with the relevant operator that the action taken by the relevant operator before the contravention time is to be treated as the taking by the relevant operator of the action required by the regulation in question and, where the action taken by the relevant operator includes a promise to perform any action, whether before or after the contravention time, the relevant operator duly performs that promise⁶;
- 1552 (3) where information is or is required to be provided by the customer to the relevant operator:
 - 99 145. (a) the customer has failed to provide that information; or
 - 146. (b) the information is provided to an address or by use of a telephone number other than the address or telephone number which the relevant operator has advised the customer⁷ is appropriate for receipt of information of that type; or
 - 147. (c) in the case of information given by telephone for certain specified purposes⁸, the information was given outside such reasonable hours as the relevant operator has advised the customer⁹ are the hours during which the telephone number will be available for the receipt of information of that type¹⁰;
- 100 1553 (4) it was not reasonably practicable for the relevant operator to take the action required by the regulation in question before the contravention time as a result of:
 - 101 148. (a) severe weather conditions;
 - 149. (b) industrial action by the employees or contractors of the relevant operator;
 - 150. (c) the act or default of a person other than an officer, employee or agent of the relevant operator, or a person acting on behalf of an agent of the relevant operator;
 - 151. (d) the inability of the relevant operator to obtain any necessary access to any premises;
 - 152. (e) the existence of circumstances by reason of which the relevant operator could reasonably expect that if he took the action he would or would be likely to be in breach of an enactment;
 - 153. (f) the effects of an event for which emergency regulations have been made under Part 2 of the Civil Contingencies Act 2004¹¹;
 - 154. (g) delays imposed by a requirement to obtain a permit for street works under the Traffic Management Act 2004¹²; or
 - 155. (h) other circumstances of an exceptional nature beyond the control of the relevant operator,

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1554 and the relevant operator had taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect¹³;

1555 (5) the relevant operator reasonably considers that the information given by the customer was frivolous or vexatious¹⁴;

1556 (6) the customer has:

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156. (a) committed an offence under the provisions of the gas code prohibiting injury to gas fittings and interference with meters¹⁵ or the restoration of supply without the relevant consent¹⁶; or

157. (b) failed to pay any charges due to the relevant operator after receiving a notice that the supplier is to install a prepayment meter to recover charges that are due or is to cut off the supply for non-payment¹⁷,

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1557 and the action taken or not taken by the relevant operator was in exercise of his powers under the relevant provisions¹⁸ of the gas code¹⁹;

1558 (7) the relevant gas transporter²⁰ has disconnected or refused to connect the customer's premises in exercise of a power²¹ under the gas code²².

1 Ie the circumstances described in the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 13: see reg 13(1).

2 For the meaning of 'customer' see PARA 876 note 2 ante.

3 For the meaning of 'relevant operator' see PARA 876 note 15 ante.

4 For these purposes, 'contravention time' means (1) in relation to the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, regs 7, 8 (see PARAS 880-881 post), the expiry of the relevant period referred to in reg 7(2)(a) and reg 8(2)(a) and (where applicable) of each period referred to in reg 7(2)(b) and reg 8(2)(b); and (2) in relation to any other regulation, the time at which, if reg 13 and any other exemption contained in that regulation did not apply, the relevant operator would become liable to pay the prescribed sum to the customer: reg 13(10). For the meaning of 'prescribed sum' see PARA 876 note 13 ante.

5 Ibid reg 13(2).

6 Ibid reg 13(3).

7 For these purposes, the relevant operator may advise the customer by publishing the address, the telephone number or the hours in such a manner as may be appropriate for the purpose of bringing the advice to the attention of customers likely to be affected by it: ibid reg 13(5).

8 Ie for the purpose of ibid reg 6(1) or 10(1)(d): see PARAS 879, 882 post.

9 See note 7 supra.

10 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 13(4).

11 Ie under the Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 As to street works see the Traffic Management Act 2004 Pt 4 (ss 40-59); and HIGHWAYS, STREETS AND BRIDGES.

13 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 13(6).

14 Ibid reg 13(7).

15 Ie under the Gas Act 1986 Sch 2B para 10 (as added and amended): see PARA 861 ante.

16 Ie under ibid Sch 2B para 11 (as added and amended): see PARA 860 ante.

17 Ie a notice under ibid Sch 2B para 7 (as added and amended): see PARA 858 ante.

- 18 le under the provisions referred to in notes 15-17 supra.
- 19 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 13(8).
- 20 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.
- 21 le a power under the Gas Act 1986 Sch 2B (as added and amended): see PARA 856 et seq ante.
- 22 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 13(9).

UPDATE

877 Exemptions

TEXT AND NOTE 5--In head (1) words 'or any further action' omitted: SI 2005/1135 reg 13(2) (amended by SI 2008/696).

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878. Prepayment meters.

Where a gas supplier¹ is informed², other than by post, by a domestic customer³ who takes his supply through a prepayment meter either:

- 1559 (1) that the prepayment meter is not operating so as to permit a supply to the customer's premises in the manner for which the prepayment meter was designed;
or
- 1560 (2) of circumstances suggesting that the prepayment meter is not so operating,

then where, within the prescribed period⁴ from the applicable date⁵, an appropriate person⁶ fails to attend at the premises where the prepayment meter is installed in order to repair or replace the prepayment meter so as to permit a supply in the manner for which it was designed, the gas supplier must, except in any of the specified circumstances⁷, pay to the customer the prescribed sum⁸.

1 For the meaning of 'gas supplier' for these purposes see PARA 876 note 1 ante.

2 For these purposes, where information is received by a gas supplier outside working hours it is to be deemed to have been received at the commencement of the next following period of working hours: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 5(2). 'Working hours' means the period between the hours specified in Sch 1 Pt II (ie 8 am to 8 pm on each working day and 9 am to 5 pm on any other day): reg 3(1), Sch 1 Pt II). For the meaning of 'working day' see PARA 876 note 5 ante.

3 For the meaning of 'domestic customer' see PARA 876 note 2 ante.

4 The prescribed period for these purposes is four hours on any day: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 1 Pt I cols 1, 2. For the meaning of 'prescribed period' see PARA 876 note 7 ante.

5 For the meaning of 'applicable date' see PARA 876 note 8 ante.

6 For these purposes, 'appropriate person' means a person employed or authorised by a gas supplier to repair and replace prepayment meters: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 5(5).

7 Ie except in any of the circumstances described in ibid reg 5(4). Those circumstances are: (1) each of the circumstances described in reg 13 (see PARA 877 ante); (2) that the customer requested the gas supplier not to attend the premises; (3) that the customer requested the gas supplier not to restore the supply; and (4) that the prepayment meter was found to be operating in the manner for which it was designed: reg 5(4).

8 Ibid reg 5(1), (3). The prescribed sum for these purposes is £20: Sch 1 Pt I col 3. For the meaning of 'prescribed sum' see PARA 876 note 13 ante; and for the meaning of 'pay' see PARA 876 note 12 ante.

UPDATE

878 Prepayment meters

NOTES--SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

NOTE 2--Definition of 'working hours' amended: SI 2008/696.

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879. Appointments.

Where:

- 1561 (1) a domestic customer¹ informs the gas supplier² that the customer wishes the gas supplier to visit the customer's premises; or
- 1562 (2) the gas supplier informs a domestic customer that the gas supplier wishes to visit the customer's premises,

being in either case a visit in connection with the activities which the gas supplier is required or authorised to carry on under his licence which requires access to be afforded to his representative or for which it would otherwise be reasonable to expect the customer to be present, then where the gas supplier:

- 1563 (a) fails within a reasonable period from the applicable date³ to offer a timed appointment⁴; or
- 1564 (b) fails to keep a timed appointment,

the gas supplier must, except in any of the specified circumstances⁵, pay to the customer the prescribed sum⁶.

Where, however, a timed appointment is made for more than one purpose, the gas supplier is not to be required to pay more than one prescribed sum under head (b) above in respect of that timed appointment⁷.

1 For the meaning of 'domestic customer' see PARA 876 note 2 ante.

2 For the meaning of 'gas supplier' for these purposes see PARA 876 note 1 ante.

3 For the meaning of 'applicable date' see PARA 876 note 8 ante.

4 For these purposes, 'timed appointment' means an appointment to make a visit to a customer's premises commencing (1) unless head (2) infra applies, during a part (specified by the gas supplier) of a day (also specified by the gas supplier) within a reasonable period from the applicable date, having regard to the purpose of visit, being either a part which falls either wholly before one o'clock in the afternoon or wholly after noon, or a part not exceeding two hours; or (2) during such part of a day as is requested by the customer and agreed with the gas supplier, such agreement not to be unreasonably withheld, provided that the relevant operator is not to be obliged to agree a part of a day that is less than two hours: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 6(6).

5 Ie except in any of the circumstances described in ibid reg 6(5). Those circumstances are: (1) each of the circumstances described in reg 13 (see PARA 877 ante) provided that, in relation to reg 13(6) (see PARA 877 ante at head (4) in the text), the gas supplier gave the customer not less than one working day's prior warning (whether or not in writing) that he would be unable to keep the timed appointment or the circumstances referred to in reg 13(6) occurred at a time when it was not reasonably practicable to give such a warning; (2) that the visit is for the purpose of responding to information received under reg 4 (see PARA 876 ante) or reg 5 (see PARA 878 ante); and (3) that the visit is wholly or mainly in connection with disconnecting the premises in exercise of the power contained in the Gas Act 1986 Sch 2B para 7 (as added and amended) (see PARA 858 ante): Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 6(5).

6 Ibid reg 6(1)-(3). The prescribed sum for these purposes is £20: see Sch 1 Pt I col 3. For the meaning of 'prescribed sum' see PARA 876 note 13 ante; and for the meaning of 'pay' see PARA 876 note 12 ante.

7 Ibid reg 6(4).

UPDATE

879 Appointments

NOTE 6--SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

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880. Supply restoration.

Where the conveyance of gas to a domestic customer's¹ premises is discontinued as a result of a failure of, fault in or damage to the pipeline system² operated by the relevant gas transporter³, then the relevant gas transporter must, except in any of the specified circumstances⁴, pay the prescribed sum⁵ to the customer:

- 1565 (1) where the conveyance of gas is not resumed to the customer's premises within the prescribed period⁶ from the applicable date⁷; and
- 1566 (2) in respect of each succeeding period of 24 hours upon the expiry of which the conveyance of gas is not resumed⁸.

The following additional provisions apply where the conveyance of gas to a priority domestic customer's⁹ premises or to gas fittings¹⁰ at those premises is discontinued¹¹. In such a case, the relevant gas transporter must, except in any of the specified circumstances¹², pay the prescribed sum¹³ to the customer where it does not provide to the customer at the customer's premises alternative heating and cooking facilities¹⁴:

- 1567 (a) where the relevant gas transporter had given prior notice¹⁵ to the customer of its intention to discontinue the conveyance of gas, within the prescribed period¹⁶ from the applicable date; and
 - 1568 (b) in any other case where:
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- 158. (i) less than 250 customers' premises (whether domestic or non-domestic) are affected by the relevant event, within the prescribed period¹⁷ from the relevant time¹⁸; or
 - 159. (ii) 250 or more customers' premises (whether domestic or non-domestic) are affected by the relevant event, within the prescribed period¹⁹ from the relevant time²⁰.

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1 For the meaning of 'domestic customer' see PARA 876 note 2 ante.

2 For the meaning of 'pipeline system' see PARA 876 note 15 ante.

3 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.

4 Ie except in any of the circumstances described in the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 7(3). Those circumstances are (1) each of the circumstances described in reg 13 (see PARA 877 ante); (2) that the relevant event was caused by the act or default of the customer; (3) that the relevant event resulted in the discontinuance of conveyance of gas to more than 50,000 premises of customers (whether domestic or non-domestic) of the relevant gas transporter; (4) that the prescribed sum is not to be payable in respect of any period for which the making of that payment would cause the aggregate of the prescribed payments to the customer in respect of the relevant event to exceed £1,000; (5) that the damage to the pipeline system was caused by the act or default of a person other than an officer, employee or agent of the gas transporter or a person acting on behalf of a gas transporter or by water which has escaped from a pipe owned by a water undertaker; and (6) that the relevant event was caused by severe weather conditions or other circumstances of an exceptional nature beyond the control of the gas transporter and the gas transporter

had taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect: reg 7(3). 'Non-domestic customer' means any customer other than a domestic customer; 'relevant event' means the occurrence as a result of which a regulation applies; and 'water undertaker' has the same meaning as in the Water Industry Act 1991 (see WATER AND WATERWAYS vol 100 (2009) PARA 137 et seq): Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1). For the meaning of 'prescribed sum' see PARA 876 note 13 ante.

5 The prescribed sum for these purposes is £30: *ibid* Sch 1 Pt I col 3. For the meaning of 'pay' see PARA 876 note 12 ante.

6 The prescribed period for these purposes is 24 hours: *ibid* Sch 1 Pt I cols 1, 2. For the meaning of 'prescribed period' see PARA 876 note 7 ante.

7 For the meaning of 'applicable date' see PARA 876 note 8 ante.

8 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 7(1), (2).

9 'Priority domestic customer' means a domestic customer in respect of whom the relevant details included on the Priority Service Register maintained by gas suppliers in accordance with standard licence condition 37 of the gas suppliers' licence have been provided to the relevant gas transporter: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

10 For the meaning of 'gas fittings' see PARA 861 note 1 ante.

11 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 9(1).

12 Ie except in any of the circumstances described in *ibid* reg 9(3). Those circumstances are: (1) each of the circumstances described in reg 13 (see PARA 877 ante); (2) that the customer had alternative heating or cooking facilities (as the case may be) (for the meaning of which see note 14 *infra*); (3) that (a) alternative heating and cooking facilities were made available for collection from a place reasonably conveniently situated to the customer's premises; (b) the location of that place was notified to the customer within the prescribed period from the applicable date or the relevant time (for the meaning of which see note 18 *infra*) (as the case may be); and (c) that it was reasonable for the relevant gas transporter to expect the customer to collect or arrange for the collection of the alternative heating and cooking facilities from that place having regard to all relevant circumstances, including the information which was available, or could reasonably have been obtained by, the relevant gas transporter in relation to the customer: reg 9(3).

13 The prescribed sum for these purposes is £24: see *ibid* Sch 1 Pt I col 3.

14 For these purposes, alternative heating and cooking facilities means (1) in respect of heating, an electric fan heater; and (2) in respect of cooking, a single ring electric or bottled gas appliance, or, in either case, any reasonably equivalent appliance, having regard to the expected duration of the discontinuance and the weather conditions expected during that period: *ibid* reg 9(4)(a).

15 Where more than one person is a customer in respect of particular premises, a notice given by a relevant operator to one person who is a customer in respect of those premises is a sufficient notice to any other person who is a customer in respect of those premises at the time the notice is given: *ibid* reg 3(4)(a).

16 For these purposes, the prescribed period is four hours: see *ibid* Sch 1 Pt I col 2. In calculating the prescribed period for the purposes of reg 9, the period between 8.00 pm and 8.00 am must be ignored: *ibid* reg 9(4)(b).

17 See note 16 *supra*.

18 For these purposes, 'the relevant time' means (1) the time when the relevant event occurred; or if later, (2) the time when the relevant gas transporter was notified or became aware that the relevant event had occurred or of circumstances in which a prudent operator would expect that a relevant event had or was likely to occur in respect of the customer's premises (Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 9(4)(d)); and a relevant gas transporter is to be deemed to have been notified of a relevant event where the relevant event is notified to any person operating a service for receipt of such information on behalf of the relevant gas transporter (reg 9(4)(c)).

19 For these purposes, the prescribed period is eight hours: see *ibid* Sch 1 Pt I col 2. As to the calculation of this period see note 16 *supra*.

20 *Ibid* reg 9(2).

UPDATE

880 Supply restoration

NOTES--SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

TEXT AND NOTE 1--Word 'domestic' omitted: SI 2008/696.

NOTE 4--In head (3) for '50,000' read '30,000'; heads (4), (5) substituted; head (7) added: SI 2008/696. SI 2005/1135 reg 7(4) added: SI 2008/696. Definition of 'water undertaker' omitted: SI 2008/696.

NOTE 5--The prescribed sum for these purposes in the case of a non-domestic customer is £50: SI 2005/1135 Sch 1 Pt I col 4.

NOTE 9--Definition of 'priority domestic customer' amended: SI 2008/696.

NOTE 12--Heads (4), (5) added: SI 2005/1135 reg 19(3) (amended by SI 2008/696).

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881. Reinstatement of customer's premises.

Where the relevant gas transporter¹ has completed work to a service pipe² to the customer's³ premises⁴ and any associated work to a distribution main⁵ where such pipe or main is situated under or within the premises of the customer, then the relevant gas transporter must, except in any of the specified circumstances⁶, pay the prescribed sum⁷ to the customer where the relevant gas transporter has not completed the reinstatement of the customer's premises⁸:

- 1569 (1) within the prescribed period⁹ from the applicable date¹⁰; and
- 1570 (2) upon the expiry of each succeeding period of five working days¹¹.

1 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.

2 For the meaning of 'service pipe' see PARA 842 note 3 ante.

3 For the meaning of 'customer' see PARA 876 note 2 ante.

4 For these purposes, 'premises' includes any land or structure within the curtilage of the premises to which the gas is conveyed: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 8(5).

5 For the meaning of 'distribution main' see PARA 836 note 6 ante.

6 Ie except in any of the circumstances described in the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 8(3). Those circumstances are: (1) each of the circumstances described in reg 13 (see PARA 877 ante); (2) that the work related to the first installation or reconnection of or alteration to the position or capacity (in any such case requested by the customer) of a service pipe to the premises of the customer to whom a payment under reg 8 would otherwise be required to be made; and (3) that the work resulted from the act or default of the customer or persons under his control: reg 8(3).

7 The prescribed sum for these purposes is £50 in the case of a domestic customer and £100 in the case of a non-domestic customer: see *ibid* Sch 1 Pt I cols 3, 4. For the meaning of 'domestic customer' see PARA 876 note 2 ante; and for the meaning of 'non-domestic customer' see PARA 880 note 4 ante. For the meaning of 'prescribed sum' see PARA 876 note 13 ante; and for the meaning of 'pay' see PARA 876 note 12 ante.

8 For the purposes of *ibid* reg 8(2), the customer's premises are to be deemed to have been reinstated where (1) any drive, path or other route used to obtain access to any building on the customer's premises and any building or structure on those premises has been replaced or repaired so that the drive, path, other route, building or structure is reasonably fit for the type of access or use for which it was used prior to commencement of the work; and (2) any other part of the premises, including any garden or lawn, has been reinstated, so far as is reasonably practicable, to a reasonable standard and with reasonable care and skill having regard to its condition prior to commencement of the work: reg 8(4).

9 The prescribed period for these purposes is ten working days: *ibid* Sch 1 Pt I col 2. For the meaning of 'working day' see PARA 876 note 5 ante; and for the meaning of 'prescribed period' see PARA 876 note 7 ante.

10 For the meaning of 'applicable date' see PARA 876 note 8 ante.

11 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 8(1), (2).

UPDATE

881 Reinstatement of customer's premises

NOTES--SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

NOTE 6--Head (2) substituted: SI 2005/1135 reg 8(3) (amended by SI 2008/696).

NOTE 9--Prescribed period now five working days: SI 2005/1135 Sch 1 Pt I col 2.

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882. Connections.

Where:

- 1571 (1) in respect of heads (a) and (b) below, a relevant gas transporter¹ receives a request² for a quotation³ for obtaining a new connection⁴ or altering an existing connection from a customer⁵; or
- 1572 (2) in respect of head (c) below, a customer challenges a quotation under the relevant gas transporter's published accuracy scheme⁶; or
- 1573 (3) in respect of head (d) below, a relevant gas transporter receives a land inquiry⁷ from a customer; or
- 1574 (4) in respect of heads (e) and (f) below, a customer has accepted a quotation (including a self-quote⁸) from the relevant gas transporter for the provision of a new connection or alteration of an existing connection to the customer's premises,

in each case in respect of gas conveyed to premises at a pressure of less than 7 bar gauge and excluding domestic developments⁹, non-domestic developments¹⁰, complex connections¹¹ and excluded connections¹², then where the relevant gas transporter:

- 1575 (a) fails within the specified time¹³ from the applicable date¹⁴ to issue to a customer a standard quotation¹⁵, for providing a new or altering an existing connection up to and including 275kWh per hour; or
- 1576 (b) fails within the specified time¹⁶ from the applicable date to issue to a customer:

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- 160. (i) a non-standard quotation¹⁷ for providing a new or altering an existing connection up to and including 275kWh per hour; or
- 161. (ii) a non-standard quotation for providing a new or altering an existing connection greater than 275kWh per hour; or

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- 1577 (c) fails to provide the customer with an accurate quotation; or
- 1578 (d) fails within the specified time¹⁸ from the applicable date to respond to a land inquiry in respect of a new connection or alteration of an existing connection; or
- 1579 (e) fails within the specified time¹⁹ from the applicable date to offer a date for commencement of work on the connection and substantial completion²⁰ on specified days²¹ in respect of:

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- 162. (i) a new connection or alteration of an existing connection up to and including 275kWh per hour; or
- 163. (ii) a new connection or altering an existing connection greater than 275kWh per hour;

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- 1580 (f) fails substantially to complete a connection on the date agreed with the customer in respect of a connection with a quoted cost to the customer of:

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- 164. (i) up to and including £1,000;
- 165. (ii) over £1,000 but not exceeding £4,000
- 166. (iii) over £4,000 but not exceeding £20,000;
- 167. (iv) over £20,000 but not exceeding £50,000;
- 168. (v) over £50,000 but not exceeding £100,000,

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the relevant gas transporter must, except in the specified circumstances²²:

1581 (A) in respect of heads (a), (b), (d), (e) and (f) above pay to the customer the prescribed sum²³ in respect of the initial failure and each additional working day during which the failure continues, including the day on which the appropriate action is taken to meet the relevant requirements²⁴; and

1582 (B) in respect of head (c) above refund the customer any overcharge²⁵ that has been paid²⁶.

In the event that the customer challenges a quotation provided by the relevant gas transporter in accordance with any published accuracy scheme and that quotation is found not to be accurate, the quotation will be deemed invalid and the provisions of heads (a) and (b) above apply until the relevant gas transporter issues a revised quotation to the customer²⁷. Notwithstanding this provision, the relevant transporter must refund to the customer any overcharge²⁸.

1 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.

2 For these purposes, where the relevant gas transporter receives a request for a quotation, a land inquiry or the acceptance of a quotation after 5 pm on a working day or at any time on any other day, the request for a quotation, land inquiry or acceptance of the quotation is to be deemed to have been received on the next following working day: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 10(2). For the meaning of 'working day' see PARA 876 note 5 ante; and for the meaning of 'land inquiry' see note 7 infra.

3 'Quotation' means a cost estimate for a connection: *ibid* reg 3(1).

4 'Connection' means the provision of pipework from the gas pipeline system of the relevant gas transporter to the emergency control valve at the relevant premises: *ibid* reg 3(1). For the meaning of 'pipeline system' see PARA 876 note 15 ante.

5 For the meaning of 'customer' see PARA 876 note 2 ante.

6 'Published accuracy scheme' means a scheme, including a process through which a customer can challenge whether he has received an accurate quotation, published by the relevant gas transporter as agreed from time to time with the Gas and Electricity Markets Authority ('GEMA'); and 'accurate' means: (1) in respect of a standard quotation for the provision of a connection up to and including 275 kWh per hour within 5% or £150 (whichever is greater) of the correct amount as calculated in accordance with the relevant gas transporter's connection charging statement issued in accordance with standard condition 4B of its licence; or (2) in respect of a non-standard quotation for the provision of a connection up to and including 275 kWh per hour within 5% or £150 (whichever is the greater) of the correct amount as calculated in accordance with the relevant gas transporter's connection charging statement issued in accordance with standard condition 4B of its licence; or (3) in respect of a non-standard quotation for the provision of a connection greater than 275 kWh per hour within 5% or £300 (whichever is the greater) of the correct amount as calculated in accordance with the relevant gas transporter's connection statement issued in accordance with standard condition 4B of its licence: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante. As to the standard conditions of licences see PARA 810 ante.

7 'Land inquiry' means a request by a customer for an indication of the availability of gas, an estimate of pressure, an estimate of the cost of the relevant proposed connection and, where appropriate, the approval of a design for the provision of a new or alteration of an existing connection; and 'alteration' means the alteration of

an existing service pipe operated by the relevant gas transporter at the relevant premises: *ibid* reg 3(1). For the meaning of 'service pipe' see *PARA 842* note 3 *ante*.

8 'Self-quote' means a quotation produced by the customer for the provision of a new or alteration of an existing connection in accordance with any conditions published by the relevant gas transporter to enable the customer to calculate the cost of those works: *ibid* reg 3(1).

9 'Domestic development' means a development of at least five new build domestic premises where there is no existing connection to the relevant gas transporter's pipeline system: *ibid* reg 3(1). For the meaning of 'domestic premises' see *PARA 876* note 2 *ante*.

10 'Non-domestic development' means a development of at least five new build non-domestic premises where there is no existing connection to the relevant gas transporter's pipeline system; and 'non-domestic premises' means any premises other than domestic premises: *ibid* reg 3(1).

11 'Complex connection' means a connection of sufficient complexity as described in a statement issued from time to time by the relevant gas transporter and agreed with the Authority after such consultation as the Authority directs: *ibid* reg 3(1).

12 'Excluded connection' means a connection described in a statement issued from time to time by the licensee and agreed by the Authority: *ibid* reg 3(1).

13 For the meaning of 'specified time' see *PARA 876* note 9 *ante*. The prescribed period within which that time is to fall is six working days: see *ibid* Sch 1 Pt I col 2. For the meaning of 'working day' see *PARA 876* note 5 *ante*.

14 For the meaning of 'applicable date' see *PARA 876* note 8 *ante*.

15 'Standard quotation' means a standard quotation (excluding a self-quote) that does not require a site visit as defined in the connection charges statement issued from time to time by the relevant gas transporter in accordance with standard licence condition 4B of its licence: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

16 The prescribed period within which that time is to fall is eleven working days for the purposes of head (b) (i) in the text and 21 working days for the purposes of head (b)(ii) in the text: see *ibid* Sch 1 Pt I col 2.

17 'Non-standard quotation' means a quotation which requires a site visit but excluding a self-quote: *ibid* reg 3(1).

18 The prescribed period within which that time is to fall is five working days: see *ibid* Sch 1 Pt I col 2.

19 The prescribed period within which that time is to fall is 20 working days: see *ibid* Sch 1 Pt I col 2.

20 'Substantial completion' means that the connection to the premises has been installed, commissioned and left safe: *ibid* reg 3(1).

21 For these purposes, 'specified day' means a day within a reasonable period from the applicable date: *ibid* reg 10(7)(a).

22 *le* except in the circumstances described in *ibid* reg 10(6). Those circumstances are as follows (reg 10(6)):

24 (1) each of the circumstances described in reg 13 (see *PARA 877* *ante*) provided that in relation to reg 13(6) (see *PARA 877* *ante* at head (4) in the text), the relevant gas transporter gave the customer not less than one working day's prior warning (whether or not in writing) that he would be unable to keep the timed appointment or the circumstances referred to in reg 13 occurred at a time when it was not reasonably practicable to give such a warning;

25 (2) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(a) and (b) (see heads (a)-(b) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under that sub-paragraph to exceed (a) the lesser of £250 or the quotation sum for the provision of a new connection or altering an existing quotation up to and including 275 kWh per hour; (b) the lesser of £500 or the quotation sum for the provision of a new connection or altering an existing quotation greater than 275 kWh per hour;

26 (3) that the prescribed sum payable in respect of any one breach under reg 10(3)(d) (see head (d) in the text) is not to be payable where the making of that payment would cause the

aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(d) to exceed (a) in respect of a new connection or altering an existing connection up to and including 275 kWh per hour £250; and (b) in respect of a new connection or altering an existing connection greater than 275kWh per hour £500;

- 27 (4) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(e) (see head (e) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(e) to exceed (a) the lesser of £250 or the contract sum for the provision of a connection up to and including 275 kWh per hour; (b) the lesser of £500 or the contract sum for the provision of a connection greater than 275 kWh per hour;
- 28 (5) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(f)(i) (see head (f)(i) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(f)(i) to exceed the lesser of £200 or the contract sum;
- 29 (6) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(f)(ii)-(f)(iii) (inclusive) (see heads (f)(ii)-(iii) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(f)(ii)-(f)(iii) (inclusive) to exceed 25% of the contract sum;
- 30 (7) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(f)(iv) (see head (f)(iv) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(f)(iv) to exceed £5,000;
- 31 (8) that the prescribed sum payable in respect of the continuation of any one breach under reg 10(3)(f)(v) (see head (f)(v) in the text) is not to be payable where the making of that additional payment would cause the aggregate of the prescribed payments to the customer in respect of that breach under reg 10(3)(f)(v) to exceed £9,000;
- 32 (9) that the relevant gas transporter is unable to provide an accurate quotation within the relevant time scales since the quotation will include costs that can only be negotiated with and paid to a third party;
- 33 (10) that consents are required from third parties and such consents cannot by reasonable endeavours be obtained;
- 34 (11) in respect of a standard or non-standard quotation made without a site visit, that an assumption made by the relevant gas transporter in providing the quotation is incorrect because information provided by the customer was either incomplete or incorrect;
- 35 (12) that any visit is made wholly or mainly in connection with disconnecting the premises in exercise of the power contained in the Gas Act 1986 Sch 2B para 7 (as added and amended) (see PARA 858 ante);
- 36 (13) where the service relates to the provision of metering services as defined in the licence of the gas transporter issued under s 7 (as substituted and amended) (see PARA 805 ante); or
- 37 (14) in respect of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 10(1)(a), (b) and (c) (see heads (1)-(3) in the text), the gas transporter considers that a request or requests received from the customer or a person acting with apparent authority for one or more customers were frivolous or vexatious.

For these purposes, 'quotation sum' means the price originally quoted for the connection; and 'contract sum' means the accurate quotation for the connection: reg 10(7)(b), (c). For the meaning of 'apparent authority' see PARA 876 note 2 ante; and for the meaning of 'prescribed sum' see PARA 876 note 13 ante.

23 The prescribed sum for these purposes is: (1) in respect of *ibid* reg 10(3)(a), (b)(i) (see heads (a), (b)(i) in the text), £10; (2) in respect of reg 10(3)(b)(i), (e)(i) and (f)(i) (see heads (b)(i), (e)(i) and (f)(i) in the text), £20; (3) in respect of reg 10(3)(d), (e)(ii) (see heads (d), (e)(ii) in the text), £40; (4) in respect of reg 10(3)(f)(ii) (see head (f)(ii) in the text), the lesser of £100 or 2.5% of the contract sum; (5) in respect of reg 10(3)(f)(iii), (iv) (see heads (f)(iii), (iv) in the text), £100; and (6) in respect of reg 10(3)(f)(v) (see head (f)(v) in the text), £150: see Sch 1 Pt I cols 3, 4. For the meaning of 'pay' see PARA 876 note 12 ante.

24 In the requirements of heads (a), (b), (d), (e) and (f) in the text.

25 'Overcharge' means any sum exceeding the correct amount as calculated in accordance with the relevant gas transporter's connection charging statement issued in accordance with standard licence condition 4B of its licence: Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 3(1).

26 Ibid reg 10(1), (3).

27 Ibid reg 10(4).

28 Ibid reg 10(5).

UPDATE

882 Connections

TEXT AND NOTES--Definitions of 'published accuracy scheme', 'accurate', 'land inquiry', 'self-quote', 'complex connection', 'excluded connection', 'standard quotation', 'overcharge' amended: SI 2008/696. SI 2005/1135 Sch 1 Pt I substituted: SI 2008/696.

Compensation of a prescribed sum is payable where the relevant gas transporter fails to give the customer prior notice of a prescribed period of planned disconnection: SI 2005/1135 reg 10A (added by SI 2008/696). As to requirements in respect of responding to customer complaints see SI 2005/1135 reg 10B (added by SI 2008/696).

NOTE 7--Definition of alteration' omitted: SI 2008/696.

TEXT AND NOTE 9--Now, head (4) in respect of heads (e) and (f), a relevant gas transporter receives acceptance of a quotation (including a self-quote) for the provision of a new connection or alteration of an existing connection from a customer: SI 2005/1135 reg 10(1) (amended by SI 2008/696).

TEXT AND NOTES 13-22--In heads (a), (b), (d), (e) for 'specified time' read 'prescribed period'; in heads (a), (b)(i) and (ii) for 'new' read 'new connection': SI 2005/1135 reg 10(3) (amended by SI 2008/696).

NOTE 20--Heads (2)-(8) substituted: SI 2008/696.

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883. Payments.

Where a gas supplier¹ is obliged to make a payment² to a customer³ under any of the prescribed performance standards relating to meter disputes, prepayment meters or appointments⁴, and the gas supplier fails within the prescribed period⁵ from the applicable date⁶ to dispatch a notice to the customer⁷ advising that the payment is due to the customer and to make payment to the customer of the sum to which he is entitled, the gas supplier must, except in any of the specified circumstances⁸, pay to the customer the prescribed sum⁹.

Where:

- 1583 (1) a relevant gas transporter¹⁰ is obliged to make a payment to a customer under any of the prescribed performance standards relating to supply restoration, reinstatement of the customer's premises, priority domestic customers or connections¹¹; and
- 1584 (2) the relevant gas transporter fails within the prescribed period¹² from the applicable date:
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- 169. (a) to dispatch a notice to the customer (or to the gas shipper¹³ in relation to payments in respect of the standards relating to supply restoration, reinstatement of the customer's premises or priority domestic customers¹⁴) in respect of the customer's premises advising that the payment is due to the customer; and
- 170. (b) to make the payment to the customer or, where the notice has been dispatched to the gas shipper, to the gas shipper for onward transmission to the gas supplier of the customer, of the sum to which the customer is entitled,
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the relevant gas transporter must, except in any of the specified circumstances¹⁵, pay to the customer (or to the gas shipper¹⁶) the prescribed sum¹⁷.

Where a relevant operator is required to make a payment under the relevant regulations¹⁸:

- 1585 (i) in relation to any premises of which more than one person is a customer, a payment to any one or more of the customers in respect of those premises is to be a complete discharge of the obligation of the relevant operator to make the payment to all the customers of those premises;
- 1586 (ii) nothing in, or done by a relevant operator in consequence of, those regulations is to determine who is beneficially entitled to any payment made in pursuance of those regulations; and
- 1587 (iii) nothing in those regulations permits a relevant operator to make a payment other than by means of:
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- 171. (A) a cheque or cash or BACS transfer to a supplier's bank account; or
- 172. (B) a credit to the account of the customer for charges incurred or to be incurred in respect of the supply or the provision of any gas meter or the provision of any connection;

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1588 (iv) then where a relevant gas transporter elects to dispatch a notice or make any payment directly to a customer, the dispatch of the notice or payment by the relevant gas transporter to a person whom it reasonably believes to be the customer in respect of the premises in relation to which the entitlement arises is to be a complete discharge of the obligation of the relevant gas transporter to dispatch the notice or make the payment to the actual customer of those premises¹⁹.

1 For the meaning of 'gas supplier' for these purposes see PARA 876 note 1 ante.

2 For the meaning of 'payment' see PARA 876 note 12 ante.

3 For the meaning of 'customer' see PARA 876 note 2 ante.

4 Ie under any of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, regs 4-6: see PARAS 876, 878-879 ante.

5 The prescribed period for these purposes is ten working days: see *ibid* Sch 1 Pt I col 2. For the meaning of 'prescribed period' see PARA 876 note 7 ante; and for the meaning of 'working day' see PARA 876 note 5 ante.

6 For the meaning of 'applicable date' see PARA 876 note 8 ante.

7 As to the dispatch of notices to the customer see PARA 880 note 15 ante.

8 Ie any of the circumstances described in the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 12(5). Those circumstances are (1) each of the circumstances described in reg 13 (see PARA 877 ante); and (2) that there is a genuine dispute between the relevant operator and the customer as to whether the relevant operator is obliged to make the payment: reg 12(5). For the meaning of 'relevant operator' see PARA 876 note 15 ante.

9 *Ibid* reg 12(1), (3). The prescribed sum for these purposes is £20: see Sch 1 Pt I cols 3, 4. For the meaning of 'prescribed sum' see PARA 876 note 13 ante.

10 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.

11 Ie under any of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, regs 7-10: see PARAS 880-882 ante.

12 The prescribed period for these purposes is 20 working days: see *ibid* Sch 1 Pt I col 2.

13 For the meaning of 'gas shipper' see PARA 807 ante.

14 Ie in respect of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, regs 7-9: see PARAS 880-881 ante.

15 See note 8 *supra*.

16 Ie where the failure to make payment was in relation to payments in respect of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 7, reg 8 or reg 9 for onward transmission to the gas supplier of the customer.

17 *Ibid* reg 12(2), (4). The prescribed sum for these purposes is £20: see Sch 1 Pt I cols 3, 4.

18 Ie under the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended): see PARA 876 *et seq* ante, PARA 884 *et seq* post.

19 *Ibid* reg 12(6).

UPDATE

883 Payments

TEXT AND NOTES--SI 2005/1135 reg 12(2), (4) substituted, reg 12(6) amended, reg 12(1A), (3A), (7), (8) added: SI 2008/696.

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884. Notice of rights.

In respect of the rights prescribed for the benefit of domestic customers¹ with regard to meter disputes, prepayment meters and appointments² and disputes, payments, exemptions and the timing of notification³, a gas supplier⁴ must prepare and from time to time revise a statement describing the rights prescribed for the benefit of domestic customers under the relevant regulations⁵ and the effect of the statutory provision requiring a gas supplier to pay compensation⁶ in a form and having a content which a gas supplier could reasonably expect would be within the understanding of customers to whom the statement relates⁷. The gas supplier must:

- 1589 (1) give a copy of the statement, and of any revision of the statement, to the Gas and Electricity Markets Authority ('GEMA')⁸ and to the Gas and Electricity Consumer Council⁹, before he makes it available to customers;
- 1590 (2) at least once in any period of 12 months dispatch to each domestic customer of the gas supplier a copy of the statement, in the form current at the time it is provided, provided that where in relation to any premises more than one person is a domestic customer, the obligation is to be satisfied by dispatching a copy of each such statement to any one of them;
- 1591 (3) make a copy of the statement, in its current form, available for inspection by any person at any premises of or occupied by the supplier open to the public in the normal course of the supplier's business during the normal opening hours of the premises; and
- 1592 (4) dispatch a copy of the statement, in its current form, to any person who requests it¹⁰.

A gas supplier may satisfy his obligation under head (2) or head (4) above by dispatching the statement he has prepared to the class of customer to whom it relates¹¹.

In respect of the rights prescribed for the benefit of customers with regard to supply restoration, reinstatement of the customer's premises, priority domestic customers, connections, disputes, payments, exemptions and the timing of notification¹², a relevant gas transporter¹³ must prepare and from time to time revise a statement describing those rights and the effect of the statutory provision requiring a gas transporter to pay compensation¹⁴ in a form and having a content which a gas transporter could reasonably expect would be within the understanding of customers to whom the statement relates¹⁵. The gas transporter must:

- 1593 (a) give a copy of the statement and of any revision of the statement to the Authority and to the Council, before he sends it to the gas suppliers referred to in head (b) below;
- 1594 (b) at least once in any period of 12 months dispatch to each gas supplier which supplies gas to customers connected to the relevant gas transporter's pipeline system¹⁶ for onward transmission to the gas supplier's customers a copy of the statement, in the form current at the time it is provided;
- 1595 (c) make a copy of the statement, in its current form, available for inspection by any person at any offices fixed as appropriate by the relevant gas transporter

for the statutory purposes¹⁷ or, if none, at any premises of or occupied by the relevant gas transporter open to the public in the normal course of the relevant gas transporter's business during the normal opening hours of the premises; and
 1596 (d) dispatch a copy of the statement, in its current form, to any person who requests it¹⁸.

A gas supplier must at least once in any period of 12 months dispatch to each customer of the gas supplier the information in any statement sent to him by a relevant gas transporter pursuant to the above provisions in respect of the relevant gas transporter to whose pipeline system the customer's premises are connected¹⁹.

1 For the meaning of 'domestic customer' see PARA 876 note 2 ante.

2 Ie the rights prescribed under the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, regs 4-6 (inclusive): see PARAS 876, 878-879 ante.

3 Ie the rights prescribed under ibid regs 11-14 (inclusive): see PARAS 876 note 5, 877, 883 ante, PARA 886 post.

4 For the meaning of 'gas supplier' for these purposes see PARA 876 note 1 ante.

5 Ie under the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended): see PARA 876 et seq ante, PARA 886 et seq post.

6 Ie the effect of the Gas Act 1986 s 33A(4) (as added and amended): see PARA 874 ante.

7 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 15(1).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

10 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 15(1)(a)-(d).

11 Ibid reg 15(3).

12 Ie the rights prescribed under ibid regs 7-14 (inclusive): see PARAS 876 note 5, 877, 880-883 ante, PARA 886 post.

13 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.

14 Ie the effect of the Gas Act 1986 s 33AA(5) (as added): see PARA 875 ante.

15 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 15(2).

16 For the meaning of 'pipeline system' see PARA 876 note 15 ante.

17 Ie for the purposes of the Gas Act 1986 s 46(3) (as amended): see PARA 980 post.

18 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 15(2)(a)-(d).

19 Ibid reg 15(4).

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(C) DISPUTES RELATING TO STANDARDS OF PERFORMANCE

885. Reference of disputes to the Gas and Electricity Markets Authority.

Any dispute arising under the statutory powers to prescribe standards of performance in individual cases¹ or regulations made thereunder² may be referred to the Gas and Electricity Markets Authority ('GEMA')³ by either party or, with the agreement of either party, by the Gas and Electricity Consumer Council⁴. On such a reference, the dispute must be determined by order made by the Authority or, if it thinks fit, by such person, other than the Council, as may be prescribed⁵. A person making such an order must include in the order his reasons for reaching his decision with respect to the dispute⁶. Such an order is final and is enforceable as if it were a judgment of a county court⁷.

The practice and procedure to be followed in connection with any such determination is to be such as may be prescribed⁸.

¹ Ie under the Gas Act 1986 s 33A (as added and amended) or s 33AA (as added): see PARAS 874-875 ante.

² Ie under regulations made under *ibid* s 33A (as added and amended) or s 33AA (as added). See the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended); and PARA 876 et seq ante, PARA 886 et seq post.

³ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

⁴ Gas Act 1986 s 33AB(1)(a) (s 33AB added by the Utilities Act 2000 s 90(2)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

⁵ Gas Act 1986 s 33AB(1)(a) (as added: see note 4 supra). For these purposes, 'prescribed' means prescribed by regulations made by the Authority with the consent of the Secretary of State: s 33AB(5) (as so added). For the relevant regulations see the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2; and PARA 886 et seq post.

⁶ Gas Act 1986 s 33AB(2) (as added: see note 4 supra).

⁷ Ibid s 33AB(4)(a) (as added: see note 4 supra).

⁸ Ibid s 33AB(3) (as added: see note 4 supra). For the prescribed procedure see the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2; and PARA 886 et seq post.

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886. Procedure for determination of disputes; in general.

Where a dispute under any provision of the relevant regulations¹ is referred to the Gas and Electricity Markets Authority ('GEMA')² for determination³, the dispute must be determined in accordance with the practice and procedure set out⁴ in the following provisions⁵.

Where such a dispute has arisen between a relevant operator⁶ and a customer⁷, or between relevant operators, it may be referred to the Authority by any party or, with the agreement of any party, by the Gas and Electricity Consumer Council⁸ and it must, on such reference, be determined by order made by the Authority⁹. In making such an order, the Authority must include in the order the reasons for reaching its decision with respect to a dispute¹⁰.

1 Ie under any provision of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135 (as amended); see PARA 876 et seq ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 Ie under the Gas Act 1986 s 33AB(1) (as added); see PARA 885 ante.

4 Ie the procedure set out in the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2: see the text and notes 6-9 infra; and PARA 887 et seq post.

5 Ibid reg 11.

6 For the meaning of 'relevant operator' see PARA 876 note 15 ante.

7 For the meaning of 'customer' see PARA 876 note 2 ante.

8 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

9 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 1(1), (2).

10 Ibid Sch 2 para 1(3).

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887. Determination of individual disputes.

The Gas and Electricity Markets Authority ('GEMA')¹ must determine a dispute between a relevant operator and a customer or between relevant operators² before the end of 80 working days³ from the date when the dispute was referred to it⁴; but if the Authority is satisfied that there are good reasons for departing from that requirement, the period in which a dispute may be determined may be extended with the consent of the referring party or parties⁵.

Where an individual dispute is referred to the Authority, the Authority must, at the outset, send to the parties a notice of procedure for the determination of individual disputes⁶. Upon receipt of such a notice, the parties to the dispute must provide the Authority with any specific information that the Authority is requesting as part of the written statement prepared in accordance with the prescribed procedure⁷ and with any other information that they consider relevant to the dispute⁸. If the Authority decides it is necessary to obtain third party advice in relation to technical issues or any other issues that may arise during the determination, it must request it and inform the parties to the dispute of that request and indicate in writing how that request will affect the timetable outlined in the notice of procedure which it has⁹ issued¹⁰.

At any time after receiving a written statement¹¹ the Authority may, if it considers it appropriate to do so, request¹² an oral hearing¹³. If the Authority is satisfied that it has sufficient information to determine a dispute, it must prepare a draft determination statement containing the submissions of the parties and then send that statement to the parties for comment¹⁴. When the Authority has received comments from the parties, and is satisfied that it has sufficient information to make the determination decision, it must prepare and then issue to the parties a final determination statement¹⁵.

The parties must, within one week of receiving a final determination statement, notify the Authority of any issue or information within that statement that should be excluded because such issue or information is of a confidential nature¹⁶. The Authority must, upon receipt of any such notification, make the necessary adjustments to the final determination statement and then publish¹⁷ that statement on its website¹⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 I.e. a dispute to which the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2 applies: see PARA 886 ante. For the meaning of 'customer' see PARA 876 note 2 ante; and for the meaning of 'relevant operator' see PARA 876 note 15 ante.

3 For the meaning of 'working day' see PARA 876 note 5 ante.

4 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 2(1).

5 Ibid Sch 2 para 2(2).

6 Ibid Sch 2 para 3(1). That notice must: (1) set out a timetable by which each part of the procedure for the determination of individual disputes under Sch 2 is to take place; (2) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically

classed as confidential by the party to whom it belongs before the date expressly stated in the notice; (3) inform the parties of any specific information that the Authority is requesting as part of the written statement prepared in accordance with Sch 2 para 7 (see PARA 889 post); and (4) explain the manner in which the Authority intends to publish the determination decision: Sch 2 para 3(2).

7 Ie the information specified in *ibid* Sch 2 para 3(2)(c): see note 6 head (3) *supra*.

8 *Ibid* Sch 2 para 3(3).

9 Ie the notice which it has issued under *ibid* Sch 2 para 3(1): see the text and note 6 *supra*.

10 *Ibid* Sch 2 para 3(4).

11 As to written statements see *ibid* Sch 2 para 7; and PARA 889 post.

12 Ie in accordance with *ibid* Sch 2 para 9: see PARA 890 post.

13 *Ibid* Sch 2 para 3(5).

14 *Ibid* Sch 2 para 3(6).

15 *Ibid* Sch 2 para 3(7).

16 *Ibid* Sch 2 para 3(8).

17 Ie in accordance with *ibid* Sch 2 para 3(2)(d): see note 6 head (4) *supra*.

18 *Ibid* Sch 2 para 3(9). As to publication by the Authority see PARA 793 note 5 *ante*.

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888. Determination of multiple disputes.

The Gas and Electricity Markets Authority ('GEMA')¹ may, if it considers it appropriate to do so, consolidate into one or more categories (in each case a 'consolidated group') similar or related disputes² for the purposes of determining those disputes³. A determination made by the Authority for one or more consolidated groups is to apply, in respect of each consolidated group, to each individual dispute in that group⁴. When determining disputes falling within a consolidated group, the Authority must determine those disputes before the end of six months from the date when they were so consolidated into that group by the Authority⁵. If, however, the Authority is satisfied that there are good reasons for departing from this requirement, the period in which disputes falling within a consolidated group may be determined may be extended by notice to the nominated representatives⁶ of any such group⁷.

Where the Authority considers it appropriate to consolidate disputes, the Authority must send to the parties a notice of procedure for the determination of those disputes⁸. Upon receipt of such a notice, the parties to the dispute must provide the Authority with any specific information that the Authority is requesting⁹ and with any other information that they consider relevant to the dispute¹⁰. Upon receipt of the information so provided, the Authority may, if it considers it fitting to do so, prepare a list of consolidated groups and then consult as to whether those consolidated groups are appropriate¹¹. When so consulting, the Authority must publish¹² and explain its proposals in a manner which it believes will bring them to the attention of persons most likely to be affected and must invite those persons to comment to the Authority within a period from the publication of the proposals that is specified therein¹³. Upon receipt of responses to that consultation, the Authority must have regard to those responses before finalising the consolidated groups¹⁴.

When the Authority has decided on the consolidated groups for the purpose of determining multiple disputes, it must appoint¹⁵ customer representatives¹⁶. Following the appointment of the customer representatives for the consolidated groups, those customer representatives and the relevant operators¹⁷ must prepare a written statement¹⁸. Upon receipt of the written statements, the Authority may decide that it is necessary to obtain third party advice in relation to technical issues or any other issues that may arise during the determination; and if third party advice is requested, then the Authority must inform the customer representatives and the relevant operators of that request and must indicate in writing how that request will affect the timetable outlined in the notice it has¹⁹ issued²⁰.

At any time after receiving the written statement, the Authority may request²¹ an oral hearing²². If the Authority is satisfied that it has the necessary information, it must prepare a draft determination statement containing the submissions of the customer representatives and the relevant operators and then send that statement to the customer representatives and the relevant operators for comment²³. When the Authority has received comments from the customer representatives and the relevant operators, and is satisfied that it has sufficient information to make the determination decision, it must issue a final determination statement for a consolidated group, or for each consolidated group where there is more than one²⁴. The customer representatives and the relevant operators must within one week of receiving a final determination statement notify the Authority of any issue or information within that statement

that should be excluded because such issue or information is of a confidential nature²⁵. The Authority must, upon receipt of any such notification, make the necessary adjustments to the final determination statement and then publish²⁶ that statement on its website²⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie disputes to which the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2 applies: see PARA 886 ante.

3 Ibid Sch 2 para 4(1).

4 Ibid Sch 2 para 4(2).

5 Ibid Sch 2 para 5(1).

6 Ie the representatives nominated under ibid Sch 2 para 10. Where disputes are consolidated into categories under Sch 2 para 4, the Authority must nominate one or more customers to be representatives of each consolidated group: Sch 2 para 10(1). A customer so nominated to be a representative of a consolidated group is only to become a representative if he consents to do so: Sch 2 para 10(2). For the meaning of 'customer' see PARA 876 note 2 ante.

7 Ibid Sch 2 para 5(2).

8 Ibid Sch 2 para 6(1). Those notices must (1) set out a timetable by which each part of the procedure for the determination of multiple disputes under Sch 2 is to take place; (2) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically classed as confidential by the party to whom it belongs before the date expressly stated in the notice; (3) inform the parties of any specific information that the Authority is requesting in accordance with Sch 2 para 11 (see PARA 889 post); and (4) explain the manner in which the Authority intends to publish the determination decision: Sch 2 para 6(2).

9 Ie the information specified in ibid Sch 2 para 6(2)(c): see note 8 head (3) supra.

10 Ibid Sch 2 para 6(3).

11 Ibid Sch 2 para 6(4).

12 As to publication by the Authority see PARA 793 note 5 ante.

13 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 6(5).

14 Ibid Sch 2 para 6(6).

15 Ie under ibid Sch 2 para 10: see note 6 supra.

16 Ibid Sch 2 para 6(7).

17 For the meaning of 'relevant operator' see PARA 876 note 15 ante.

18 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 6(8).

19 Ie the notice issued under ibid Sch 2 para 6(1).

20 Ibid Sch 2 para 6(9).

21 Ie in accordance with ibid Sch 2 para 9: see PARA 890 post.

22 Ibid Sch 2 para 6(10).

23 Ibid Sch 2 para 6(11).

24 Ibid Sch 2 para 6(12).

25 Ibid Sch 2 para 6(13).

26 le in accordance with *ibid* Sch 2 para 6(2)(d); see note 8 head (4) *supra*.

27 *Ibid* Sch 2 para 6(14).

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889. Written statements; documents, evidence and information.

The Gas and Electricity Markets Authority ('GEMA')¹ may, by notice:

- 1597 (1) ask any party to a dispute² to produce a written statement with respect to a matter specified in the notice³; and this power includes power to specify the time and place at which the statement is to be produced⁴;
- 1598 (2) ask a party to a dispute to produce such documentation, including other evidence, in such form and at such time as it directs, as the Authority may reasonably require to enable it to make the determination decision⁵; and this power to ask for the production of a document is a power to ask for its production at the time and place specified in the notice and in a legible form⁶;
- 1599 (3) ask any customer⁷ who is a party to a dispute falling within a consolidated group⁸ to produce such information with respect to a matter specified in the notice as the Authority may reasonably require to enable it to make the determination decision⁹; and this power to require the production of information includes the power to specify the time and place at which it is to be produced¹⁰.

No person is, however, to be compelled under the above provisions to produce a written statement or to give information with respect to any matter about which he could not be compelled to give evidence in civil proceedings in the High Court¹¹ nor to produce a document that he could not be compelled to produce in civil proceedings in the High Court¹².

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie a dispute to which the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2 applies: see PARA 886 et seq ante.

3 Ibid Sch 2 para 7(1).

4 Ibid Sch 2 para 7(2). The Authority may make copies of a document produced to it under Sch 2 para 7: Sch 2 para 7(4).

5 Ibid Sch 2 para 8(1).

6 Ibid Sch 2 para 8(2). The Authority may make copies of a document produced to it under Sch 2 para 8: Sch 2 para 8(4).

7 For the meaning of 'customer' see PARA 876 note 2 ante.

8 As to consolidated groups see PARA 888 ante.

9 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 11(1).

10 Ibid Sch 2 para 11(2).

11 Ibid Sch 2 paras 7(3), 11(3).

12 Ibid Sch 2 para 8(3).

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890. Oral hearings.

An oral hearing may be held¹, and evidence may be heard at such a hearing from any party to a dispute². The Gas and Electricity Markets Authority ('GEMA')³ may, by notice, request any party to a dispute:

- 1600 (1) to attend at a time and place specified in the notice; and
- 1601 (2) at that time and place, to give evidence to any person appointed by the Authority to conduct the oral hearing⁴.

At any oral hearing, the Authority may request the customer or a person attending the hearing as a representative of the relevant operator⁵ to give evidence or make representations or observations⁶; and if any party fails to attend a hearing to be subjected to such a requirement, the Authority may determine the dispute without hearing his evidence, representations, or observations⁷.

No person is, however, to be compelled under these provisions to give evidence which he could not be compelled to give in civil proceedings in the High Court⁸.

1. See for the purposes of the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2: see PARA 886 et seq ante, PARA 891 post.

2. Ibid Sch 2 para 9(1).

3. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4. Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 9(2).

5. For the meaning of 'relevant operator' see PARA 876 note 15 ante.

6. Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 9(3).

7. Ibid Sch 2 para 9(4).

8. Ibid Sch 2 para 9(5).

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891. Payments to customers; set-off and costs.

An order determining a dispute¹ does not, where there is more than one customer² at the premises, determine who is beneficially entitled to any payment³ required to be made by the order⁴.

Where a dispute is determined by an order requiring a relevant operator⁵ to make a payment to the customer and the relevant operator fails to make that payment, the customer may set off the amount so ordered to be paid against any charges that are owed by the customer to the relevant operator⁶.

An order determining a dispute may include a provision requiring the relevant operator or the customer to pay a sum in respect of the costs or expenses incurred by the Gas and Electricity Markets Authority ('GEMA')⁷. In including in such an order any such provision as to costs, the Authority must have regard to the conduct and means of the parties and any other relevant circumstances⁸.

¹ I.e. an order determining a dispute to which the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 11, Sch 2 applies: see PARA 886 ante.

² For the meaning of 'customer' see PARA 876 note 2 ante.

³ For the meaning of 'payment' see PARA 876 note 12 ante.

⁴ Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 12.

⁵ For the meaning of 'relevant operator' see PARA 876 note 15 ante.

⁶ Gas (Standards of Performance) Regulations 2005, SI 2005/1135, Sch 2 para 13.

⁷ Ibid Sch 2 para 14(1). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

⁸ Ibid Sch 2 para 14(2).

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C. OVERALL STANDARDS OF PERFORMANCE

892. Overall standards of performance relating to gas suppliers.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time determine such standards of overall performance in connection with the provision of gas supply² services by gas suppliers³ as ought in its opinion to be achieved by them⁴ and may arrange for the publication of the standards so determined in such form and in such manner as the Authority considers appropriate⁵. Different standards may be determined for different gas suppliers if the Authority is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers⁶; and standards may be determined either as respects the provision of gas supply services generally or as respects the provision of such services to customers of a particular class or description⁷.

It is the duty of every gas supplier to conduct his business in such a way as can reasonably be expected to lead to its achieving the standards set under these provisions⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

3 For the meaning of 'gas supplier' see PARA 807 ante.

4 Gas Act 1986 s 33B(1)(a) (s 33B added by the Competition and Service (Utilities) Act 1992 s 11; the Gas Act 1986 s 33B(1) amended by the Gas Act 1995 s 10(1), Sch 3 para 35(1); and by virtue of the Utilities Act 2000 s 3(2)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

5 Gas Act 1986 s 33B(1)(b) (as added and amended: see note 4 supra). As to publication by the Authority see PARA 793 note 5 ante. As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

6 Ibid s 33B(3) (s 33B(3) substituted, and s 33B(3A) added, by the Gas Act 1995 Sch 3, para 35(3); amended by virtue of the Utilities Act 2000 s 3(2)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

7 Gas Act 1986 s 33B(3A) (as added: see note 6 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

8 Ibid s 33B(4) (as added (see note 4 supra); amended by the Gas Act 1995 Sch 3 para 35(4)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

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893. Overall standards of performance relating to gas transporters.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time determine such standards of overall performance in connection with the activities of gas transporters² as, in its opinion, ought to be achieved by them³ and may arrange for the publication of the standards so determined in such form and in such manner as the Authority considers appropriate⁴. Different standards may be determined for different gas transporters if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters⁵.

It is the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under these provisions⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 Gas Act 1986 s 33BA(1)(a) (s 33BA added by the Utilities Act 2000 s 91). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

4 Gas Act 1986 s 33BA(1)(a) (as added: see note 3 supra). As to publication by the Authority see PARA 793 note 5 ante. As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

5 Ibid s 33BA(2) (as added: see note 3 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

6 Ibid s 33BA(3) (as added: see note 3 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

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894. Information to be given to customers about overall performance.

The Gas and Electricity Markets Authority ('GEMA')¹ may make regulations requiring such information as may be specified or described in the regulations about:

- 1602 (1) the standards of overall performance determined in relation to gas suppliers and gas transporters²;
- 1603 (2) the levels of performance achieved as respects those standards,

to be given by gas suppliers or gas transporters to customers or potential customers of gas suppliers³. Such regulations may include provision:

- 1604 (a) as to the form and manner in which and the frequency with which information is to be given; and
- 1605 (b) requiring information about the matters mentioned in head (1) or head (2) above and relating to gas transporters to be given by gas transporters to gas suppliers and by gas suppliers to their customers or potential customers⁴.

In respect of the overall standards of performance determined by the Authority in relation to gas suppliers⁵, a gas supplier⁶ must prepare and from time to time revise a statement describing those standards and the levels of performance achieved as respects those standards in a form and having a content which a gas supplier could reasonably expect would be within the understanding of customers⁷ to which the statement relates and must:

- 1606 (i) give a copy of the statement, and of any revision of the statement, to the Authority and to the Gas and Electricity Consumer Council⁸ before he makes it available to customers;
- 1607 (ii) at least once in any period of 12 months dispatch to each domestic customer⁹ of the gas supplier a copy of the statement, in the form current at the time it is provided; but where in relation to any premises more than one person is a domestic customer, the obligation is satisfied by dispatching a copy of each statement to any one of those persons;
- 1608 (iii) make a copy of the statement, in its current form, available for inspection by any person at any premises of or occupied by the supplier open to customers in the normal course of the supplier's business during the normal opening hours of the premises; and
- 1609 (iv) dispatch a copy of the statement, in its current form, to any person who requests it¹⁰.

A gas supplier may satisfy his obligation under head (ii) or head (iv) above by dispatching the statement he has prepared to the class of customer to whom it relates¹¹.

In respect of the overall standards of performance determined by the Authority in relation to gas transporters¹², a relevant gas transporter¹³ must prepare and from time to time revise a statement describing those standards and the levels or performance achieved in respect of

those standards in a form and having a content which a relevant gas transporter could reasonably expect would be within the understanding of customers to which the statement relates; and must:

- 1610 (A) give a copy of the statement, and of any revision of the statement, to the Authority and to the Council, before he sends it to the gas suppliers referred to in head (B) below;
- 1611 (B) at least once in any period of 12 months dispatch to each gas supplier which supplies gas to premises connected to the relevant gas transporter's pipeline system¹⁴ for onward transmission to the gas supplier's customers a copy of the statement, in the form current at the time it is provided;
- 1612 (C) make a copy of the statement, in its current form, available for inspection by any person at any offices fixed as appropriate by the relevant gas transporter for the statutory purposes¹⁵ or, if none, at any premises of or occupied by the relevant gas transporter open to the public in the normal course of the relevant gas transporter's business during the normal opening hours of the premises; and
- 1613 (D) dispatch a copy of the statement, in its current form, to any person who requests it¹⁶.

A gas supplier must at least once in any period of 12 months dispatch to each customer of the gas supplier the information in any statement sent to him by a relevant gas transporter pursuant to heads (A) to (D) above in respect of the relevant gas transporter to whose pipeline system the customer's premises are connected, provided that where in relation to any premises more than one person is a domestic customer, the obligation is satisfied by dispatching such information to any one of those persons¹⁷.

A relevant operator¹⁸ may prepare a separate statement for domestic and non-domestic customers¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie the standards determined under the Gas Act 1986 s 33B (as added and amended) (see PARA 892 ante) or s 33BA (as added) (see PARA 893 ante). For the meaning of 'gas supplier' see PARA 807 ante; and for the meaning of 'gas transporter' see PARA 805 ante.

3 Ibid s 33D(1) (s 33D added by the Competition and Service (Utilities) Act 1992 s 13; substituted by the Utilities Act 2000 s 94). As to the exercise of this power see the Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 16; and the text and notes 5-19 infra. As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

4 Gas Act 1986 s 33D(2) (as substituted: see note 3 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

5 Ie the standards determined under ibid s 33B (as added and amended): see PARA 892 ante.

6 For the meaning of 'gas supplier' for these purposes see PARA 876 note 1 ante.

7 For the meaning of 'customer' see PARA 876 note 2 ante.

8 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

9 For the meaning of 'domestic customer' see PARA 876 note 2 ante.

10 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 16(1).

- 11 Ibid reg 16(3).
- 12 Ie the standards determined under the Gas Act 1986 s 33BA (as added): see PARA 893 ante.
- 13 For the meaning of 'relevant gas transporter' see PARA 876 note 15 ante.
- 14 For the meaning of 'pipeline system' see PARA 876 note 15 ante.
- 15 Ie for the purposes of the Gas Act 1986 s 46(3) (as amended): see PARA 980 post.
- 16 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 16(2).
- 17 Ibid reg 16(5).
- 18 For the meaning of 'relevant operator' see PARA 876 note 15 ante.
- 19 Gas (Standards of Performance) Regulations 2005, SI 2005/1135, reg 16(4). For the meaning of 'non-domestic customer' see PARA 880 note 4 ante.

UPDATE

894 Information to be given to customers about overall performance

TEXT AND NOTES 11-19--Replaced. SI 2005/1135 reg 16 (2)-(5) now reg 16(2), (3) (substituted by SI 2008/696) by virtue of which a gas supplier may satisfy his obligation under head (2) or (4) in the text by dispatching the statement he has prepared to the class of customer to whom it relates, and may prepare a separate statement for domestic and non-domestic customers.

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D. CARBON EMISSIONS REDUCTION TARGETS

895. Promotion of reductions in carbon emissions; gas transporters and gas suppliers.

The Secretary of State¹ may by order impose on each gas transporter² (or each gas transporter of a specified description), and on each gas supplier³ (or each gas supplier of a specified description), an obligation to achieve, within a specified period and in accordance with the order, the carbon emissions reduction target to be determined by the Gas and Electricity Markets Authority ('GEMA')⁴ under the order for that transporter or supplier (and that obligation is referred to as a 'carbon emissions reduction obligation')⁵. Before making such an order the Secretary of State must consult the Authority, the Gas and Electricity Consumer Council⁶, gas transporters and gas suppliers and such other persons as he considers appropriate⁷; and no such order may be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament⁸.

For these purposes, 'carbon emissions reduction target' means a target for the promotion of any of the following:

- 1614 (1) measures for improving energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes⁹ or any other source of energy which is specified in the order;
- 1615 (2) if the order so provides:
- 117 173. (a) measures for increasing the amount of electricity generated, or heat produced, by microgeneration¹⁰;
- 174. (b) any other measures of a description specified in the order for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies¹¹;
- 175. (c) measures for reducing the consumption of such energy as is mentioned in head (1) above¹².
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An order under these provisions may specify criteria by reference to which the Authority is to determine carbon emissions reduction targets for the gas transporters and gas suppliers on whom obligations are imposed by the order¹³. The order:

- 1616 (i) may make provision generally in relation to the carbon emissions reduction obligations which it imposes, including in particular provision:
- 119 176. (A) as to the treatment of persons who become gas transporters or gas suppliers after the beginning of the period to which the order relates;
- 177. (B) as to the action which qualifies for the purpose of meeting the whole or any part of a carbon emissions reduction target;

178. (c) as to the method by which improvements in energy efficiency, increases in the amount of electricity generated, or heat produced, by microgeneration or otherwise using low-emissions sources or technologies or reductions in energy consumption attributable to any qualifying action are to be assessed;
 179. (D) requiring transporters and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their carbon emissions reduction obligations¹⁴;
 180. (E) requiring the Authority to determine whether any proposed action qualifies for the purpose of achieving the whole or any part of a person's carbon emissions reduction target and, if so, what improvement in energy efficiency, increase in the amount of electricity generated, or heat produced, by microgeneration or otherwise using low-emissions sources or technologies or reduction in energy consumption is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and
 181. (F) requiring transporters or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their carbon emissions reduction obligations¹⁵;
- 120
- 1617 (ii) may make provision authorising the Authority to require a transporter or supplier to provide it with specified information, or information of a specified nature, relating to his proposals for complying with his carbon emissions reduction obligation, or the question whether he has complied with that obligation¹⁶;
 - 1618 (iii) may make provision as to circumstances in which:
- 121
182. (A) a person's carbon emissions reduction target may be altered during the period to which the order relates;
 183. (B) the whole or any part of a person's carbon emissions reduction target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
 184. (C) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
 185. (D) the whole or any part of a person's carbon emissions reduction target may be transferred to another gas transporter or gas supplier or to an electricity distributor or electricity supplier¹⁷; or
 186. (E) a person may carry forward the whole or any part of his carbon emissions reduction target for the period to which the order relates to a subsequent period¹⁸;
- 122
- 1619 (iv) may:
- 123
187. (A) provide for exceptions from any requirement of the order;
 188. (B) provide that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part I of the Gas Act 1986¹⁹;
 189. (C) make supplementary, incidental and transitional provision; and
 190. (D) make²⁰ different provision for different cases, including different provision in relation to different transporters or suppliers²¹;
- 124
- 1620 (v) may include provision for treating the promotion of the supply to premises of:
- 125
191. (A) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
 192. (B) heat produced in association with electricity or steam produced from, or air or water heated by, such heat; or
 193. (C) any gas or liquid subjected to a cooling effect produced in association with electricity,

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1621 as promotion of improvements in energy efficiency²².

The Secretary of State and the Authority must carry out their respective functions under these provisions in the manner he or it considers is best calculated to ensure that no gas transporter is unduly disadvantaged in competing with other gas transporters and no gas supplier is unduly disadvantaged in competing with other gas suppliers²³.

Prior to 28 February 2007²⁴, the above provisions referred to 'energy efficiency obligations' and 'energy efficiency targets'²⁵. The orders setting out such obligations and targets are discussed in an earlier part of this title²⁶, as is the Secretary of State's power to specify an overall target for the promotion of the above-mentioned measures²⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'gas transporter' see PARA 805 ante.

3 For the meaning of 'gas supplier' see PARA 807 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Gas Act 1986 s 33BC(1) (s 33BC added by the Utilities Act 2000 s 99; the Gas Act 1986 s 33BC(1), (3), (5)-(7) amended by the Climate Change and Sustainable Energy Act 2006 s 15(1), (2)).

6 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

7 Gas Act 1986 s 33BC(11) (as added: see note 5 supra).

8 Ibid s 33BC(12) (as added: see note 5 supra).

9 For the meanings of 'gas' see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

10 For these purposes, 'microgeneration' has the same meaning as in the Climate Change and Sustainable Energy Act 2006 (see PARA 619 note 2 ante): Gas Act 1986 s 33BC(13) (s 33BC(13), (14) added by the Climate Change and Sustainable Energy Act 2006 s 15(5)).

11 For the purposes of the Gas Act 1986 s 33BC(2)(b)(ii) (as substituted) (see head (2)(b) in the text), electricity is generated, or heat is produced, using low-emissions sources or technologies if it is generated, or produced, by plant which relies wholly or mainly on a source of energy or a technology mentioned in the Climate Change and Sustainable Energy Act 2006 s 26(2) (see PARA 619 note 2 ante): Gas Act 1986 s 33BC(14) (as added: see note 10 supra). 'Plant' includes any equipment, apparatus or appliance: s 33BC(13) (as so added).

12 Ibid s 33BC(2) (substituted by the Climate Change and Sustainable Energy Act 2006 s 15(3)).

13 Gas Act 1986 s 33BC(3) (as added and amended: see note 5 supra).

14 No person is, however, to be required by virtue of ibid s 33BC (as added and amended) to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court: s 33BC(10) (as added: see note 5 supra).

15 Ibid s 33BC(5) (as added and amended: see note 5 supra).

16 Ibid s 33BC(6) (as added and amended: see note 5 supra).

17 Ie within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq post. For the meanings of 'electricity supplier' and 'electricity distributor' see PARA 1065 notes 7, 9 post.

18 Gas Act 1986 s 33BC(7) (as added and amended: see note 5 supra).

- 19 le for the purposes of *ibid* Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 896 et seq post.
- 20 le subject to *ibid* s 33BC(4) (as added): see the text and note 23 infra.
- 21 *Ibid* s 33BC(8) (as added: see note 5 supra).
- 22 *Ibid* s 33BC(9) (as added: see note 5 supra).
- 23 *Ibid* s 33BC(4) (as added: see note 5 supra).
- 24 le prior to the coming into force of the Climate Change and Sustainable Energy Act 2006 s 15.
- 25 See the Gas Act 1986 s 33BC (as added (see note 5 supra), but without the amendments made by the Climate Change and Sustainable Energy Act 2006 s 15.
- 26 See the Electricity and Gas (Energy Efficiency Obligations) Order 2001, SI 2001/4011 (amended by SI 2003/1180); the Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392; and PARA 765 ante.
- 27 See the Utilities Act 2000 s 103 (as amended); and PARA 765 ante.

UPDATE

895 Promotion of reductions in carbon emissions; gas transporters and gas suppliers

TEXT AND NOTES--See Electricity and Gas (Carbon Emissions Reduction) Order 2008, SI 2008/188 (amended by SI 2009/1904, SI 2009/1905); Electricity and Gas (Community Energy Saving Programme) Order 2009, SI 2009/1905.

TEXT AND NOTES 1-25--The power to make orders under the Gas Act 1986 s 33BC may be exercised so as to impose more than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent: s 33BC(1A) (added by the Climate Change Act 2008 Sch 8 para 1(2)).

NOTE 15--Gas Act 1986 s 33BC(5) amended: Climate Change Act 2008 Sch 8 para 1(3).

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E. INFORMATION AND PUBLICITY ABOUT STANDARDS AND TARGETS

896. Information as to levels of performance.

The Gas and Electricity Markets Authority ('GEMA')¹ must from time to time collect information with respect to:

- 1622 (1) the compensation made by gas suppliers² under the standards of performance for individual cases³;
- 1623 (2) the levels of overall performance achieved by gas suppliers in connection with the provision of gas supply services⁴;
- 1624 (3) the compensation made by gas transporters⁵ under the standards of performance for individual cases⁶;
- 1625 (4) the levels of overall performance achieved by gas transporters⁷.

At such times as the Authority may direct, each gas supplier must give the following information to the Authority:

- 1626 (a) as respects each prescribed standard for individual cases⁸, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- 1627 (b) as respects each standard determined⁹ in relation to overall performance, such information with respect to the level of performance achieved by the supplier as the Authority may direct¹⁰.

Similarly, at such times as the Authority may direct, each gas transporter must give the following information to the Authority:

- 1628 (i) as respects each prescribed standard for individual cases¹¹, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- 1629 (ii) as respects each standard determined¹² in relation to overall performance, such information with respect to the level of performance achieved by the transporter as the Authority may direct¹³.

The provision of information about overall performance by gas transporters and gas suppliers to customers or potential customers of gas suppliers has already been discussed¹⁴.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

² For the meaning of 'gas supplier' see PARA 807 ante.

³ I.e. under the Gas Act 1986 s 33A (as added and amended): see PARA 874 ante.

4 Ibid s 33C(1) (s 33C added by the Competition and Service (Utilities) Act 1992 s 12; the Gas Act 1986 s 33C(1) amended by the Gas Act 1995 s 10(1), Sch 3 para 37(1); the Utilities Act 2000 ss 93(1), (2), 108, Sch 8; and by virtue of s 3(2)). As to levels of overall performance see the Gas Act 1986 s 33B (as added and amended); and PARA 892 ante. For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante. As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

5 For the meaning of 'gas transporter' see PARA 805 ante.

6 le under the Gas Act 1986 s 33AA (as added): see PARA 875 ante.

7 Ibid s 33C(1A) (added by the Utilities Act 2000 s 93(1), (3)). As to levels of overall performance see the Gas Act 1986 s 33BA (as added); and PARA 893 ante. As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

8 le prescribed by regulations under the Gas Act 1986 s 33A (as added and amended). As to such prescribed standards see PARA 876 et seq ante.

9 le under ibid s 33B (as added and amended): see PARA 892 ante.

10 Ibid s 33C(2) (as added (see note 4 supra); amended by the Gas Act 1995 Sch 3 para 37(2); the Utilities Act 2000 ss 93(1), (4), 108, Sch 6 Pt I paras 1, 14, Sch 8; and by virtue of s 3(2)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

11 le prescribed by regulations under the Gas Act 1986 s 33AA (as added). As to such prescribed standards see PARA 876 et seq ante.

12 le under ibid s 33BA (as added): see PARA 893 ante.

13 Ibid s 33C(2A) (added by the Utilities Act 2000, s 93(1), (5)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

14 See PARA 894 ante.

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897. Publication of statistical information about standards of performance etc.

It is the duty of the Gas and Electricity Consumer Council¹ to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to:

- 1630 (1) the levels of performance achieved by gas suppliers² and gas transporters³ in respect of:
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- 194. (a) standards of performance prescribed or determined under the relevant statutory provisions⁴; and
- 195. (b) carbon emissions reduction obligations imposed by order under the relevant statutory provision⁵; and
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- 1631 (2) complaints⁶ made by consumers about any matter relating to the activities of such suppliers or transporters and the handling of such complaints⁷.

The general restrictions on the disclosure of information which are contained in the Utilities Act 2000⁸ are not to be construed as limiting any matters which may be published under the above provisions⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 For the meaning of 'gas supplier' see PARA 807 ante.

3 For the meaning of 'gas transporter' see PARA 805 ante.

4 Ie under the Gas Act 1986 s 33A (as added and amended) (standards of performance in individual cases in relation to gas suppliers: see PARA 874 ante), s 33AA (as added) (standards of performance in individual cases in relation to gas transporters: see PARA 875 ante), s 33B (as added and amended) (overall standards of performance in relation to gas suppliers: see PARA 892 ante) and s 33BA (as added) (overall standards of performance in relation to gas transporters: see PARA 893 ante).

5 Ie under ibid s 33BC (as added and amended): see PARA 895 ante.

6 For these purposes, 'complaints' includes complaints made directly to gas suppliers and gas transporters (or anyone carrying on activities on their behalf) and complaints to the Gas and Electricity Markets Authority ('GEMA') or the Council: ibid s 33DA(2) (s 33DA added by the Utilities Act 2000 s 20(5)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 Gas Act 1986 s 33DA(1) (as added (see note 6 supra); amended by the Climate Change and Sustainable Energy Act 2006 s 17, Schedule paras 1, 3).

8 Ie the Utilities Act 2000 s 105 (as amended): see PARA 767 ante.

9 See ibid s 105(8); and PARA 767 note 5 ante.

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F. SERVICE STANDARDS AND REMUNERATION

898. Service standards and remuneration of company directors.

The following provisions apply to any company¹ which is authorised by a licence² to carry on activities subject to price regulation³.

As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Gas and Electricity Markets Authority ('GEMA')⁴:

- 1632 (1) disclosing whether or not remuneration⁵ has been paid or become due during that financial year to the directors of the company as a result of arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards⁶ in connection with activities subject to price regulation⁷; and
- 1633 (2) where such remuneration has been paid or become due, describing the arrangements and the remuneration⁸.

A description under head (2) above must include in particular:

- 1634 (a) a statement of when the arrangements were made;
- 1635 (b) a description of the service standards in question;
- 1636 (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
- 1637 (d) an explanation of how the remuneration was calculated⁹.

The required statement must also state:

- 1638 (i) whether or not there are in force in respect of the financial year during which the statement is made arrangements such as are described in head (1) above¹⁰; or
- 1639 (ii) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements¹¹. Such a description must:

- 1640 (A) include in particular the matters listed in heads (a) to (c) above; and
- 1641 (B) where the arrangements described are different from any arrangements described under head (2) above, state the likely effect of those differences on the remuneration of each director of the company¹².

The required statement must be made to the Authority in such manner as may be required by the Authority¹³. It must be published by the company making the statement in such manner as

it reasonably considers will secure adequate publicity for it¹⁴. It may also be published by the Authority in such manner as it may consider appropriate¹⁵.

1 For these purposes, 'company' means a company within the meaning of the Companies Act 1985 or the Companies Act 2006 which is limited by shares: Gas Act 1986 s 33F(10) (s 33F added by the Utilities Act 2000 s 97); Companies Act 2006 s 1297(5).

2 For the meaning of 'licence' see PARA 789 note 9 ante.

3 Gas Act 1986 s 33F(1) (as added: see note 1 supra). 'Activities subject to price regulation', in relation to any company, are activities for which (1) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or (2) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue, is determined by or under the licence granted under Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante, PARA 899 et seq post): s 33F(10) (as so added). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 For these purposes, 'remuneration' in relation to a director of a company (1) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and (2) includes remuneration in respect of any of his services while a director of the company: Gas Act 1986 s 33F(10) (as added: see note 1 supra). The duty of a company under s 33F (as so added) applies in respect of any person who has at any time been a director of the company: s 33F(9) (as so added).

6 For these purposes, 'service standards' in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are (1) set by or under any conditions included in a licence granted under ibid Pt I (as amended); (2) prescribed by the Authority in regulations made under s 33A (as added and amended) and s 33AA (as added) (standards of performance in individual cases: see PARAS 874-875 ante); (3) determined by the Authority under s 33B (as added and amended) or s 33BA (as added) (overall standards of performance: see PARAS 892-893 ante); or (4) set or agreed to by the company: s 33F(10) (as added: see note 1 supra).

7 le arrangements falling within ibid s 33F(3) (as added: see note 1 supra).

8 Ibid s 33F(2), (3) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

9 Ibid s 33F(4) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

10 See note 7 supra.

11 Gas Act 1986 s 33F(5) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

12 Ibid s 33F(6) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

13 Ibid s 33F(7) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

14 Ibid s 33F(8)(a) (as added: see note 1 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

15 Ibid s 33F(8)(b) (as added: see note 1 supra). As to publication by the Authority see PARA 793 note 5 ante.

UPDATE

898 Service standards and remuneration of company directors

NOTE 1--Definition of 'company' substituted: SI 2009/1941.

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(v) Gas Standards and Safety

A. STANDARDS OF GAS QUALITY

899. Power to prescribe standards of gas quality.

The Gas and Electricity Markets Authority ('GEMA')¹ may, with the consent of the Secretary of State², prescribe³:

- 1642 (1) standards of pressure and purity to be complied with by gas transporters⁴ in conveying gas to premises⁵ or to pipeline systems operated by other gas transporters; and
- 1643 (2) other standards with respect to the properties, condition and composition of gas so conveyed⁶.

Before making any regulations under these provisions the Authority must consult such persons and organisations as it considers appropriate and such gas transporters as appear to it to be affected by the regulations⁷. The Authority may by notice in writing require a gas transporter to give to the Authority, or to any person appointed by it for the purpose, within such time and at such place as may be specified in the notice, such information⁸ as the Authority may reasonably require for the purpose of making such regulations or of giving directions under such regulations⁹; but a gas transporter is not to be so required to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court¹⁰.

Such regulations may make provision:

- 1644 (a) for requiring tests of gas conveyed by gas transporters to be carried out by persons appointed by the Authority¹¹ or by gas transporters for the purpose of ascertaining whether the gas conforms with the standards prescribed by the regulations¹²;
- 1645 (b) for requiring such tests to be carried out on the basis of samples taken by persons so appointed or by gas transporters¹³;
- 1646 (c) for requiring samples of gas taken under head (b) above to be provided by gas transporters for the purpose of carrying out such tests¹⁴;
- 1647 (d) for requiring such premises, apparatus and equipment as the Authority may direct to be provided and maintained by gas transporters for the purpose of carrying out tests required under head (a) above¹⁵;
- 1648 (e) for requiring tests of apparatus and equipment so provided to be carried out by persons appointed¹⁶ by the Authority¹⁷;
- 1649 (f) for requiring gas transporters to carry out tests of apparatus and equipment so provided and maintained by them¹⁸;
- 1650 (g) as to the places or premises and the times at which, and the manner in which, tests under these provisions are to be carried out, samples of gas are to be taken and provided under these provisions and results of tests under these provisions are to be notified or made available¹⁹;

- 1651 (h) for the Authority to require by direction any matter which may be required by regulations by virtue of head (g) above²⁰;
- 1652 (i) for persons representing the gas transporter concerned to be present during the carrying out of any tests carried out by persons appointed²¹ by the Authority²²;
- 1653 (j) for the results of tests under these provisions to be made available to other licence holders²³ and to the public²⁴;
- 1654 (k) for requiring gas transporters to notify the results of such tests carried out by them to the Authority or to any person appointed²⁵ by the Authority²⁶;
- 1655 (l) for conferring powers of entry on property owned or occupied by gas transporters for the purpose of carrying out tests under these provisions and otherwise for the purposes of the regulations²⁷.

The Authority must appoint competent and impartial persons for the purpose of:

- 1656 (i) carrying out tests of gas, apparatus or equipment in accordance with regulations under these provisions; and
- 1657 (ii) assisting the Authority in exercising functions under these provisions and regulations made under them²⁸.

Every person who is a gas transporter during any period must pay to the Authority such proportion as the Authority may determine of such part of its expenses for that period as the Authority may determine to be attributable to its functions in connection with the testing of gas for these purposes²⁹. It is the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to secure compliance with the standards set under heads (1) and (2) above³⁰.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie prescribe by regulations: see PARA 798 note 5 ante.

4 For the meaning of 'gas transporter' see PARA 805 ante.

5 For the meaning of 'gas' see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

6 Gas Act 1986 s 16(1) (s 16 added by the Utilities Act 2000 s 101). The Gas Act 1986 s 16 (as originally enacted) was repealed by the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 12. At the date at which this title states the law, no such regulations had been made. As to the content and other characteristics of gas see, however, the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 8; and PARA 908 post. Those 1996 regulations are made in the exercise of powers under the Health and Safety at Work etc Act 1974.

7 Gas Act 1986 s 16(2) (as added: see note 6 supra).

8 For the meaning of 'information' see PARA 792 note 8 ante.

9 Gas Act 1986 s 16(7) (as added: see note 6 supra).

10 Ibid s 16(8) (as added: see note 6 supra).

11 Ie persons appointed under ibid s 16(3) (as added): see heads (i)-(ii) in the text.

12 Ibid s 16(4)(a) (as added: see note 6 supra).

13 Ibid s 16(4)(b) (as added: see note 6 supra).

- 14 Ibid s 16(4)(c) (as added: see note 6 supra).
- 15 Ibid s 16(5)(a) (as added: see note 6 supra).
- 16 See note 11 supra.
- 17 Gas Act 1986 s 16(5)(b) (as added: see note 6 supra).
- 18 Ibid s 16(5)(c) (as added: see note 6 supra).
- 19 Ibid s 16(6)(a) (as added: see note 6 supra).
- 20 Ibid s 16(6)(b) (as added: see note 6 supra).
- 21 See note 11 supra.
- 22 Gas Act 1986 s 16(6)(c) (as added: see note 6 supra).
- 23 For the meaning of 'licence holder' see PARA 789 note 9 ante.
- 24 Gas Act 1986 s 16(6)(d) (as added: see note 6 supra).
- 25 See note 11 supra.
- 26 Gas Act 1986 s 16(6)(e) (as added: see note 6 supra).
- 27 Ibid s 16(6)(f) (as added: see note 6 supra).
- 28 Ibid s 16(3) (as added: see note 6 supra).
- 29 Ibid s 16(9) (as added: see note 6 supra).
- 30 Ibid s 16(10) (as added: see note 6 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.

UPDATE

899 Power to prescribe standards of gas quality

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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B. RIGHTS OF ENTRY FOR GAS SAFETY PURPOSES

900. Gas safety regulations.

The Secretary of State¹ may make provision by regulations for empowering any officer² authorised by the relevant authority³:

- 1658 (1) to enter any premises in which there is a service pipe⁴ connected with a gas main, for the purpose of inspecting any gas fitting⁵ on the premises, any flue or means of ventilation used in connection with any such gas fitting, or any part of the gas system on the premises, that is to say any service pipe or other apparatus (not being a gas fitting) which is on the premises and is used for the conveyance or supply of gas⁶ or is connected with a gas main⁷;
- 1659 (2) where he so enters any such premises, to examine or apply any test to any such object as is mentioned in head (1) above and, where that object is a gas fitting, to verify what supply of air is available for it⁸; and
- 1660 (3) where in his opinion it is necessary to do so for the purpose of averting danger to life or property, and notwithstanding any contract previously existing, to disconnect and seal off any gas fitting or any part of the gas system on the premises, or disconnect the premises or, if the premises are not connected, to signify the refusal of the relevant authority to convey gas or, as the case may be, allow gas to be conveyed to the premises⁹.

Such regulations may also make provision for prohibiting any person, except with the consent of the relevant authority or in pursuance of any directions¹⁰ given by the Secretary of State, from:

- 1661 (a) reconnecting any gas fitting or any part of any gas system which has been disconnected by or on behalf of the relevant authority in exercise of a power conferred by the regulations¹¹; or
- 1662 (b) reconnecting any premises which have been disconnected by or on behalf of the relevant authority in the exercise of any such power¹²; or
- 1663 (c) causing gas from a gas main to be conveyed to any premises where in pursuance of the regulations the refusal of the relevant authority to convey gas or, as the case may be, allow gas to be conveyed to those premises has been signified and that refusal has not been withdrawn¹³.

Any person contravening or failing to comply with any provision of the regulations so made¹⁴ is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁵.

Where in pursuance of any powers conferred by regulations made under heads (1) to (3) above, entry is made on any premises by an officer authorised by the relevant authority, the officer must ensure that the premises are left no less secure by reason of the entry and the relevant authority must make good, or pay compensation for, any damage caused by the

officer, or by any person accompanying him in entering the premises¹⁶, in taking any action therein authorised by the regulations, or in making the premises secure¹⁷.

If any person intentionally obstructs any officer exercising powers of entry conferred by regulations so made, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁸.

The Rights of Entry (Gas and Electricity Boards) Act 1954, which restricts rights of entry to premises, except in a case of emergency, so that either the occupier's consent or a justice's warrant is required¹⁹, applies in relation to any powers of entry conferred by regulations made under heads (1) to (3) above as if any reference to a gas operator were a reference to the relevant authority²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'officer' see PARA 867 note 1 ante; and see also PARA 867 note 2 ante. In the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended) (see notes 7-9, 11-13 infra; the text and notes 14-15 infra; and PARAS 901-902 post), any reference to an officer authorised by a gas transporter and, where the relevant authority is a gas transporter, any reference to an officer authorised by such authority, includes a reference to any officer authorised by another such transporter with whom the transporter or authority has made arrangements for officers authorised by the other transporter to discharge any functions under those regulations of officers authorised by the transporter or authority: reg 2(1) (amended by virtue of the Utilities Act 2000 s 76(7)).

3 For these purposes, 'the relevant authority' (1) in relation to dangers arising from the conveyance of gas by a gas transporter, or from the use of gas conveyed by such a transporter, means that transporter; and (2) in relation to dangers arising from the conveyance of gas by a person other than a gas transporter, or from the use of gas conveyed by such a person, means the Secretary of State: Gas Act 1986 s 18(9) (s 18(9) substituted, and s 18(10)-(11) added, by the Gas Act 1995 s 10(1), Sch 3 para 14(4); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). This definition is applied by the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 2(1). Where the relevant authority is a gas transporter, any reference in the Gas Act 1986 s 18 (as amended) to any officer authorised by the authority includes a reference to any officer authorised by another such transporter with whom the authority has made arrangements for officers authorised by the other transporter to discharge any functions of the authority under s 18 (as amended): s 18(10) (as so added and amended). Except in cases of emergency, no officer must be authorised by a gas transporter to exercise any powers of entry conferred by regulations under s 18 (as amended) unless the transporter has taken all reasonable steps to ensure that he is a fit and proper person to exercise those powers: s 18(11) (as so added and amended). As to the enforcement of this requirement see PARA 968 et seq post; and as to penalties for the contravention of this requirement see PARA 972 et seq post. For the meaning of 'gas' see PARA 802 ante.

4 For the meaning of 'service pipe' see PARA 842 note 3 ante.

5 For the meaning of 'gas fittings' see PARA 861 note 1 ante.

6 For the meaning of references to the supply of gas see PARA 802 ante.

7 Gas Act 1986 s 18(2)(a) (amended by the Gas Act 1995 s 10(1), Sch 3 para 14(1)); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 5(a), which confers such a right.

8 Gas Act 1986 s 18(2)(b); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 5(b), which confers such a right.

9 Gas Act 1986 s 18(2)(c) (amended by the Gas Act 1995 Sch 3 para 14(1)); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 5(c), which confers such a right.

Where any regulations under the Gas Act 1986 s 18(2) (as amended) confer any power in accordance with s 18(2)(c) (as so amended), they must also include provision (1) for securing that, where any such power is exercised, the consumer will be notified as to the nature of the defect or other circumstances in consequence of which it has been exercised; (2) for enabling any consumer so notified to appeal to the Secretary of State on the grounds that the defect or other circumstances in question did not constitute a danger such as to justify the action taken in the exercise of the power, or did not exist or has or have ceased to exist; and (3) for enabling the Secretary of State to give such directions as may in accordance with the regulations be determined by him to be appropriate in consequence of any such appeal: s 18(3). Where an officer authorised by the relevant authority takes any action in relation to any premises in the exercise of a power conferred by the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 5(c), the relevant authority must, within five clear working days after the action is taken, serve on the consumer a notice in writing: (a) specifying (i) the nature of the

defect or other circumstance in consequence of which the power has been exercised; and (ii) the nature of the danger in question and the action taken in the exercise of the power; and (b) stating (i) that the consumer has a right of appeal under the 1996 Regulations to the Secretary of State against the action taken in exercise of the power within the period of 21 days beginning with the date of service of the notice, or such longer period as the Secretary of State may at any time in any particular case allow; (ii) the grounds on which and the manner in which he can appeal; and (iii) the effect of regs 9 and 10 (prohibition of reconnection etc and penalties: see notes 11-13 *infra*, and the text and notes 14-15 *infra*): reg 6(1). Where an officer authorised by the relevant authority takes any action in relation to any premises in the exercise of a power conferred by reg 5(c), he must at the same time, in accordance with reg 6(3), affix prominently a notice of the effect of the relevant part of regs 9 and 10: reg 6(2). The notice so required must be affixed (A) where a gas fitting or any part of the gas system on the premises has been disconnected or sealed off, to, or to part of the premises near to, the gas fitting or part of the gas system in question; or (B) where the premises have been disconnected, to, or to a part of the premises near to, the meter nearest downstream to the point of disconnection, or, if there is no such meter, to a conspicuous part of the premises; or (C) where the relevant authority has signified its refusal to convey gas or, as the case may be, allow gas to be conveyed to the premises, to, or to a part of the premises near to, the meter nearest downstream to the point from which gas would be so conveyed, or, if there is no such meter, to a conspicuous part of the premises: reg 6(3). 'Working day' does not include a Saturday, Sunday or a bank or other public holiday: reg 2(1). As to appeals see PARA 901 *post*.

10 *Ie* as mentioned in the Gas Act 1986 s 18(3)(c): see note 9 head (3) *supra*.

11 *Ibid* s 18(4)(a) (s 18(4) amended by the Gas Act 1995 Sch 3 para 14(2)); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 9(1)(a), which imposes such a prohibition. The prohibitions imposed by reg 9(1)(a) and (b) do not apply (1) in the course of the repairing or testing of any gas fitting or any part of a gas system; or (2) where all necessary steps have been taken to remedy and prevent a recurrence of the defect or other circumstance in respect of which the disconnection was carried out: reg 9(2).

12 Gas Act 1986 s 18(4)(b) (as amended: see note 11 *supra*); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 9(1)(b), which imposes such a prohibition. See also reg 9(2), cited in note 11 *supra*.

13 Gas Act 1986 s 18(4)(c) (as amended: see note 11 *supra*); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 9(1)(c), which imposes such a prohibition.

14 *Ie* the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended): see notes 7-9, 1-13 *supra*; and PARAS 901-902 *post*.

15 *Ibid* reg 10. As to the standard scale see PARA 613 note 11 *ante*.

16 Any officer exercising powers of entry conferred by regulations made under the Gas Act 1986 s 18(2) (as amended) (see heads (1)-(3) in the text) may be accompanied by such persons as may be necessary or expedient for the purpose for which entry is made, or for the purposes of s 18(5): s 18(6).

17 *Ibid* s 18(5).

18 *Ibid* s 18(7). See, however, the Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(3); and PARA 773 *ante*.

19 See PARAS 773-774 *ante*.

20 Gas Act 1986 s 18(8) (amended by the Gas Act 1995 Sch 3 para 14(3)).

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901. Consumers' rights of appeal against disconnections made on entry under the safety regulations.

Where an officer authorised by the relevant authority¹ has taken action to disconnect and seal off any gas fitting² or any part of the gas system on the premises, or to disconnect the premises or, if the premises are not connected, to signify the refusal of the relevant authority to convey gas or, as the case may be, allow gas to be conveyed to the premises in circumstances where in his opinion it is necessary to do so for the purpose of averting danger to life or property³, the consumer on whom the required notice following such action⁴ is served may, within the period of 21 days beginning with the date of service of the notice, or such longer period as the Secretary of State⁵ may at any time in any particular case allow, appeal to the Secretary of State against the action so taken on any of the following grounds, that is to say:

- 1664 (1) that the defect or other circumstances specified in the notice did not constitute a danger such as to justify the action taken specified in the notice;
- 1665 (2) that the defect or other circumstances so specified did not exist at the time the action was taken; or
- 1666 (3) that the defect or other circumstances so specified has or have ceased to exist⁶.

Such an appeal is of no effect unless it is made by notice in writing given to the Secretary of State for the time being discharging the relevant functions⁷ at his principal office and indicates the grounds of the appeal⁸.

On any such appeal the Secretary of State may, if either the consumer or the relevant authority so desires, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose⁹.

On the determination of the appeal the Secretary of State may direct that, subject to any right of a conveyor of gas to refuse to convey gas to the premises:

- 1667 (a) any gas fitting or part of the gas system on the premises which has been disconnected under the relevant safety regulations¹⁰ is either to remain disconnected or must or may be reconnected;
- 1668 (b) any premises which have been disconnected under those regulations are either to remain disconnected or must or may be reconnected; or
- 1669 (c) where the refusal of the relevant authority to convey gas or, as the case may be, allow gas to be conveyed has been signified under those regulations, the conveyor either must not convey gas or must or may cause gas to be conveyed to the premises,

and may give such supplementary directions as he considers to be appropriate in consequence of the appeal¹¹.

¹ For the meaning of 'relevant authority' for these purposes see PARA 875 note 3 ante; and as to officers authorised by such an authority see PARA 875 note 2 ante.

- 2 For the meaning of 'gas fitting' see PARA 861 note 1 ante.
- 3 Ie the officer has exercised powers under the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 5(c): see PARA 875 note 9 ante.
- 4 Ie a notice under ibid reg 6(1): see PARA 875 note 9 ante.
- 5 As to the Secretary of State see PARA 601 note 1 ante.
- 6 See the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 7.
- 7 Ie the functions conferred by ibid reg 8(2)-(3): see the text and notes 9-11 infra.
- 8 Ibid reg 8(1).
- 9 Ibid reg 8(2).
- 10 Ie under the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended).
- 11 Ibid reg 8(3).

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902. Gas escape regulations.

The Secretary of State¹ may by regulations make provision:

- 1670 (1) for empowering any officer² authorised by a gas transporter³, if the transporter has reasonable cause to suspect:
- 129
196. (a) that gas⁴ conveyed by the transporter is escaping, or may escape, in any premises; or
197. (b) that gas so conveyed which has escaped has entered, or may enter, any premises,
- 130
- 1671 to enter the premises, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property⁵; and
- 1672 (2) for empowering any officer so authorised, if the transporter has reasonable cause to suspect:
- 131
198. (a) that gas conveyed through pipes⁶ by some other person is escaping, or may escape, in any premises; or
199. (b) that gas so conveyed which has escaped has entered, or may enter, any premises,
- 132
- 1673 to enter the premises and take any steps necessary to avert danger to life or property⁷.

The right of entry conferred by the regulations made in pursuance of head (2) above is not exercisable otherwise than in respect of:

- 1674 (i) premises within an authorised area⁸ of the gas transporter in question; or
- 1675 (ii) premises which that gas transporter reasonably believed to be in such an area at the time when he first had cause to suspect an escape of gas⁹.

Where in pursuance of any powers conferred by regulations made under heads (1) and (2) above, entry is made on any premises by an officer authorised by a gas transporter, the officer must ensure that the premises are left no less secure by reason of the entry and the gas transporter must make good, or pay compensation for, any damage caused by the officer, or by any person accompanying him in entering the premises¹⁰, in taking any action therein authorised by the regulations, or in making the premises secure¹¹.

If any person intentionally obstructs any officer exercising powers of entry conferred by regulations so made, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹².

The Rights of Entry (Gas and Electricity Boards) Act 1954, which restricts rights of entry to premises, except in a case of emergency, so that either the occupier's consent or a justice's

warrant is required¹³, applies in relation to any powers of entry conferred by regulations made under heads (1) and (2) above¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'officer' see PARA 867 note 1 ante.

3 For the meaning of 'gas transporter' see PARA 805 ante. Any reference for these purposes to any officer authorised by a gas transporter includes a reference to any officer authorised by another such transporter with whom the transporter has made arrangements for officers authorised by the other transporter to discharge any functions under the Gas Act 1986 s 18A (as added and amended) of officers authorised by the transporter: s 18A(4) (s 18A added by the Gas Act 1995 s 10(1), Sch 3 para 15; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). See also PARA 900 note 2 ante.

Except in cases of emergency, no officer must be authorised by a gas transporter to exercise any powers of entry conferred by regulations under s 18A (as added and amended) unless the transporter has taken all reasonable steps to ensure that he is a fit and proper person to exercise those powers: s 18(11) (added by the Gas Act 1995 Sch 3 para 14(4); amended by the Utilities Act 2000 Sch 6 Pt I paras 1, 2(1); applied with modifications by the Gas Act 1986 s 18A(2) (as so added and amended)).

4 For the meaning of 'gas' see PARA 802 ante.

5 Gas Act 1986 s 18A(1)(a) (as added and amended: see note 3 supra); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 4(1)(a) (amended by virtue of the Utilities Act 2000 s 76(7)), which confers such a power on any officer authorised by the transporter who produces some duly authenticated document showing his authority.

The Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535 (as amended), do not apply to a gas processing facility within the meaning of the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1) (see PARA 903 note 2 post) in respect of gas which escapes in the course of being processed or stored in connection with such process at that facility: Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 3.

6 For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

7 Gas Act 1986 s 18A(1)(b) (as added and amended: see note 3 supra); and see the Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 4(1)(b) (amended by virtue of the Utilities Act 2000 s 76(7)), which confers such a power on any officer authorised by the transporter who produces some duly authenticated document showing his authority. See also note 5 supra.

8 For the meaning of 'authorised area' see PARA 805 note 3 ante.

9 Gas Safety (Rights of Entry) Regulations 1996, SI 1996/2535, reg 4(2) (amended by virtue of the Utilities Act 2000 s 76(7)).

10 Any officer exercising powers of entry conferred by regulations made under the Gas Act 1986 s 18A(1) (as amended) (see heads (1)-(2) in the text) may be accompanied by such persons as may be necessary or expedient for the purpose for which entry is made, or for the purposes of s 18(5): s 18(6) (applied, with modifications, by s 18A(2) (as added and amended: see note 3 supra)).

11 Ibid s 18(5) (applied, with modifications, by s 18A(2) (as added and amended: see note 3 supra)).

12 Ibid s 18(7) (applied, with modifications, by s 18A(2) (as added and amended: see note 3 supra)). As to the standard scale see PARA 613 note 11 ante. See, however, the Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(3); and PARA 773 ante.

13 See PARAS 773-774 ante.

14 Gas Act 1986 s 18A(4) (as added: see note 3 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/903. Duties on persons conveying gas.

C. SAFETY MANAGEMENT WITH REGARD TO GAS

903. Duties on persons conveying gas.

No person must convey gas¹ in a network² unless:

- 1676 (1) he has prepared a safety case³ containing the prescribed particulars⁴ and that safety case has been accepted by the Health and Safety Executive⁵; and
- 1677 (2) where any other person is conveying gas in that network, there is a sole network emergency co-ordinator for the network⁶.

For these purposes, a network emergency co-ordinator is⁷ a person who has prepared a safety case containing the prescribed particulars⁸ and has had that safety case accepted by the Executive⁹; but where a network emergency co-ordinator has given written notice to the Executive and to all persons conveying gas in the network that he no longer intends to act in that capacity, he is not to be the network emergency co-ordinator for the statutory purposes from the time such notice takes effect, which must not be less than six months after it was given¹⁰.

Nothing in the relevant regulations¹¹ prevents a person who conveys gas in a network from also being the network emergency co-ordinator¹².

A fee is payable to the Executive by a person conveying gas who has prepared a safety case¹³ pursuant to the above provisions, or by a network emergency co-ordinator, for the performance by or on behalf of the Executive, or by an inspector appointed by it, of any function conferred on the Executive or the inspector by the Health and Safety at Work etc Act 1974 which relates to the enforcement of any of the relevant statutory provisions¹⁴ against one or other or both of the following:

- 1678 (a) that person in relation to the network to which the safety case relates; or
- 1679 (b) a contractor in relation to work carried out by him on or in connection with that network¹⁵,

in so far as such enforcement is for the purpose of protecting persons from risks arising from the manner in which gas is conveyed or used¹⁶.

1 For these purposes, 'gas' means any substance in a gaseous state which consists wholly or mainly of methane: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1). Any reference for these purposes to the conveyance of gas is a reference to the conveyance of gas through pipes (reg 2(7)); and any reference to a person conveying gas is a reference to a person who does so in the course of a business or other undertaking carried on by him (reg 2(11)). 'Pipe' includes a pipeline, distribution main, service pipe and any ancillary plant connected to a pipe and used for the conveyance of gas, but it does not include a pipe downstream of an emergency control: reg 2(1). 'Distribution main' means any main through which a transporter is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk; 'emergency control' means a valve for shutting off the supply of gas in an emergency, being a valve intended for use by a consumer of gas; and 'service pipe' means a pipe for distributing gas to premises from a distribution main, being any pipe between the distribution main and the outlet of the first emergency control downstream from

the distribution main: see the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (definitions applied by the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1); and by virtue of the Interpretation Act 1978 s 17(2)).

2 Any reference for these purposes to a network is, subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(3), (4), a reference to a connected network of pipes used for the conveyance of gas from a gas processing facility, a storage facility or an interconnector, except a connected network of pipes used exclusively for conveying gas to non-domestic premises: reg 2(2). A network does not include pipes upstream from a junction on a pipe used exclusively for conveying gas to an electricity generating station; and this reference to a junction on a pipe used exclusively for conveying gas to an electricity generating station is a reference to the point where the upstream end of the pipe joins a pipe used for another purpose: reg 2(3). Where gas which does not conform with the requirements referred to in reg 8(1) (see PARA 908 post) is conveyed from a gas processing facility for treatment or blending so as to bring it into conformity with those requirements, any pipes used exclusively for conveying gas from that facility to the point where the gas is treated or blended or to non-domestic premises or to both, are not to be treated as part of a network for these purposes: reg 2(4). 'Gas processing facility' means any gas processing facility which (1) blends or purifies gas, removes from gas any of its constituent gases or separates from gas any oil or water; and (2) is situated at a terminal which receives gas directly or indirectly from a gas production facility; 'gas production facility' means a facility for the extraction of gas from strata or for the manufacture of gas; and 'interconnector' means a pipeline used for the conveyance of gas to Great Britain from another country: reg 2(1). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

Any reference for these purposes to conveying gas in a network includes a reference to conveying gas in any part of the network: reg 2(8).

3 Any reference for these purposes to a safety case is a reference to a document containing the particulars required by the provision of the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), pursuant to which the safety case is prepared, and (1) in so far as the document contains other particulars it is not to be treated as part of the safety case for the purposes of those regulations; (2) nothing in those regulations requires the particulars to relate to a source of risk other than the gas itself: reg 2(5). For these purposes, any reference to a person preparing a safety case is a reference to a person who does so in the course of a business or other undertaking carried on by him: reg 2(11).

4 The particulars specified in *ibid* reg 3(1), Sch 1 (as amended). Those particulars are as follows (see Sch 1 (paras 1-21) (amended by SI 1999/3242), ie:

- 38 (1) general matters:
 24. (a) name and address of the person preparing the safety case ('the duty holder');
24
 25. (b) a description of the operation intended to be undertaken by the duty holder;
25
 26. (c) a general description of the plant and premises the duty holder intends to use in connection with the operation including, in particular, the geographical location where any pipes he uses joins pipes used by other persons for conveying gas;
26
 27. (d) particulars of any technical specifications and procedures or arrangements relating to operation and maintenance which the duty holder intends to follow in connection with the operation he intends to undertake in so far as they affect the health and safety of persons;
27
- 39 (2) safety management:
 28. (a) a statement of the significant findings of the risk assessment he has made pursuant to the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg 3 (as amended) (risk assessment: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 429) and particulars of the arrangements he has made in accordance with reg 5(1) (health and safety arrangements: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 434);
28
 29. (b) particulars to demonstrate that the management system of the duty holder is adequate to ensure that the relevant statutory provisions will (in respect of matters within his control) be complied with in relation to the operation he intends to undertake;
29
 30. (c) particulars to demonstrate that the duty holder has established adequate arrangements for ensuring the competence of his employees in health and safety matters;

- 30
31. (d) particulars to demonstrate that the duty holder has established adequate arrangements for managing work carried out by persons who are not his employees on or in relation to plant or premises which he owns or controls;
31
32. (e) particulars to demonstrate that the duty holder has established adequate arrangements for passing information relevant to health and safety to persons within his undertaking;
32
33. (f) particulars to demonstrate that the duty holder has established adequate arrangements for passing and receiving information relevant to health and safety to and from other persons who have duties under the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended);
33
34. (g) particulars to demonstrate that the duty holder has established adequate arrangements for audit and the making of any necessary reports;
34
- 40 (3) co-operation: particulars of the arrangements the duty holder has established to enable him to comply with reg 6 (co-operation: see PARA 906 post) including (except where he is the network emergency co-ordinator) particulars of the arrangements he has established to ensure that any directions given to him by the network emergency co-ordinator are followed;
- 41 (4) gas escapes and investigations:
35. (a) particulars of the arrangements (i) the duty holder and any emergency service provider appointed by him have established to enable him or the provider, as the case may be, to comply with reg 7(4)-(6) (see PARA 907 post); (ii) the duty holder has established to appoint emergency service providers;
35
36. (b) particulars to demonstrate that the duty holder has established adequate arrangements to enable him to comply with reg 7(12), (13), (15) and (16) (see PARA 907 post), for co-ordinating the investigations he causes to be carried out pursuant to reg 7 with other investigations carried out pursuant thereto, and for participating in such other investigations;
36
- 42 (5) content and other characteristics of gas: particulars to demonstrate that the duty holder has established adequate arrangements to ensure that all gas he conveys complies with reg 8 (see PARA 908 post);
- 43 (6) continuity of supply:
37. (a) particulars to demonstrate that the duty holder has established adequate arrangements to minimise the risk of a supply emergency;
37
38. (b) particulars to demonstrate that the duty holder has established adequate arrangements to ensure that the gas he conveys will be at an adequate pressure when it leaves the part of the network used by him;
38
- 44 (7) supply emergencies:
39. (a) particulars to demonstrate that the duty holder has established adequate arrangements for dealing with supply emergencies or other incidents which could endanger persons;
39
40. (b) where the duty holder is the only person conveying gas in a network, particulars to demonstrate that he has established adequate arrangements to decide when and for how long gas not conforming with the requirements of reg 8(1) should be conveyed in the network pursuant to reg 8(4);
40
41. (c) without prejudice to head (a) supra, particulars of the procedures that the duty holder has established to discontinue safely supply to consumers, when it is known there is insufficient gas to satisfy demand;
41
42. (d) particulars of the procedures that the duty holder has established to restore safely the gas supply to consumers, following an interruption in supply.

42

For the purposes of Sch 1 (as amended), 'audit' means systematic assessment of the adequacy of the management system to achieve the purpose referred to in Sch 1 para 6 (see head (2)(b) supra) carried out by persons who are sufficiently independent of the system (but who may be employed by the duty holder) to ensure that such assessment is objective; 'management system' means the organisation and arrangements established by the duty holder for managing his undertaking; and any reference to an operation intended to be undertaken by the duty holder is a reference to his intended operation of conveying gas in a network: Sch 1 para 22. For the purposes of the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), 'supply emergency' means an emergency endangering persons and arising from a loss of pressure in a network or any part thereof (reg 2(1)); and any reference, in relation to a network, to the network emergency co-ordinator is a reference to the network emergency co-ordinator who has prepared and had accepted a safety case relating to that network pursuant to reg 3(2) (see the text and notes 7-9 infra) or reg 10(4) (transitional provisions) (reg 2(10)).

5 Any reference for these purposes to the Executive accepting a safety case or revision thereof is a reference to the Executive notifying in writing the person who prepared it that it is satisfied with the case for health and safety made out in it: *ibid* reg 2(1). As to the Health and Safety Executive see *HEALTH AND SAFETY AT WORK* vol 52 (2009) PARA 361 et seq.

6 *Ibid* reg 3(1). As to exemptions from this requirement see PARA 910 post; and as to the duty to keep the safety case for so long as it is current see PARA 909 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see *HEALTH AND SAFETY AT WORK* vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see *HEALTH AND SAFETY AT WORK* vol 53 (2009) PARA 852 et seq.

7 *Ie* subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 3(3).

8 *Ie* the particulars specified in *ibid* reg 3(2), Sch 2. Those particulars are as follows (see Sch 2 paras 1-4), *ie*:

- 45 (1) name and address of the person preparing the safety case ('the duty holder');
- 46 (2) a general description of the network to which the safety case relates, including the geographical location of where pipes used by different persons conveying gas in the network join;
- 47 (3) particulars to demonstrate that the duty holder has established adequate arrangements for co-ordinating the actions to be taken to prevent a supply emergency including:
43. (a) particulars to demonstrate that the duty holder has established adequate arrangements to monitor gas flow within the network in order to identify a forthcoming supply emergency;
43
44. (b) in cases where it is not possible to obtain sufficient gas, particulars of the procedures and arrangements that the duty holder has established to direct persons conveying gas to secure a reduction in consumption and to verify that such directions have been followed;
44
45. (c) particulars of the procedures that the duty holder has established to monitor the situation throughout a supply emergency, and details of the procedures established to restore safely the gas supply to consumers, once the emergency is over;
45
46. (d) particulars to demonstrate that the duty holder has established adequate arrangements to decide when and for how long gas not conforming with the requirements of reg 8(1) should be conveyed in the network pursuant to reg 8(2) (see PARA 908 post);
46
47. (e) particulars to demonstrate that the duty holder has established adequate arrangements for rehearsing and testing the actions to be taken in the case of a supply emergency;
47
48. (f) a general description of the plant and premises the duty holder intends to use in connection with the arrangements and procedures described in his safety case pursuant to heads (a)-(e) supra;
48
- 48 (4) the same particulars as are referred to in Sch 1 paras 4-11 (as amended) (see note 4 heads (1)(d), (2) supra) as if any reference in Sch 1 para 4 (see note 4 head (1)(d) supra) and

Sch 1 para 6 (see note 4 head (2)(b) supra) to the operation intended to be undertaken were a reference to the network emergency co-ordinator's functions under the arrangements and procedures described in his safety case.

Any reference in the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended) to preventing a supply emergency is a reference to preventing a supply emergency from occurring or continuing: reg 2(9).

9 Ibid reg 3(2). See also note 6 supra.

10 Ibid reg 3(3). See also note 6 supra.

11 Ie nothing in the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended): see the text and notes 1-10 supra; and PARA 904 et seq post.

12 Ibid reg 3(4).

13 Any reference for these purposes to a person who has prepared a safety case includes a reference to a person who is required to prepare a safety case, and in that connection as if any reference to the network to which the safety case relates were a reference to the network to which the safety case would have related if it had been prepared in accordance with such requirement: Health and Safety (Fees) Regulations 2007, SI 2007/813, reg 17(5).

14 Any reference for these purposes to a function conferred on an inspector by the Health and Safety at Work etc Act 1974 which relates to enforcement against a person of any of the relevant statutory provisions includes a reference to any function conferred on an inspector by that Act which is exercised for the purpose of carrying into effect those provisions in relation to that person: Health and Safety (Fees) Regulations 2007, SI 2007/813, reg 17(7). For the meaning of 'the relevant statutory provisions' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

15 Any reference for these purposes to work carried out by a contractor is a reference to work carried out by the contractor or his employees for the benefit of the person by whom the fees are payable under ibid reg 16, whether pursuant to an agreement or an arrangement he has made with that person or with another person: reg 17(6).

16 Ibid reg 16(2). As to the amount of, and payment of, such fees see reg 17(1), (2).

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

903 Duties on persons conveying gas

NOTES 13-16--SI 2007/813 regs 16, 17 replaced: Health and Safety (Fees) Regulations 2009, SI 2009/515, regs 15, 17.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/904. Revision of safety cases.

904. Revision of safety cases.

A person who has prepared a safety case¹ pursuant to the relevant regulations² must revise its contents whenever it is appropriate, but nothing in this provision requires him to have the revision accepted by the Health and Safety Executive³. Where, however, a revision proposed to be made under the above provision will render the safety case materially different from the last version accepted by the Executive⁴, the revision must not be made unless the Executive has accepted the revision⁵. In determining for these purposes whether a proposed revision will render the safety case materially different from the version referred to above, regard must be had to the cumulative effect of that proposed revision and any previous revisions made⁶ but not subject to that requirement of acceptance⁷.

A person who has prepared a safety case which has been accepted by the Executive⁸ must make a thorough review of its contents at least every three years⁹.

¹ For the meanings of 'safety case', and references to a person preparing a safety case, see PARA 903 note 3 ante.

² Ie pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended). As to preparation of a safety case see PARA 903 ante.

³ Ibid reg 4(1). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq; and as to acceptance of a safety case or a revision of a safety case by the Executive see PARA 903 note 5 ante. As to exemptions from this requirement see PARA 910 post; and as to the duty to keep documents see PARA 909 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

⁴ Ie pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended).

⁵ Ibid reg 4(2). See also note 3 supra.

⁶ Ie made under ibid reg 4(1).

⁷ Ibid reg 4(2).

⁸ See note 4 supra.

⁹ Gas Safety (Management) Regulations 1996, SI 1996/551, reg 4(3). See also note 3 supra.

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/905. Duty to conform with safety case.

905. Duty to conform with safety case.

Where a person has prepared and has had accepted a safety case¹ pursuant to the relevant regulations² he must ensure, so long as he conveys gas³ in the network⁴ to which the safety case relates or remains a network emergency co-ordinator⁵, as the case may be, that the procedures and arrangements described in the safety case and any revision thereof are followed⁶.

In criminal proceedings for a contravention of the above provision⁷ it is, however, a defence for the accused to prove that:

- 1680 (1) in the particular circumstances of the case it was not in the best interests of health and safety to follow the procedures or arrangements concerned and there was insufficient time to revise the safety case⁸; or
- 1681 (2) the commission of the offence was due to a contravention by another person of the duty to co-operate⁹ and the accused had taken all reasonable precautions and exercised all due diligence to ensure that the procedures or arrangements were followed¹⁰.

1 For the meanings of 'safety case', and references to a person preparing a safety case, see PARA 903 note 3 ante; and for the meaning of references to the acceptance of a safety case see PARA 903 note 5 ante.

2 Ie pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended). As to preparation of a safety case see PARA 903 ante.

3 For the meanings of 'gas', and references to a person conveying gas, see PARA 903 note 1 ante.

4 For the meanings of 'network', and references to a person conveying gas in a network, see PARA 903 note 2 ante.

5 For the meaning of references to a 'network emergency co-ordinator' see PARA 903 note 4 ante.

6 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 5(1). As to exemptions from this requirement see PARA 910 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425).

7 As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

8 Ie pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 4: see PARA 904 ante.

9 Ie the duty under ibid reg 6: see PARA 906 post.

10 Ibid reg 5(2).

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/906. Duty of co-operation.

906. Duty of co-operation.

Every person to whom this provision applies, namely:

- 1682 (1) a person conveying gas¹ in the network²;
- 1683 (2) an emergency service provider³;
- 1684 (3) the network emergency co-ordinator⁴ in relation to a person conveying gas;
- 1685 (4) a person conveying gas in pipes⁵ which are not part of a network⁶;
- 1686 (5) the holder of a gas supplier or gas shipper licence⁷;
- 1687 (6) a person exempted⁸ from the statutory prohibition on certain unlicensed activities⁹;
- 1688 (7) the person in control of a gas production facility¹⁰, a gas processing facility¹¹, a storage facility or an interconnector¹² supplying gas¹³ to the network,

must co-operate so far as is necessary with a person conveying gas in a network and with a network emergency co-ordinator to enable them to comply with the provisions¹⁴ of the relevant regulations¹⁵.

A person conveying gas in a network may¹⁶ direct a person not to consume gas for the period specified in the direction¹⁷. Such a direction may:

- 1689 (a) only be given where it is necessary to prevent a supply emergency¹⁸ or to prevent danger arising from the use of gas not conforming with the prescribed requirements¹⁹;
- 1690 (b) be given orally or in writing and may be withdrawn at any time²⁰.

Where a direction is so given to a person, that person must comply with it during the period specified in the direction except that this does not require him to comply with a direction after it has been withdrawn²¹. In criminal proceedings for a contravention of this requirement²², it is a defence for the accused to prove that he had no knowledge of the direction²³.

A person who conveys gas in a network must, where he is requested to do so by a person proposing to carry out work in relation to a gas fitting²⁴, provide him with information about the operating pressures of the gas at the outlet of a service pipe²⁵.

1 For the meanings of 'gas', and references to a person conveying gas, see PARA 903 note 1 ante.

2 For the meanings of 'network', and references to a person conveying gas in a network, see PARA 903 note 2 ante.

3 'Emergency service provider' means a person appointed pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(11) (see PARA 907 post): reg 2(1).

4 For the meaning of references to a 'network emergency co-ordinator' see PARA 903 note 4 ante.

5 For the meaning of 'pipe' see PARA 903 note 1 ante.

6 le by virtue of the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(3) or (4): see PARA 903 note 2 ante.

7 le a licence issued under the Gas Act 1986 s 7A (as added and amended): see PARA 807 ante.

8 le under ibid s 6A(1) (as added and amended): see PARA 804 ante. At the date at which this title states the law, a person referred to in Sch 2A para 5(1) (as amended; prospectively repealed) is also included in the list set out in the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 6(2) (see heads (1)-(7) in the text).

9 le exempted from the Gas Act 1986 s 5(1)(b) or (c) (as substituted and amended): see PARA 803 ante.

10 For the meaning of 'gas production facility' see PARA 903 note 2 ante. The reference in head (7) in the text to the person in control of a production facility is (1) where the facility is a fixed installation within the meaning of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1), an operator within the meaning of reg 2(1); (2) where the facility is at a borehole site within the meaning of the Borehole Sites and Operations Regulations 1995, SI 1995/2038, reg 2(1), an operator within the meaning of reg 2(1): see the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 6(3). Regulation 6(3)(a) (see head (1) supra) refers to a 'fixed installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1); but those regulations no longer refer to 'fixed installations' and the relevant definition was revoked by the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 25, Sch 9 para 2(a)(iii); the reference in head (1) supra to those 2005 Regulations is substituted by virtue of the Interpretation Act 1978 s 17(2). As to the regulations referred to in heads (1), (2) supra see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 723, 724 et seq, 744.

11 For the meaning of 'gas processing facility' see PARA 903 note 2 ante.

12 For the meaning of 'interconnector' for these purposes see PARA 903 note 2 ante.

13 Any reference for these purposes to a person supplying gas is a reference to a person who does so in the course of a business or other undertaking carried on by him: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(11).

14 le the provisions of the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended): see PARA 903 et seq ante; the text and notes 1-13 supra, 15-25 infra; and PARA 907 et seq post.

15 Ibid reg 6(1), (2). As to exemptions from this requirement see PARA 910 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

16 le subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 6(5): see heads (a)-(b) in the text.

17 Ibid reg 6(4).

18 For the meaning of 'supply emergency' see PARA 903 note 4 ante; and for the meaning of references to preventing a supply emergency see PARA 903 note 8 ante.

19 le the requirements of the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 8: see PARA 908 post.

20 Ibid reg 6(5).

21 Ibid reg 6(6). See also note 15 supra.

22 As to criminal proceedings see note 15 supra.

23 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 6(7).

24 'Gas fittings' means gas pipework, valves (other than emergency controls), regulators and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, cooking or other purposes for which gas can be used, but it does not mean (1) any part of a service pipe; (2) any part of a distribution main or other pipe upstream of the service pipe; (3) a gas storage vessel; or (4) a gas cylinder or cartridge designed to be disposed of when empty: see the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (definition applied, with modifications as here set out, by the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1); and by virtue of the Interpretation Act 1978 s 17(2)). Any reference in

the 1996 Regulations to a person carrying out work in relation to a gas fitting is a reference to a person who does so in the course of a business or other undertaking carried on by him: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(11).

25 Ibid reg 6(8).

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/907. Gas escapes and investigations.

907. Gas escapes and investigations.

It is the duty of British Gas plc to provide a continuously manned telephone service (which must be contactable within Great Britain by the use of one telephone number) for enabling persons to report an escape of gas¹ from a network² or from a gas fitting³ supplied with gas from a network⁴. Where British Gas plc is notified of such an escape of gas it must, if it is not responsible for preventing the escape⁵, report it forthwith to the person who is⁶.

A person conveying gas in the network⁷, an emergency service provider⁸, the network emergency co-ordinator⁹ in relation to a person conveying gas¹⁰ and the holder of a gas supplier licence¹¹ who discovers or is notified of any such escape of gas, other than by virtue of a report made to him pursuant to the above provision¹², must report it forthwith to British Gas plc¹³.

Where:

- 1691 (1) any gas escapes from a network, the person conveying the gas in the part of the network from which the gas escapes must, as soon as is reasonably practicable after being so informed of the escape, attend the place where the gas is escaping, and within 12 hours of being so informed of the escape, he must prevent the gas escaping¹⁴;
- 1692 (2) any gas escapes from a gas fitting supplied with gas from a network, the person conveying the gas in the part of the network immediately upstream of the emergency control¹⁵ for the supply of gas to that fitting must, as soon as is reasonably practicable after being so informed of the escape, attend the place where the gas is escaping, and within 12 hours of being so informed of the escape, he must prevent the gas escaping¹⁶;
- 1693 (3) a person conveying gas in a network has reasonable cause to suspect that gas conveyed by him which has escaped has entered, or may enter, any premises, he must, so far as is reasonably practicable, take all the steps necessary to avert danger to persons from such entry¹⁷.

A person conveying gas may appoint another person to act on his behalf to prevent an escape of gas, and where he does so in advance of discovering or being notified of such an escape, he must notify British Gas plc of the name of the person appointed¹⁸. The appointee is to be responsible, in relation to the escape, for complying with heads (1) to (3) above in substitution for the person conveying the gas, and head (3) above has effect as if the reference to the person conveying gas having reasonable cause to suspect that the gas has entered or may enter premises were a reference to the appointee having such cause¹⁹.

In any proceedings against a person for an offence consisting of a contravention of head (1) or head (2) above²⁰, in so far as the contravention is not preventing the escape of gas within the period of 12 hours referred to in those heads, it is a defence for the person to prove that it was not reasonably practicable for him effectually to prevent the gas from escaping within that period, and that he did effectually prevent the escape of gas as soon as it was reasonably practicable for him to do so²¹.

If the responsible person²² for any premises knows or has reason to suspect that gas is escaping from a gas fitting in those premises supplied with gas from a network he must immediately take all reasonable steps to cause the supply of gas to be shut off at such place as may be necessary to prevent further escape of gas²³. If gas continues to escape into those premises after the supply of gas has been shut off or when a smell of gas persists, the responsible person for the premises discovering such escape or smell must immediately give notice of the escape or smell to British Gas plc²⁴. Where an escape of gas has been stopped by shutting off the supply, no person must cause or permit the supply to be reopened, other than in the course of repair, until all necessary steps have been taken to prevent a recurrence of such escape²⁵.

Where:

- 1694 (a) an escape of gas from a gas fitting on domestic premises has resulted in a fire or explosion²⁶, the person conveying the gas in the part of the network immediately upstream of the emergency control for the supply of gas to that fitting must, as soon as is reasonably practicable after receiving notice of the fire or explosion, cause an investigation to be carried out so as to establish, so far as is reasonably practicable, whether the escape was from installation pipework²⁷ or from an appliance, and if so from which appliance²⁸;
- 1695 (b) an escape of gas from a network has or was likely to have resulted in a fire or explosion, the person conveying the gas in the part of the network where the gas escaped must, as soon as is reasonably practicable after receiving notice of the escape, cause an investigation to be carried out so as to establish the source of the escape and, so far as is reasonably practicable, the reason for it²⁹;
- 1696 (c) a notifiable incident³⁰ has arisen as a result of an escape of carbon monoxide gas from incomplete combustion of gas in a gas fitting, the person who supplied the gas³¹ must, as soon as is reasonably practicable after receiving notice of the incident, cause an investigation to be carried out so as to establish, so far as is reasonably practicable, the cause of the escape and accumulation of the carbon monoxide gas³²;
- 1697 (d) a person who conveys gas receives notice of an incident referred to in head (c) above, he must, as soon as is reasonably practicable, inform the relevant gas supplier of that fact³³.

A person who causes an investigation to be carried out pursuant to head (a), head (b) or head (c) above must:

- 1698 (i) ensure that the individuals who carry it out are competent;
- 1699 (ii) notify the Health and Safety Executive³⁴ before the investigation begins of the intention to carry it out;
- 1700 (iii) ensure that a report of the investigation is prepared and a copy of it is sent to the Executive as soon as is reasonably practicable after the investigation has been completed³⁵.

1 For the meaning of 'gas' for these purposes see PARA 903 note 1 ante.

2 For the meaning of 'network' see PARA 903 note 2 ante.

3 For these purposes, any reference to an escape of gas from a gas fitting includes a reference to an escape or emission of carbon monoxide gas resulting from incomplete combustion of gas in such a fitting: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(17)(b). For the meaning of 'gas fitting' see PARA 906 note 24 ante.

4 Ibid reg 7(1). For the meaning of 'Great Britain' see PARA 602 note 7 ante. As to exemptions from this requirement see PARA 910 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

5 Ie under the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(4) or (5): see heads (1)-(2) in the text.

6 Ibid reg 7(2). See also note 4 supra.

7 Ie a person referred to in ibid reg 6(2)(a): see PARA 906 ante at head (1) in the text. For the meaning of references to a person conveying gas see PARA 903 note 1 ante; and for the meaning of references to conveying gas in a network see PARA 903 note 2 ante.

8 Ie a person referred to in ibid reg 6(2)(b): see PARA 906 ante at head (2) in the text. For the meaning of 'emergency service provider' see PARA 906 note 3 ante.

9 As to the network emergency co-ordinator see PARA 903 ante.

10 Ie a person referred to in ibid reg 6(2)(c): see PARA 906 ante at head (3) in the text.

11 Ie the holder of a licence under the Gas Act 1986 s 7A(1) (as added and amended): see PARA 807 ante.

12 Ie other than by virtue of a report made pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(2): see the text and notes 5-6 supra.

13 Ibid reg 7(3). See also note 4 supra.

14 Ibid reg 7(4). See also note 4 supra.

15 For the meaning of 'emergency control' see PARA 903 note 1 ante.

16 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(5). See also note 4 supra.

17 Ibid reg 7(6). See also note 4 supra.

18 Ibid reg 7(11)(a).

19 Ibid reg 7(11)(b).

20 As to criminal proceedings see note 4 supra.

21 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(10).

22 For these purposes, 'the responsible person', in relation to any premises, means the occupier of the premises or, where there is no occupier or the occupier is away, the owner of the premises or any person with authority for the time being to take appropriate action in relation to any gas fitting therein: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (definition applied by the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(17)(b); and by virtue of the Interpretation Act 1978 s 17(2)).

23 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(7). See also note 4 supra.

24 Ibid reg 7(8). See also note 4 supra.

25 Ibid reg 7(9). See also note 4 supra.

26 For these purposes, any reference to a fire or explosion of gas is a reference to an unintended fire or explosion of gas: ibid reg 7(17)(c).

27 For these purposes, 'installation pipework' means any pipework for conveying gas for a particular consumer and any associated valve or other gas fitting including any pipework used to connect a gas appliance to other installation pipework and any shut off device at the inlet to the appliance, but it does not mean (1) a service pipe; (2) a pipe comprised in a gas appliance; (3) any valve attached to a storage container or cylinder; or (4) service pipework: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (definition applied by the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2(1); and by virtue of the Interpretation Act 1978 s 17(2)).

28 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(12). See also note 4 supra.

29 Ibid reg 7(13). See also note 4 supra.

30 Is an incident notifiable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 6(1): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 410.

31 For the meaning of references to a person supplying gas see generally para 906 note 13 ante. For these purposes, any reference to a person supplying gas does not include a reference to a person to whom the gas is supplied and who provides it for use in a flat or part of premises let by him: Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(17)(d).

32 Ibid reg 7(14). See also note 4 supra.

33 Ibid reg 7(15). See also note 4 supra.

34 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

35 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 7(16). See also note 4 supra.

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/908. Content and other characteristics of gas.

908. Content and other characteristics of gas.

No person must¹ convey gas² in a network³ unless the gas conforms with the requirements prescribed⁴ as to its content and other characteristics in normal conditions⁵. The network emergency co-ordinator⁶ may, however, where it is necessary to prevent a supply emergency⁷ and in accordance with the arrangements specified in his safety case⁸, authorise, for the period specified in the authorisation, gas not conforming with those requirements to be conveyed in the network if the gas conforms with the requirements prescribed⁹ as to its content and other characteristics in such circumstances¹⁰. Such an authorisation may be given orally or in writing and may be withdrawn at any time¹¹.

Where only one person conveys gas in a network, he may, where it is necessary to prevent a supply emergency and in accordance with the arrangements specified in his safety case¹², convey gas which does not conform with the requirements prescribed as to its content and other characteristics in normal conditions¹³ if the gas conforms with the requirements prescribed¹⁴ as to its content and other characteristics in such circumstances¹⁵.

A person who conveys gas in a network must ensure that suitable and sufficient tests are carried out to ensure that the gas conforms with whichever of the above requirements is appropriate¹⁶.

1 Ie subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 8(2)-(4): see the text and notes 6-15 infra.

2 For the meanings of 'gas', and references to a person conveying gas, for these purposes see PARA 903 note 1 ante.

3 For the meanings of 'network', and references to a person conveying gas in a network, see PARA 903 note 2 ante.

4 Ie the requirements specified in the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 8(1), Sch 3 Pt I.

5 Ibid reg 8(1). As to exemptions from this requirement see PARA 910 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

6 As to the network emergency co-ordinator see PARA 903 ante.

7 For the meaning of 'supply emergency' see PARA 903 note 4 ante; and for the meaning of references to preventing a supply emergency see PARA 903 note 8 ante.

8 Ie pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551, Sch 2 para 3(d): see PARA 903 note 8 head (3)(d) ante.

9 Ie the requirements specified in ibid reg 8(2), Sch 3 Pt II.

10 Ibid reg 8(2). See also note 5 supra.

- 11 Ibid reg 8(3).
- 12 Ie pursuant to ibid Sch 1 para 19: see PARA 903 note 4 head (7)(b) ante.
- 13 See note 4 supra.
- 14 See note 9 supra.
- 15 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 8(4). See also note 5 supra.
- 16 Ibid reg 8(5). See also note 5 supra.

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/909. Keeping of documents.

909. Keeping of documents.

A person who prepares a safety case¹ pursuant to the relevant regulations² must:

- 1701 (1) ensure that when the safety case is sent to the Health and Safety Executive³ for acceptance it is notified of an address in Great Britain for the purposes of heads (2) to (6) below⁴;
- 1702 (2) keep the accepted safety case and any revision thereof or a copy thereof at that address;
- 1703 (3) keep each audit report⁵ made by him or a copy thereof at that address;
- 1704 (4) ensure that a record is made of any action taken in consequence of such an audit report and keep that record or a copy thereof at that address;
- 1705 (5) ensure that a report is made of every review carried out by him⁶ and ensure that a copy is sent to the Executive;
- 1706 (6) keep such report or a copy thereof at that address; and
- 1707 (7) ensure that a record is made of every test carried out⁷ in relation to gas⁸ he conveys and keep that record or a copy thereof at that address⁹.

Each report and record so required to be kept must be kept for a period of three years after it has been made, and the safety case and revision must be kept for so long as it is current¹⁰. It is, however, sufficient compliance with heads (1) to (7) above for the information in the documents to be kept at the address notified on film or by electronic means provided that the information is capable of being reproduced as a written copy at that address and it is secure from loss or unauthorised interference¹¹.

1 For the meanings of 'safety case', and references to a person preparing a safety case, see PARA 903 note 3 ante.

2 I.e. pursuant to the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended): see PARA 903 et seq ante. As to the requirement to prepare a safety case see PARA 903 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Where a person has notified an address pursuant to head (1) in the text, he may notify to the Executive a different address in Great Britain for the purposes of the provisions referred to in that head; and where he does so references in those provisions and in the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 9(3) where applicable to the address notified are to be construed as the address in the last notification so made: reg 9(4). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

5 For these purposes, 'audit report' means a report made pursuant to the arrangements referred to in ibid Sch 1 para 11 (see PARA 903 note 4 head (2)(g) ante) or Sch 2 para 4 (see PARA 903 note 8 head (4) ante) (to the extent that Sch 2 para 4 relates to arrangements for audit): reg 9(5).

6 I.e. pursuant to ibid reg 4(3): see PARA 904 ante.

7 I.e. pursuant to ibid reg 8(5) (see PARA 908 ante) and reg 10(6) (transitional provisions).

8 For the meaning of 'gas' for these purposes see PARA 903 note 1 ante.

9 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 9(1). As to exemptions from this requirement see PARA 910 post.

The Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)(c), 15(1), 16 and 21(a) (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

10 Gas Safety (Management) Regulations 1996, SI 1996/551, reg 9(2). See also note 9 supra.

11 Ibid reg 9(3).

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/C. SAFETY MANAGEMENT WITH REGARD TO GAS/910. Exemptions.

910. Exemptions.

The Health and Safety Executive¹ may², by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by the relevant regulations³, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing⁴. The Executive must not, however, grant any such exemption unless, having regard to the circumstances of the case and in particular to:

- 1708 (1) the conditions, if any, which it proposes to attach to the exemption; and
- 1709 (2) any other requirements imposed by or under any enactment which apply to the case;

it is satisfied that the health and safety of persons likely to be affected by the exemption will not be prejudiced in consequence of it⁵.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 Ie subject to the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 11(2): see the text and note 5 infra.

3 Ie imposed by the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended): see PARA 903 et seq ante.

4 Ibid reg 11(1).

5 Ibid reg 11(2).

UPDATE

903-910 Safety Management With Regard to Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/(A) In general/911. Application of safety regulations.

D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES

(A) IN GENERAL

911. Application of safety regulations.

The Secretary of State¹ has made health and safety regulations² governing the installation and use of gas fittings³, meters and regulators⁴, installation pipework⁵ and gas appliances⁶ and making provision with regard to maintenance⁷ and miscellaneous matters⁸.

Nothing in those regulations, however, applies in relation to:

- 1710 (1) the supply of gas to, or anything done in respect of a gas fitting on:
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- 200. (a) a self-propelled vehicle except when such a vehicle is either hired out in the course of a business or made available to members of the public in the course of a business carried on from that vehicle;
- 201. (b) a sea-going ship;
- 202. (c) a vessel not requiring a national or international load line certificate except when such vessel is either hired out in the course of a business, made available to members of the public in the course of a business carried out from that vessel or used primarily for domestic or residential purposes;
- 203. (d) a hovercraft; or
- 204. (e) a caravan used for touring otherwise than when hired out in the course of a business⁹;
- 134
- 1711 (2) the supply of gas to the propulsion system of any vehicle or to any gas fitting forming part of such propulsion system¹⁰;
- 1712 (3) the supply of gas to, or anything done in respect of, a bunsen burner used in an educational establishment¹¹; or
- 1713 (4) work in relation to a control device on a gas appliance if the device is intended primarily for use by a consumer of gas and the work does not involve breaking into a gasway¹².

Nor do those regulations apply:

- 1714 (i) subject to certain exceptions¹³, in relation to a gas fitting used for the purpose of training gas fitting operatives in a college or other training establishment¹⁴;
- 1715 (ii) subject to certain exceptions¹⁵, in relation to a gas fitting used for the purpose of assessing the competence of a gas fitting operative at an assessment centre where such assessment is carried out for the purposes of a nationally accredited certification scheme¹⁶.

Subject to head (1) above and to the provisions set out below¹⁷, those regulations apply to or in relation to gas fittings used in connection with gas which has been conveyed to premises through a distribution main or gas conveyed from a gas storage vessel¹⁸; but subject to certain exceptions¹⁹ they do not apply in relation to the supply of gas to, or anything done in respect of a gas fitting at, the following premises, that is to say:

- 1716 (A) a mine within the meaning of the Mines and Quarries Act 1954 or any place deemed to form part of a mine for the purposes of that Act²⁰, or a quarry within the meaning of the Quarries Regulations 1999²¹ or any place deemed to form part of a quarry for the purposes of those 1999 Regulations²²;
- 1717 (B) a factory within the meaning of the Factories Act 1961²³ or any place to which any provisions of that Act apply by virtue of the specified²⁴ statutory provisions²⁵;
- 1718 (C) agricultural premises, being agricultural land, including land being or forming part of a market garden, and any building thereon which is used in connection with agricultural operations²⁶;
- 1719 (D) temporary installations used in connection with any construction work within the prescribed meaning²⁷ of that phrase²⁸;
- 1720 (E) premises used for the testing of gas fittings²⁹; or
- 1721 (F) premises used for the treatment of sewage³⁰.

Those regulations do, however, apply in relation to such premises or part thereof used for domestic or residential purposes or as sleeping accommodation³¹.

Special provisions govern the installation of supplies of gas to certain premises used in connection with the giving there of cinematographic exhibitions³², including supplies for the purposes of safety lighting³³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), which came into force on 31 October 1998: reg 1. Those regulations are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 See the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, Pt B (regs 3-10); and PARA 913 et seq post. 'Gas fittings' means gas pipework, valves (other than emergency controls), regulators and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, cooking or other purposes for which gas can be used (other than the purpose of an industrial process carried out on industrial premises), but it does not mean (1) any part of a service pipe; (2) any part of a distribution main or other pipe upstream of the service pipe; (3) a gas storage vessel; or (4) a gas cylinder or cartridge designed to be disposed of when empty: reg 2(1). 'Gas' means any substance which is or (if it were in a gaseous state) would be gas within the meaning of the Gas Act 1986 (see PARA 802 ante) except that it does not include gas consisting wholly or mainly of hydrogen when used in non-domestic premises; 'emergency control' means a valve for shutting off the supply of gas in an emergency, being a valve intended for use by a consumer of gas; 'service pipe' means a pipe for distributing gas to premises from a distribution main, being any pipe between the distribution main and the outlet of the first emergency control downstream from the distribution main; 'distribution main' means any main through which a transporter is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk; and 'gas storage vessel' means a storage container designed to be filled or refilled with gas at the place where it is connected for use or a refillable cylinder designed to store gas, and includes the vapour valve; but it does not include a cylinder or cartridge designed to be disposed of when empty: reg 2(1). 'Refillable cylinder' means a cylinder which is filled other than at the place where it is connected for use: reg 2(1).

4 See *ibid* Pt C (regs 11-17); and PARA 921 et seq post.

5 See *ibid* Pt D (regs 18-24); and PARA 927 et seq post. 'Installation pipework' means any pipework for conveying gas for a particular consumer and any associated valve or other gas fitting including any pipework

used to connect a gas appliance to other installation pipework and any shut off device at the inlet to the appliance, but it does not mean (1) a service pipe; (2) a pipe comprised in a gas appliance; (3) any valve attached to a storage container or cylinder; or (4) service pipework: reg 2(1). 'Service pipework' means a pipe for supplying gas to premises from a gas storage vessel, being any pipe between the gas storage vessel and the outlet of the emergency control: reg 2(1).

6 See *ibid* Pt E (regs 25-34); and PARA 934 *et seq* post. 'Gas appliance' means an appliance designed for use by a consumer of gas for heating, lighting, cooking or other purposes for which gas can be used but it does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance, save that, for the purposes of regs 3, 35 and 36 (see PARAS 913, 942-943 post), it does include a portable or mobile space heater supplied with gas from a cylinder, and the cylinder, pipes and other fittings used for supplying gas to that heater: reg 2(1).

7 See *ibid* Pt F (regs 35-36); and PARAS 942-943 post.

8 See *ibid* Pt G (regs 37-41); and PARAS 912, 944-945 post.

9 *Ibid* reg 2(5).

10 *Ibid* reg 2(6)(a).

11 *Ibid* reg 2(6)(b).

12 *Ibid* reg 2(6)(c).

13 *Ie* except that *ibid* reg 3(1)-(5), (7) (see PARA 913 post) applies to work in relation to a gas fitting carried out by a person providing such training: see reg 2(7).

14 *Ibid* reg 2(7).

15 *Ie* except that *ibid* reg 3(1), (2) (see PARA 913 post) applies to work in relation to a gas fitting carried out by a person carrying out such assessment: see reg 2(8).

16 *Ibid* reg 2(8).

17 *Ie* subject to *ibid* reg 2(4), (5).

18 *Ibid* reg 2(3).

19 *Ie* save for *ibid* regs 37, 38 (see PARAS 944-945 post) and reg 41 (revocation and amendments of other statutory provisions) and subject to reg 3(8) (see PARA 913 post).

20 For the meaning of 'mine' for these purposes see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5 note 14.

21 *Ie* within the meaning of the Quarries Regulations 1999, SI 1999/2024 (as amended): see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 6.

22 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(4)(a) (substituted by SI 1999/2024).

23 For the meaning of 'factory' for these purposes see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318 *et seq*.

24 *Ie* by virtue of *ibid* ss 123-126 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 309 *et seq*.

25 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(4)(b).

26 *Ibid* reg 2(4)(c).

27 *Ie* within the meaning assigned to that phrase by the Construction (Design and Management) Regulations 2007, SI 2007/320, reg 2(1): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 674.

28 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(4)(d) (amended by SI 2007/320).

29 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(4)(e).

30 *Ibid* reg 2(4)(f).

31 Ibid reg 2(4).

32 As to the premises see the Cinematograph (Safety) Regulations 1955, SI 1955/1129, reg 1. The main valves and cocks controlling the supply must, if situated within a building, be placed as near as practicable to a door on the ground floor easily accessible from outside, and if accessible to the public they must be secured against unauthorised interference: reg 13.

33 'Safety lighting' means a means of illumination adequate to enable members of the public to see their way out of the premises without assistance from the general lighting: see ibid reg 16(1) (amended by SI 1976/1315). If the safety lighting is provided by gas it must be provided from a source other than that which supplies the general lighting: see the Cinematograph (Safety) Regulations 1955, SI 1955/1129, reg 16(3). The taps of individual lamps used for safety lighting must be secured against unauthorised interference and all other taps and cocks controlling the safety lighting must be either in a place to which the public is not admitted or, if that is not practicable, similarly protected: reg 16(5)(b)(i). Such cocks and taps may not be situated in a projection or rewinding room: reg 16(5)(b)(ii). As to safety provisions generally see further LICENSING AND GAMBLING vol 67 (2008) PARA 255.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

911 Application of safety regulations

TEXT AND NOTES 32, 33--SI 1955/1129 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/(A) In general/912. Exemption certificates.

912. Exemption certificates.

The Health and Safety Executive¹ may², by a certificate in writing, exempt any person or class of persons from any requirement or prohibition imposed by the relevant regulations³, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing⁴. The Executive must not, however, grant any such exemption unless, having regard to the circumstances of the case and in particular to:

- 1722 (1) the conditions, if any, which it proposes to attach to the exemption; and
- 1723 (2) any other requirements imposed by or under any enactment which apply to the case,

it is satisfied that the health and safety of persons likely to be affected by the exemption will not be prejudiced in consequence of it⁵.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 Ie subject to the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 40(2): see the text and note 5 infra.

3 Ie imposed by the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante, PARA 915 et seq post.

4 Ibid reg 40(1).

5 Ibid reg 40(2).

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/913. Qualification and supervision.

(B) GAS FITTINGS; GENERAL PROVISIONS

913. Qualification and supervision.

No person must carry out any work in relation to a gas fitting¹ or gas storage vessel² unless he is competent to do so³. The employer of any person carrying out such work for that employer, every other employer and self-employed person who has control to any extent of such work and every employer and self-employed person who has required such work to be carried out at any place of work under his control must ensure that this requirement is complied with in relation to such work⁴.

Without prejudice to the generality of the above provisions, no employer must⁵ allow any of his employees to carry out any work in relation to a gas fitting or service pipework⁶ and no self-employed person must carry out any such work, unless the employer or self-employed person, as the case may be, is a member of a class of persons approved for the time being by the Health and Safety Executive⁷ for these purposes⁸. These requirements do not, however, apply in respect of:

- 1724 (1) the replacement of a hose or regulator on a portable or mobile space heater; or
- 1725 (2) the replacement of a hose connecting a refillable cylinder⁹ to installation pipework¹⁰.

An approval given pursuant to the above requirements, and any withdrawal of such approval, must be in writing and notice of it must be given to such persons and in such manner as the Executive considers appropriate¹¹. No person must falsely pretend to be a member of a class of persons required to be so approved¹².

The employer of any person carrying out any work in relation to a gas fitting or gas storage vessel in the course of his employment must ensure that such of the provisions of the relevant regulations¹³ as impose duties upon that person and are for the time being in force are complied with by that person¹⁴.

Notwithstanding the general exclusion in respect of factories¹⁵, when a person is carrying out work in factory premises in relation to a gas fitting in a vehicle, vessel or caravan:

- 1726 (a) he must be competent to do so¹⁶, and certain of the duties set out above¹⁷ must be complied with as respects that work¹⁸;
- 1727 (b) he must ensure, so far as is reasonably practicable, that the installation of the gas fittings and flues¹⁹ will not contravene the provisions of the relevant regulations²⁰ when the gas fittings are connected to a gas supply²¹,

except that heads (a) and (b) above do not apply where the person has reasonable grounds for believing that the vehicle, vessel or caravan will be first used for a purpose which when so used will exclude it²² from the application of those regulations²³.

1 'Work' in relation to a gas fitting, includes any of the following activities carried out by any person, whether an employee or not, that is to say: (1) installing or reconnecting the fitting; (2) maintaining, servicing, permanently adjusting, disconnecting, repairing, altering or renewing the fitting or purging it of air or gas; (3) where the fitting is not readily movable, changing its position; and (4) removing the fitting; but the expression does not include the connection or disconnection of a bayonet fitting or other self-sealing connector: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1). For the meaning of 'gas fitting' see PARA 911 note 3 ante. For these purposes, any reference to installing a gas fitting includes a reference to converting any pipe, fitting, meter, apparatus or appliance to gas use: reg 2(2)(a). For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

2 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(1). As to the application of reg 3 see PARA 911 ante; and as to exemptions see PARA 912 ante. A person who is competent to carry out any work is a person who has the knowledge and ability necessary to perform it properly: *Paterson v Lees* 1993 SLT 48.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

Where a landlord who was incompetent to do so installed a gas fire contrary to the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3, and it vented into the room causing the death from carbon monoxide poisoning of two of his tenants, a sentence of five years for their manslaughter was held not to be excessive: see *R v Rodgers* [2004] EWCA Crim 3115, [2005] 2 Cr App Rep (S) 105, [2004] All ER (D) 369 (Nov).

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(2). See also note 3 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 3(2) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39; and see *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, [1999] 1 WLR 1526, CA (considered and applied in *R v HTM Ltd* [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383).

5 Ie subject to the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(4): see the text and notes 9-10 infra.

6 For the meaning of 'service pipework' see PARA 911 note 5 ante.

7 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(3). See also note 3 supra.

9 For the meaning of 'refillable cylinder' see PARA 911 note 3 ante.

10 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(4). See also note 3 supra. For the meaning of 'installation pipework' see PARA 911 note 5 ante.

11 Ibid reg 3(5).

12 Ibid reg 3(7). See also note 3 supra.

13 Ie the provisions of ibid regs 4-41 (as amended): see PARA 914 et seq post.

14 Ibid reg 3(6). See also note 3 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 3(6) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

15 Ie notwithstanding ibid reg 2(4)(b): see PARA 911 ante at head (B) in the text.

16 Ie ibid reg 3(1) must be complied with: see the text and notes 1-3 supra.

17 Ie ibid reg 3(2), (6): see the text and notes 4, 13-14 supra.

18 Ibid reg 3(8)(a).

19 'Flue' means a passage for conveying the products of combustion from a gas appliance to the external air and includes any part of the passage in a gas appliance duct which serves the purpose of a flue: ibid reg 2(1).

- 20 le the provisions of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended).
- 21 Ibid reg 3(8)(b).
- 22 le by virtue of ibid reg 2(5)(a), (c) or (e): see PARA 911 ante at heads (1)(a), (1)(c), (1)(e) in the text.
- 23 Ibid reg 3(8).

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/914. Duty on employer.

914. Duty on employer.

Where an employer or a self-employed person requires any work in relation to a gas fitting¹ to be carried out at any place of work under his control, or where an employer or self-employed person has control to any extent of work in relation to a gas fitting, he must take reasonable steps to ensure that the person undertaking that work is, or is employed by, a member of a class of persons approved² by the Health and Safety Executive³.

1 For the meaning of 'work' in relation to a gas fitting see PARA 913 note 1 ante; and for the meaning of 'gas fitting' see PARA 911 note 3 ante.

2 Ie approved under the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(3): see PARA 913 ante.

3 Ibid reg 4. As to the application of reg 4 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/915. Materials and workmanship.

915. Materials and workmanship.

No person must install a gas fitting¹ unless every part of it is of good construction and sound material, of adequate strength and size to secure safety and of a type appropriate for the gas² with which it is to be used³. Without prejudice to the generality of the above requirements, no person must install in a building any pipe or pipe fitting for use in the supply of gas which is:

- 1728 (1) made of lead or lead alloy; or
- 1729 (2) made of a non-metallic substance unless it is:
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- 205. (a) a pipe connected to a readily movable gas appliance⁴ designed for use without a flue⁵; or
- 206. (b) a pipe entering the building and that part of it within the building is placed inside a metallic sheath which is so constructed and installed as to prevent, so far as is reasonably practicable, the escape of gas into the building if the pipe should fail⁶.
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No person must carry out any work in relation to a gas fitting or gas storage vessel⁷ otherwise than in accordance with appropriate standards and in such a way as to prevent danger to any person⁸.

1 For the meaning of references to installing a gas fitting see PARA 913 note 1 ante; and for the meaning of 'gas fitting' see PARA 911 note 3 ante.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 5(1). As to the application of reg 5 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. No person is, however, to be guilty of an offence by reason of contravention of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 5(1) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

4 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

5 For the meaning of 'flue' see PARA 913 note 19 ante.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 5(2). See also note 3 supra.

7 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 5(3). See also note 3 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/916. General safety precautions.

916. General safety precautions.

No person must carry out any work in relation to a gas fitting¹ in such a manner that gas² could be released unless steps are taken to prevent the gas so released constituting a danger to any person³. No person carrying out work in relation to a gas fitting must leave the fitting unattended unless every incomplete gasway has been sealed with the appropriate fitting or the gas fitting is otherwise safe⁴.

Any person who disconnects a gas fitting must, with the appropriate fitting⁵, seal off every outlet of every pipe to which it was connected⁶.

No person carrying out work in relation to a gas fitting which involves exposing gasways which contain or have contained flammable gas must smoke or use any source of ignition in such a manner as may lead to the risk of fire or explosion⁷; and no person searching for an escape of gas must use any source of ignition⁸.

Where a person carries out any work in relation to a gas fitting which might affect the gas tightness of the gas installation he must immediately thereafter test the installation for gas tightness at least as far as the nearest valves upstream and downstream in the installation⁹.

No person must:

- 1730 (1) install a gas storage vessel¹⁰ unless the site where it is to be installed is such as to ensure that the gas storage vessel can be used, filled or refilled without causing a danger to any person¹¹;
- 1731 (2) install in a cellar or basement a gas storage vessel or an appliance fuelled by liquefied petroleum gas which has an automatic ignition device or a pilot light¹²;
- 1732 (3) intentionally or recklessly interfere with a gas storage vessel or otherwise do anything which might affect a gas storage vessel so that the subsequent use of that vessel might cause a danger to any person¹³;
- 1733 (4) store or keep gas¹⁴ consisting wholly or mainly of methane on domestic premises¹⁵.

1 For the meaning of 'work' in relation to a gas fitting see PARA 913 note 1 ante; and for the meaning of 'gas fitting' see PARA 911 note 3 ante.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 6(1). As to the application of reg 6 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 6(2). See also note 3 supra.

5 'Appropriate fitting' means a fitting which (1) has been designed for the purpose of effecting a gas tight seal in a pipe or other gasway; (2) achieves that purpose when fitted; and (3) is secure, so far as is reasonably practicable, against unauthorised opening or removal: *ibid* reg 2(1).

6 *Ibid* reg 6(3). See also note 3 *supra*.

7 *Ibid* reg 6(4). See also note 3 *supra*.

8 *Ibid* reg 6(5). See also note 3 *supra*.

9 *Ibid* reg 6(6). See also note 3 *supra*.

10 For the meaning of 'gas storage vessel' see PARA 911 note 3 *ante*.

11 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 6(7). See also note 3 *supra*.

12 *Ibid* reg 6(8). See also note 3 *supra*.

13 *Ibid* reg 6(9). See also note 3 *supra*. For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

14 For this purpose, such gas from time to time present in pipes or in the fuel tank of any vehicle propelled by gas is to be deemed not to be stored or kept: *ibid* reg 6(10).

15 *Ibid* reg 6(10). See also note 3 *supra*.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/917. Protection against damage.

917. Protection against damage.

Any person installing a gas fitting¹ must ensure that it is properly supported and so placed or protected as to avoid any undue risk of damage to the fitting².

No person must install a gas fitting if he has reason to suspect that foreign matter may block or otherwise interfere with the safe operation of the fitting unless he has fitted to the gas inlet of, and any airway in, the fitting a suitable filter or other suitable protection³. Nor must a person install a gas fitting in a position where it is likely to be exposed to any substance which may corrode gas fittings unless the fitting is constructed of materials which are inherently resistant to being so corroded or it is suitably protected against being so corroded⁴.

1 For the meaning of references to installing a gas fitting see PARA 913 note 1 ante; and for the meaning of 'gas fitting' see PARA 911 note 3 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 7(1). As to the application of reg 7 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 7(2). See also note 2 supra.

4 Ibid reg 7(3). See also note 2 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 7(3) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/918. Existing gas fittings.

918. Existing gas fittings.

No person must make any alteration to any premises in which a gas fitting¹ or gas storage vessel² is fitted if that alteration would adversely affect the safety of the fitting or vessel in such a manner that, if the fitting or the vessel had been installed after the alteration, there would have been a contravention of, or failure to comply with, the relevant³ regulations⁴. Nor must a person do anything which would affect a gas fitting or any flue⁵ or means of ventilation used in connection with the fitting in such a manner that the subsequent use of the fitting might constitute a danger to any person, except that this does not apply to an alteration to premises⁶.

In relation to any place of work under his control, an employer or a self-employed person must ensure, so far as is reasonably practicable, that the above provisions are complied with⁷.

1 For the meaning of 'gas fitting' see PARA 911 note 3 ante.

2 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

3 I.e. a contravention of, or failure to comply with, the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante, PARA 919 et seq post.

4 Ibid reg 8(1). As to the application of reg 8 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

5 For the meaning of 'flue' see PARA 913 note 19 ante.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 8(2). See also note 4 supra.

7 Ibid reg 8(3). See also note 4 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/919. Emergency controls.

919. Emergency controls.

No person must for the first time enable gas¹ to be supplied for use in any premises unless there is provided an appropriately sited emergency control² to which there is adequate access³.

Any person installing an emergency control must ensure that:

- 1734 (1) any key, lever or hand-wheel of the control is securely attached to the operating spindle of the control;
- 1735 (2) any such key or lever is attached so that:
- 137 207. (a) the key or lever is parallel to the axis of the pipe in which the control is installed when the control is in the open position; and
- 208. (b) where the key or lever is not attached so as to move only horizontally, gas cannot pass beyond the control when the key or lever has been moved as far as possible downwards;
- 138 1736 (3) either the means of operating the key or lever is clearly and permanently marked or a notice in permanent form is prominently displayed near such means so as to indicate when the control is open and when the control is shut; and
- 1737 (4) any hand-wheel indicates the direction of opening or closing of the control⁴.

Where a person installs an emergency control which is not adjacent to a primary meter⁵, he must immediately thereafter prominently display on or near the means of operating the control a suitably worded notice in permanent form indicating the procedure to be followed in the event of an escape of gas⁶; and where any person first supplies gas⁷ to premises where an emergency control is installed, he must ensure that the notice so required remains suitably worded or must, where necessary, forthwith amend or replace that notice so as to give effect to the above requirements⁸.

The above provisions do not apply where gas is supplied in a refillable cylinder⁹ except where two or more cylinders are connected by means of an automatic change-over device¹⁰.

1 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

2 For the meaning of 'emergency control' see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 9(1). As to the application of reg 9 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 9(2). See also note 3 supra.

5 'Primary meter' means the meter nearest to and downstream of a service pipe or service pipework for ascertaining the quantity of gas supplied through that pipe or pipework by a supplier: *ibid* reg 2(1). For the meanings of 'service pipe' and 'service pipework' see PARA 911 notes 3, 5 *ante*.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 9(3). See also note 3 *supra*.

7 For these purposes, a person to whom gas is supplied and who provides that gas for use in a flat or part of premises let by him is not in so doing to be deemed to be supplying gas: *ibid* reg 2(2)(b).

8 *Ibid* reg 9(4). See also note 3 *supra*.

9 For the meaning of 'refillable cylinder' see PARA 911 note 3 *ante*.

10 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 9(5). See also note 3 *supra*.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (B) Gas Fittings; General Provisions/920. Maintaining electrical continuity.

920. Maintaining electrical continuity.

In any case where it is necessary to prevent danger, no person must carry out work in relation to a gas fitting¹ without using a suitable bond to maintain electrical continuity until the work is completed and permanent electrical continuity has been restored².

¹ For the meaning of 'work' in relation to a gas fitting see PARA 913 note 1 ante; and for the meaning of 'gas fitting' see PARA 911 note 3 ante.

² Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 10. As to the application of reg 10 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/921. General safety provisions concerning meters.

(C) METERS AND REGULATORS

921. General safety provisions concerning meters.

No person must install a meter:

- 1738 (1) in any premises unless the site where it is to be installed is such as to ensure so far as is reasonably practicable that the means of escape from those premises in the event of fire is not adversely affected¹;
- 1739 (2) in any premises unless it is of sound construction adequate to ensure so far as is reasonably practicable that, in the event of fire, gas² is not able to escape in hazardous quantities; but this does not apply to any meter installed in non-domestic premises to which gas is supplied through a readily accessible service valve³;
- 1740 (3) unless the installation is so placed as to ensure that there is no risk of damage to it from electrical apparatus⁴;
- 1741 (4) except in a readily accessible position for inspection and maintenance⁵.

Where a meter has bosses or side pipes attached to the meter by a soldered joint only, no person must make rigid pipe connections to the meter⁶.

Where a person installs a meter and the pipes and other gas fittings⁷ associated with it, he must ensure that:

- 1742 (a) immediately thereafter they are adequately tested to verify that they are gas tight and examined to verify that they have been installed in accordance with the relevant regulations⁸; and
- 1743 (b) immediately after such testing and examination, purging is carried out throughout the meter and every other gas fitting through which gas can then flow so as to remove safely all air and gas other than the gas to be supplied⁹.

1 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 12(1). As to the application of reg 12 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 12(2). See also note 1 supra. 'Service valve' means a valve (other than an emergency control) for controlling a supply of gas, being a valve (1) incorporated in a service pipe; and (2) intended for use by a transporter of gas; and (3) not situated inside a building: reg 2(1). 'Transporter' in relation to gas means a person who conveys gas through a distribution main: ibid reg 2(1). For the meanings of 'service pipe' and 'distribution main' see PARA 911 note 3 ante.

4 Ibid reg 12(3). See also note 1 supra.

5 Ibid reg 12(4). See also note 1 supra.

6 Ibid reg 12(5). See also note 1 supra.

7 For the meaning of 'gas fittings' see PARA 911 note 3 ante.

8 Ie in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante; the text and notes 1-7 supra; and PARA 922 post.

9 Ibid reg 12(6). See also note 1 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/922. Meter housings.

922. Meter housings.

Where a meter is housed in a meter box¹ or meter compound² attached to or built into the external face of the outside wall of any premises, the meter box or meter compound must be so constructed and installed that any gas³ escaping within the box or compound cannot enter the premises or any cavity in the wall but must disperse to the external air⁴.

No person must:

- 1744 (1) knowingly store readily combustible materials in any meter box or meter compound⁵;
- 1745 (2) install a meter in a meter box provided with a lock, unless the consumer has been provided with a suitably labelled key to that lock⁶;
- 1746 (3) install a meter within a meter compound which is capable of being secured unless the consumer has been provided with a suitably labelled key for that compound⁷.

1 For these purposes, 'meter box' means a receptacle or compartment designed and constructed to contain a meter with its associated fittings: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 11.

2 For these purposes, 'meter compound' means an area or room designed and constructed to contain one or more meters with their associated fittings: *ibid* reg 11.

3 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 13(1). As to the application of reg 13 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

5 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 13(2). See also note 4 supra.

6 *Ibid* reg 13(3). See also note 4 supra.

7 *Ibid* reg 13(4). See also note 4 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/923. Regulators.

923. Regulators.

No person must install a primary meter¹ or meter bypass² used in connection with a primary meter unless:

- 1747 (1) there is a regulator controlling the pressure of gas³ supplied through the meter or the bypass, as the case may be, which provides adequate automatic means for preventing the gas fittings⁴ connected to the downstream side of the regulator from being subjected to a pressure greater than that for which they were designed;
- 1748 (2) where the normal pressure of the gas supply is 75 millibars or more at the inlet to the regulator, there are also adequate automatic means for preventing, in case the regulator should fail, those gas fittings from being subjected to such a greater pressure; and
- 1749 (3) where the regulator contains a relief valve or liquid seal, such valve or seal is connected to a vent pipe of adequate size and so installed that it is capable of venting safely⁵.

Without prejudice to the above requirements, no person must cause gas to be supplied from a gas storage vessel⁶, other than a refillable cylinder⁷ or a cylinder or cartridge designed to be disposed of when empty, to any service pipework or gas fitting unless:

- 1750 (a) there is a regulator installed which controls the nominal operating pressure of the gas;
- 1751 (b) there is adequate automatic means for preventing the installation pipework and gas fittings downstream of the regulator from being subjected to a pressure different from that for which they were designed; and
- 1752 (c) there is an adequate alternative automatic means for preventing the service pipework from being subjected to a greater pressure than that for which it was designed should the regulator referred to in head (a) above fail⁸.

No person must cause gas to be supplied through an installation consisting of one or more refillable cylinders unless the supply of gas passes through a regulator which controls the nominal operating pressure of the gas⁹. Without prejudice to that prohibition, no person must cause gas to be supplied through an installation consisting of four or more refillable cylinders connected to an automatic change-over device unless there is an adequate alternative means for preventing the installation pipework and any gas fitting downstream of the regulator from being subjected to a greater pressure than that for which it was designed should the regulator fail¹⁰.

Where a person installs a regulator for controlling the pressure of gas through a primary meter, a meter bypass used in connection with a primary meter or from a gas storage vessel, or installs a gas appliance¹¹ itself fitted with a regulator for controlling the pressure of gas to that appliance, he must immediately thereafter ensure, in either case, that the regulator is

adequately sealed so as to prevent its setting from being interfered with without breaking of the seal¹². In relation to:

- 1753 (i) gas from a distribution main¹³, no person except the transporter¹⁴ or a person authorised to act on his behalf;
- 1754 (ii) gas from a gas storage vessel, no person except the supplier¹⁵ or a person authorised to act on his behalf,

must break a seal so applied other than a seal applied to a regulator for controlling the pressure of gas to the appliance to which that regulator is fitted¹⁶. A person who breaks a seal so applied must apply as soon as is practicable a new seal which is adequate to prevent the setting of the regulator from being interfered with without breaking such seal¹⁷.

1 For the meaning of 'primary meter' see PARA 919 note 5 ante.

2 'Meter bypass' means any pipe and other gas fittings used in connection with it through which gas can be conveyed from a service pipe or service pipework to installation pipework without passing through the meter: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1). For the meaning of 'service pipe' see PARA 911 note 3 ante; and for the meanings of 'service pipework' and 'installation pipework' see PARA 911 note 5 ante.

3 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

4 For the meaning of 'gas fittings' see PARA 911 note 3 ante.

5 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 14(1). As to the application of reg 14 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

6 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

7 For the meaning of 'refillable cylinder' see PARA 911 note 3 ante.

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 14(2). See also note 5 supra.

9 Ibid reg 14(3). See also note 5 supra.

10 Ibid reg 14(4). See also note 5 supra.

11 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

12 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 14(5). See also note 5 supra.

13 For the meaning of 'distribution main' see PARA 911 note 3 ante.

14 For the meaning of 'transporter' see PARA 921 note 3 ante.

15 For these purposes, 'supplier' in relation to gas means (1) a person who supplies gas to any premises through a primary meter; or (2) a person who provides a supply of gas to a consumer by means of the filling or refilling of a storage container designed to be filled or refilled with gas at the place where it is connected for use whether or not such container is or remains the property of the supplier; or (3) a person who provides gas in refillable cylinders for use by a consumer whether or not such cylinders are filled or refilled directly by that person and whether or not such cylinders are or remain the property of that person, but a retailer is not to be deemed to be a supplier when he sells a brand of gas other than his own: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1).

16 Ibid reg 14(6). See also note 5 supra.

17 Ibid reg 14(7). See also note 5 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/924. Emergency notices on or near meters.

924. Emergency notices on or near meters.

No person must supply gas¹ through a primary meter² installed after 31 October 1998³ or for the first time supply gas through an existing primary meter after that date unless he ensures that a suitably worded notice in permanent form is prominently displayed on or near the meter indicating the procedure to be followed in the event of an escape of gas⁴. Where a meter is installed or relocated in any premises in either case at a distance of more than 2 metres from, or out of sight of, the nearest upstream emergency control⁵ in the premises, no person must supply or provide gas for the first time through that meter unless he ensures that a suitably worded notice in permanent form is prominently displayed on or near the meter indicating the position of that control⁶.

1 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante; and for the meaning of references to a person supplying gas see PARA 919 note 7 ante.

2 For the meaning of 'primary meter' see PARA 919 note 5 ante.

3 I.e. after the date when the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), came into force: see reg 1.

4 Ibid reg 15(1). As to the application of reg 15 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. No person is, however, to be guilty of an offence by reason of contravention of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 reg 15 in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

5 For the meaning of 'emergency control' see PARA 911 note 3 ante.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 15(2). See also note 4 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/925. Primary meters.

925. Primary meters.

No person must install a prepayment meter as a primary meter¹ through which gas² passes to a secondary meter³.

Any person:

1755 (1) who first provides gas through any service pipe⁴ or service pipework⁵ after 31 October 1998⁶ to more than one primary meter; or

1756 (2) who subsequently makes any modification which affects the number of primary meters so provided,

must ensure that a notice in permanent form is prominently displayed on or near each primary meter indicating that more than one primary meter is provided with gas through that service pipe or service pipework⁷.

Where a primary meter is removed, the person who last supplied gas⁸ through the meter before removal must:

1757 (a) where the meter is not forthwith reinstalled or replaced by another meter:
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209. (i) close any service valve⁹ which controlled the supply of gas to that meter and did not control the supply of gas to any other primary meter; and

210. (ii) seal the outlet of the emergency control¹⁰ with an appropriate fitting¹¹; and

211. (iii) clearly mark any live gas pipe in the premises in which the meter was installed to the effect that the pipe contains gas; and

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1758 (b) where the meter has not been reinstalled or replaced by another meter before the expiry of the period of 12 months beginning with the date of removal of the meter and there is no such service valve as is mentioned in head (a)(i) above, ensure that the service pipe or service pipework for those premises is disconnected as near as is reasonably practicable to the main or storage vessel and that any part of the pipe or pipework which is not removed is sealed at both ends with the appropriate fitting¹².

Where a person proposes to remove a primary meter he must give sufficient notice of it to the person supplying gas through the meter to enable him to comply with heads (a) and (b) above¹³.

1 For the meaning of 'primary meter' see PARA 919 note 5 ante.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 16(1). 'Secondary meter' means a meter, other than a primary meter, for ascertaining the quantity of gas provided by a person for use by another person: reg 11. As to the application of reg 16 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 For the meaning of 'service pipe' see PARA 911 note 3 ante.

5 For the meaning of 'service pipework' see PARA 911 note 5 ante.

6 The date when the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), came into force: see reg 1.

7 Ibid reg 16(2). See also note 3 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 16(2) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

8 For the meaning of references to persons supplying gas see PARA 919 note 7 ante.

9 For the meaning of 'service valve' see PARA 921 note 3 ante.

10 For the meaning of 'emergency control' see PARA 911 note 3 ante.

11 For the meaning of 'appropriate fitting' see PARA 916 note 5 ante.

12 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 16(3). See also note 3 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 16(3) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

13 Ibid reg 16(4). See also note 3 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (C) Meters and Regulators/926. Secondary meters.

926. Secondary meters.

Any person supplying or permitting the supply of gas¹ through a primary meter² to a secondary meter³ must ensure that a line diagram in permanent form is prominently displayed on or near the primary meter or gas storage vessel⁴ and on or near all emergency controls⁵ connected to the primary meter showing the configuration of all meters, installation pipework⁶ and emergency controls⁷. Any person who changes the configuration of any meter, installation pipework or emergency control so that the accuracy of that line diagram is affected must ensure that the line diagram is amended so as to show the altered configuration⁸.

1 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante; and for the meaning of references to a person supplying gas see PARA 919 note 7 ante.

2 For the meaning of 'primary meter' see PARA 919 note 5 ante.

3 For the meaning of 'secondary meter' see PARA 925 note 3 ante.

4 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

5 For the meaning of 'emergency control' see PARA 911 note 3 ante.

6 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

7 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 17(1). As to the application of reg 17 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. No person is, however, to be guilty of an offence by reason of contravention of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 17(1) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

8 Ibid reg 17(2).

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/927. Safe use of pipes.

(D) INSTALLATION PIPEWORK

927. Safe use of pipes.

No person must install any installation pipework¹ in any position in which it cannot be used with safety having regard to the position of other pipes, pipe supports, drains, sewers, cables, conduits and electrical apparatus and to any parts of the structure of any premises in which it is installed which might affect its safe use².

Any person who connects any installation pipework to a primary meter³ must, in any case where electrical equipotential bonding may be necessary, inform the responsible person⁴ that such bonding should be carried out by a competent person⁵.

1 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 18(1). As to the application of reg 18 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 For the meaning of 'primary meter' see PARA 919 note 5 ante.

4 'The responsible person', in relation to any premises, means the occupier of the premises or, where there is no occupier or the occupier is away, the owner of the premises or any person with authority for the time being to take appropriate action in relation to any gas fitting therein: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1). For the meaning of 'gas fitting' see PARA 911 note 3 ante.

5 Ibid reg 18(2).

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/928. Enclosed pipes.

928. Enclosed pipes.

No person must:

- 1759 (1) install any part of any installation pipework¹ in a wall or a floor or standing of solid construction unless it is so constructed and installed as to be protected against failure caused by the movement of the wall, the floor or the standing as the case may be²;
- 1760 (2) install any installation pipework so as to pass through a wall or a floor or standing of solid construction, whether or not it contains any cavity, from one side to the other unless:
- 141
 - 212. (a) any part of the pipe within such wall, floor or standing as the case may be takes the shortest practicable route; and
 - 213. (b) adequate means are provided to prevent, so far as is reasonably practicable, any escape of gas³ from the pipework passing through the wall, floor or standing from entering any cavity in the wall, floor or standing⁴;
- 142
 - 1761 (3) install any part of any installation pipework in the cavity of a cavity wall unless the pipe is to pass through the wall from one side to the other⁵; but this does not apply to the installation of installation pipework connected to a living flame effect gas fire⁶ provided that the pipework in the cavity is as short as is reasonably practicable, is enclosed in a gas tight sleeve and sealed at the joint at which the pipework enters the fire⁷;
 - 1762 (4) install any installation pipework or any service pipework⁸ under the foundations of a building or in the ground under the base of a wall or footings unless adequate steps are taken to prevent damage to the installation pipework or service pipework in the event of the movement of those structures or the ground⁹;
 - 1763 (5) where any installation pipework is not itself contained in a ventilated duct, install any installation pipework in any shaft, duct or void which is not adequately ventilated¹⁰.

1 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 19(1). As to the application of reg 19 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 19(2). See also note 2 supra.

5 Ibid reg 19(3). See also note 2 supra.

6 For this purpose, a 'living flame effect gas fire' means a gas fire (1) designed to simulate the effect of a solid fuel fire; (2) designed to operate with a fanned flue system; and (3) installed within the inner leaf of a cavity wall: *ibid* reg 4. For the meaning of 'flue' see *PARA 913* note 19 *ante*.

7 *Ibid* reg 19(4).

8 For the meaning of 'service pipework' see *PARA 911* note 5 *ante*.

9 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 19(5). See also note 2 *supra*.

10 *Ibid* reg 19(6). See also note 2 *supra*.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see *LOCAL GOVERNMENT* vol 69 (2009) *PARA 733*.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/929. Protection of buildings.

929. Protection of buildings.

No person must install any installation pipework¹ in a way which would impair the structure of a building or impair the fire resistance of any part of its structure².

¹ For the meaning of 'installation pipework' see PARA 911 note 5 ante.

² Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 20. As to the application of reg 20 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/930. Clogging precautions.

930. Clogging precautions.

No person must install any installation pipework¹ in which deposition of liquid or solid matter is likely to occur unless a suitable vessel for the reception of any deposit which may form is fixed to the pipe in a conspicuous and readily accessible position and safe means are provided for the removal of the deposit².

1 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 21. As to the application of reg 21 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/931. Testing and purging of pipes.

931. Testing and purging of pipes.

Where a person carries out work in relation to any installation pipework¹ which might affect the gas tightness of any part of it, he must immediately thereafter ensure that:

- 1764 (1) that part is adequately tested to verify that it is gas tight and examined to verify that it has been installed in accordance with the relevant regulations²; and
- 1765 (2) after such testing and examination, any necessary protective coating is applied to the joints of that part³.

Where gas⁴ is being supplied to any premises in which any installation pipework is installed and a person carries out work in relation to the pipework, he must also ensure that:

- 1766 (a) immediately after complying with the provisions of heads (1) and (2) above, purging is carried out throughout all installation pipework through which gas can then flow so as to remove safely all air and gas other than the gas to be supplied;
- 1767 (b) immediately after such purging, if the pipework is not to be put into immediate use, it is sealed off at every outlet with the appropriate fitting⁵;
- 1768 (c) if such purging has been carried out through a loosened connection, the connection is retested for gas tightness after it has been retightened; and
- 1769 (d) every seal fitted after such purging is tested for gas tightness⁶.

Where gas is not being supplied to any premises in which any installation pipework is installed:

- 1770 (i) no person must permit gas to pass into the installation pipework unless he has caused such purging, testing and other work as is specified in heads (a) to (d) above to be carried out;
- 1771 (ii) a person who provides a gas supply⁷ to those premises must, unless he complies with head (i) above, ensure that the supply is sealed off with an appropriate fitting⁸.

1 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

2 ie in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante, PARA 932 et seq post.

3 Ibid reg 22(1). As to the application of reg 22 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

5 For the meaning of 'appropriate fitting' see PARA 916 note 5 ante.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 22(2). See also note 3 supra.

7 For the meaning of references to a person who supplies gas see PARA 919 note 7 ante.

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 22(3). See also note 3 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/932. Marking of pipes.

932. Marking of pipes.

Any person installing, elsewhere than in any premises or part of premises used only as a dwelling or for living accommodation, a part of any installation pipework¹ which is accessible to inspection must permanently mark that part in such a manner that it is readily recognisable as part of a pipe for conveying gas². The responsible person³ for the premises in which any such part is situated must ensure that the part continues to be so recognisable so long as it is used for conveying gas⁴.

1 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 23(1). As to the application of reg 23 see PARA 911 ante; and as to exemptions see PARA 912 ante. For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 For the meaning of 'the responsible person' see PARA 927 note 4 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 23(2). See also note 2 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (D) Installation Pipework/933. Large consumers.

933. Large consumers.

Where the service pipe¹ to any building having two or more floors to which gas is supplied or, whether or not it has more than one floor, a floor having areas with a separate supply of gas has an internal diameter of 50 millimetres or more, no person must install any incoming installation pipework² supplying gas³ to any of those floors or areas, as the case may be, unless:

1772 (1) a valve is installed in the pipe in a conspicuous and readily accessible position; and

1773 (2) a line diagram in permanent form is attached to the building in a readily accessible position as near as practicable to either the primary meter⁴ (or, where there is no primary meter, the emergency control⁵), or the gas storage vessel⁶, indicating the position of all installation pipework of internal diameter of 25 millimetres or more, meters, emergency controls, valves and pressure test points⁷ of the gas supply systems in the building⁸.

The above provision applies to service pipework⁹ as it applies to a service pipe except that the reference therein to '50 millimetres or more' is to be a reference to '30 millimetres or more'¹⁰.

1 For the meaning of 'service pipe' see PARA 911 note 3 ante.

2 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

3 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

4 For the meaning of 'primary meter' see PARA 919 note 5 ante.

5 For the meaning of 'emergency control' see PARA 911 note 3 ante.

6 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

7 For this purpose, 'pressure test point' means a gas fitting to which a pressure gauge can be connected: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 24(3).

8 Ibid reg 24(1). As to the application of reg 24 see PARA 911 ante; and as to exemptions see PARA 912 ante. For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

9 For the meaning of 'service pipework' see PARA 911 note 5 ante.

10 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 24(2). See also note 8 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/934. Safety precautions; in general.

(E) GAS APPLIANCES

934. Safety precautions; in general.

No person must:

- 1774 (1) install a gas appliance¹ unless it can be used without constituting a danger to any person²;
- 1775 (2) connect a flued domestic gas appliance to the gas³ supply system except by a permanently fixed rigid pipe⁴;
- 1776 (3) install a used gas appliance without verifying that it is in a safe condition for further use⁵;
- 1777 (4) install a gas appliance which does not comply with any enactment imposing a prohibition or restriction on the supply of such an appliance on grounds of safety⁶;
- 1778 (5) install a gas appliance without there being at the inlet to it means of shutting off the supply of gas to the appliance unless the provision of such means is not reasonably practicable⁷.

No person carrying out the installation of a gas appliance must leave it connected to the gas supply unless either the appliance can be used safely or the appliance is sealed off from the gas supply with an appropriate fitting⁸.

No person must carry out any work in relation to a gas appliance which bears an indication that it conforms to a type approved by any person as complying with safety standards in such a manner that the appliance ceases to comply with those standards⁹; and no person carrying out work in relation to a gas appliance which bears an indication that it so conforms must remove or deface the indication¹⁰.

Where a person performs work on a gas appliance he must immediately thereafter examine:

- 1779 (a) the effectiveness of any flue¹¹;
- 1780 (b) the supply of combustion air;
- 1781 (c) its operating pressure¹² or heat input or, where necessary, both;
- 1782 (d) its operation so as to ensure its safe functioning,

and forthwith take all reasonably practicable steps to notify any defect to the responsible person¹³ and, where different, the owner of the premises in which the appliance is situated or, where neither is reasonably practicable, in the case of an appliance supplied with liquefied petroleum gas, the supplier¹⁴ of gas to the appliance, or, in any other case, the transporter¹⁵. This does not, however, apply in respect of the direct disconnection of the gas supply of a gas appliance or the purging of gas or air from an appliance or its associated pipework or fittings in any case where that purging does not adversely affect the safety of that appliance, pipe or fitting¹⁶.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 26(1). As to the application of reg 26 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 26(2). See also note 2 supra.

5 Ibid reg 26(3). See also note 2 supra.

6 Ibid reg 26(4). See also note 2 supra.

7 Ibid reg 26(6). See also note 2 supra.

8 Ibid reg 26(5). See also note 2 supra. For the meaning of 'appropriate fitting' see PARA 916 note 5 ante.

9 Ibid reg 26(7). See also note 2 supra.

10 Ibid reg 26(8). See also note 2 supra.

11 For the meaning of 'flue' see PARA 913 note 19 ante.

12 For these purposes, 'operating pressure', in relation to a gas appliance, means the pressure of gas at which it is designed to operate: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 25.

13 For the meaning of 'the responsible person' see PARA 927 note 4 ante.

14 For the meaning of 'supplier' see PARA 923 note 15 ante; and for the meaning of references to a person supplying gas see PARA 919 note 7 ante.

15 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 26(9). See also note 2 supra. For the meaning of 'transporter' see PARA 921 note 3 ante.

16 Ibid reg 26(10). See also note 2 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/935. Flues.

935. Flues.

No person must:

- 1783 (1) install a gas appliance¹ to any flue² unless the flue is suitable and in a proper condition for the safe operation of the appliance³;
- 1784 (2) install a flue pipe⁴ so that it enters a brick or masonry chimney in such a way that the seal between the flue pipe and the chimney cannot be inspected⁵;
- 1785 (3) connect a gas appliance to a flue which is surrounded by an enclosure unless that enclosure is so sealed that any spillage of products of combustion cannot pass from the enclosure to any room or internal space other than the room or internal space in which the appliance is installed⁶;
- 1786 (4) install a power operated flue system for a gas appliance unless it safely prevents the operation of the appliance if the draught fails⁷;
- 1787 (5) install a flue other than in a safe position⁸.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 For the meaning of 'flue' see PARA 913 note 19 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 27(1). As to the application of reg 27 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 For these purposes, 'flue pipe' means a pipe forming a flue but does not include a pipe built as a lining into either a chimney or a gas appliance ventilation duct: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 25.

5 Ibid reg 27(2). See also note 2 supra.

6 Ibid reg 27(3). See also note 2 supra.

7 Ibid reg 27(4). See also note 2 supra.

8 Ibid reg 27(5). See also note 2 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 27(5) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/936. Access to appliance and to manufacturer's instructions.

936. Access to appliance and to manufacturer's instructions.

No person must install a gas appliance¹ except in such a manner that it is readily accessible for operation, inspection and maintenance².

Any person who installs a gas appliance must leave for the use of the owner or occupier of the premises in which the appliance is installed all instructions provided by the manufacturer accompanying the appliance³.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 28. As to the application of regs 28, 29 see PARA 911 ante; and as to exemptions see PARA 912 ante. As to maintenance see PARAS 942-943 post.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 29. See also note 2 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/937. Room-sealed appliances.

937. Room-sealed appliances.

No person must:

- 1788 (1) install a gas appliance¹ in a room used or intended to be used² as a bathroom or a shower room unless it is a room-sealed appliance³;
- 1789 (2) install a gas fire, other gas space heater or a gas water heater⁴ of more than 14 kilowatt gross heat input in a room used or intended to be used as sleeping accommodation unless the appliance is a room-sealed appliance⁵;
- 1790 (3) install a gas fire, other gas space heater or a gas water heater of 14 kilowatt gross heat input or less in a room used or intended to be used⁶ as sleeping accommodation and no person must install an instantaneous water heater unless, in each case:

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- 214. (a) it is a room-sealed appliance; or
- 215. (b) it incorporates a safety control designed to shut down the appliance before there is a build up of a dangerous quantity of the products of combustion in the room concerned⁷.

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1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 The references in the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 30(1), (3) (see heads (1), (3) in the text) to a room used or intended to be used for the purpose therein referred to includes a reference to (1) a cupboard or compartment within such a room; or (2) a cupboard, compartment or space adjacent to such a room if there is an air vent from the cupboard, compartment or space into such a room: reg 30(4).

3 Ibid reg 30(1). As to the application of reg 30 see PARA 911 ante; and as to exemptions see PARA 912 ante.

'Room-sealed appliance' means an appliance whose combustion system is sealed from the room in which the appliance is located and which obtains air for combustion from a ventilated uninhabited space within the premises or directly from the open air outside the premises and which vents the products of combustion directly to open air outside the premises: reg 2(1).

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. See, however, note 5 infra.

4 'Gas water heater' includes a gas fired central heating boiler: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1).

5 Ibid reg 30(2). See also note 3 supra. No person is, however, to be guilty of an offence by reason of contravention of reg 30 (in so far as it relates to the installation of a gas fire, other gas space heater or a gas water heater of more than 14 kilowatt gross heat input) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

6 See note 2 supra.

7 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 30(3). See also note 3 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/938. Suspended appliances.

938. Suspended appliances.

No person must install a suspended gas appliance¹ unless the installation pipework² to which it is connected is so constructed and installed as to be capable of safely supporting the weight imposed on it and the appliance is designed to be so supported³.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 31. As to the application of reg 31 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/939. Flue dampers.

939. Flue dampers.

Any person who installs an automatic damper to serve a gas appliance¹ must:

- 1791 (1) ensure that the damper is so interlocked with the gas² supply to the burner that burner operation is prevented in the event of failure of the damper when not in the open position; and
- 1792 (2) immediately after installation examine the appliance and the damper to verify that they can be used together safely without constituting a danger to any person³.

No person must install a manually operated damper to serve a domestic gas appliance⁴; and no person must install a domestic gas appliance to a flue⁵ which incorporates a manually operated damper unless the damper is permanently fixed in the open position⁶.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 32(1). As to the application of reg 32 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 32(2). See also note 3 supra.

5 For the meaning of 'flue' see PARA 913 note 19 supra.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 32(3). See also note 3 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/940. Testing of appliances.

940. Testing of appliances.

Where a person installs a gas appliance¹ at a time when gas² is being supplied to the premises in which the appliance is installed, he must immediately thereafter test its connection to the installation pipework³ to verify that it is gas tight and examine the appliance and the gas fittings⁴ and other works for the supply of gas and any flue⁵ or means of ventilation to be used in connection with the appliance for the purpose of ascertaining whether:

- 1793 (1) the appliance has been installed in accordance with the relevant regulations⁶;
- 1794 (2) the operating pressure⁷ is as recommended by the manufacturer;
- 1795 (3) the appliance has been installed with due regard to any manufacturer's instructions provided to accompany the appliance; and
- 1796 (4) all gas safety controls are in proper working order⁸.

Where a person carries out such testing and examination in relation to a gas appliance and adjustments are necessary to ensure compliance with the requirements specified in heads (1) to (4) above, he must either carry out those adjustments or disconnect the appliance from the gas supply or seal off the appliance from the gas supply with an appropriate fitting⁹.

Where gas is not being supplied to any premises in which any gas appliance is installed:

- 1797 (a) no person must subsequently permit gas to pass into the appliance unless he has caused such testing, examination and adjustment as is specified above to be carried out; and
- 1798 (b) a person who subsequently provides a gas supply¹⁰ to those premises must, unless he complies with head (a) above, ensure that the appliance is sealed off from the gas supply with an appropriate fitting¹¹.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

3 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

4 For the meaning of 'gas fittings' see PARA 911 note 3 ante.

5 For the meaning of 'flue' see PARA 913 note 19 ante.

6 Ie in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante; the text and notes 1-5 supra, 7-11 infra; and PARA 941 et seq post.

7 For the meaning of 'operating pressure' see PARA 934 note 1 ante.

8 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 33(1). As to the application of reg 33 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009))

PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. No person is, however, to be guilty of an offence by reason of contravention of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 33(1) in any case in which he can show that he took all reasonable steps to prevent that contravention: reg 39.

9 Ibid reg 33(2). See also note 8 supra. For the meaning of 'appropriate fitting' see PARA 916 note 5 ante.

10 For the meaning of references to a person supplying gas see PARA 919 note 7 ante.

11 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 33(3). See also note 8 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (E) Gas Appliances/941. Prohibition on use of unsafe appliances.

941. Prohibition on use of unsafe appliances.

The responsible person¹ for any premises must not use a gas appliance² or permit a gas appliance to be used if at any time he knows or has reason to suspect that it cannot be used without constituting a danger to any person³.

Any person engaged in carrying out any work⁴ in relation to a gas main, service pipe⁵, service pipework⁶, gas storage vessel⁷ or gas fitting⁸ who knows or has reason to suspect that any gas appliance cannot be used without constituting a danger to any person must forthwith take all reasonably practicable steps to inform the responsible person for the premises in which the appliance is situated and, where different, the owner of the appliance or, where neither is reasonably practicable, in the case of an appliance supplied with liquefied petroleum gas, the supplier⁹ of gas to the appliance, or, in any other case, the transporter¹⁰.

1 For the purposes of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 34(1) (see the text and notes 2-3 infra), the responsible person means the occupier of the premises, the owner of the premises and any person with authority for the time being to take appropriate action in relation to any gas fitting therein: reg 34(2). For the meaning of 'the responsible person' generally see PARA 927 note 4 ante.

2 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

3 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 34(1). As to the application of reg 34 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 For this purposes, the expression 'work' is to be construed as if, in the definition of 'work' in the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 2(1) (see PARA 913 note 1 ante), every reference to a gas fitting were a reference to a gas main, service pipe, service pipework, gas storage vessel or gas fitting: reg 34(4).

5 For the meaning of 'service pipe' see PARA 911 note 3 ante.

6 For the meaning of 'service pipework' see PARA 911 note 5 ante.

7 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

8 For the meaning of 'gas fitting' see PARA 911 note 3 ante.

9 For the meaning of 'supplier' see PARA 923 note 15 ante.

10 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 34(3). See also note 3 supra.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (F) Maintenance/942. Duties of employers and self-employed persons.

(F) MAINTENANCE

942. Duties of employers and self-employed persons.

It is the duty of every employer or self-employed person to ensure that any gas appliance¹, installation pipework² or flue³ installed at any place of work under his control is maintained in a safe condition so as to prevent risk of injury to any person⁴.

No person is, however, to be guilty of an offence by reason of contravention of the above requirement in any case in which he can show that he took all reasonable steps to prevent that contravention⁵.

1 For the meaning of 'gas appliance' see PARA 911 note 6 ante.

2 For the meaning of 'installation pipework' see PARA 911 note 5 ante.

3 For the meaning of 'flue' see PARA 913 note 19 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 35. As to the application of reg 35 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. See, however, the text and note 5 infra.

5 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 39.

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911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (F) Maintenance/943. Duties of landlords.

943. Duties of landlords.

Every landlord¹ must ensure that there is maintained in a safe condition:

- 1799 (1) any relevant gas fitting²; and
- 1800 (2) any flue³ which serves any relevant gas fitting,

so as to prevent the risk of injury to any person in lawful occupation of relevant premises⁴. Without prejudice to the generality of that duty, a landlord must:

- 1801 (a) ensure that each appliance and flue to which that duty extends is checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety, whether such check was made pursuant to the relevant regulations⁵ or not;
- 1802 (b) in the case of a lease commencing after 31 October 1998⁶, ensure that each appliance and flue to which the duty extends has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or flue has been installed, whichever is later; and
- 1803 (c) ensure that a record in respect of any appliance or flue so checked is made and retained for a period of two years from the date of that check; and that record must include the following information:

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- 216. (i) the date on which the appliance or flue was checked;
- 217. (ii) the address of the premises at which the appliance or flue is installed;
- 218. (iii) the name and address of the landlord of the premises, or, where appropriate, his agent, at which the appliance or flue is installed;
- 219. (iv) a description of and the location of each appliance or flue checked;
- 220. (v) any defect identified;
- 221. (vi) any remedial action taken;
- 222. (vii) confirmation that the check undertaken complies with the prescribed requirements⁷;
- 223. (viii) the name and signature of the individual carrying out the check; and
- 224. (ix) the registration number with which that individual, or his employer, is registered with a body approved by the Health and Safety Executive⁸ for the relevant statutory⁹ purposes¹⁰.

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The record referred to in head (c) above, or a copy of it, must be made available upon request and upon reasonable notice for the inspection of any person in lawful occupation of relevant premises who may be affected by the use or operation of any appliance to which the record relates¹¹. Notwithstanding that requirement, every landlord must ensure that:

- 1804 (A) a copy of the record made pursuant to the requirements of head (c) above is given to each existing tenant¹² of premises to which the record relates within 28 days of the date of the check; and
- 1805 (B) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises; except that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises¹³.

Where, however, there is no relevant gas appliance in any room occupied or to be occupied by the tenant in relevant premises, the landlord may, instead of ensuring that a copy of the record is given to the tenant, ensure that there is displayed in a prominent position in the premises, from such time as a copy would have been required¹⁴ to have been given to the tenant, a copy of the record with a statement indorsed on it that the tenant is entitled to have his own copy of the record on request to the landlord at an address specified in the statement; and on any such request being made, the landlord must give to the tenant a copy of the record as soon as is practicable¹⁵.

Every landlord must ensure that any work¹⁶ in relation to a relevant gas fitting or any check of a gas appliance or flue carried out pursuant to heads (1) to (2) and (a) to (c) above is carried out by, or by an employee of, a member of a class of persons approved¹⁷ for the time being by the Executive¹⁸. A safety check carried out pursuant to heads (a) to (c) above must include, but is not to be limited to, an examination of certain prescribed¹⁹ matters²⁰.

Every landlord must also ensure that in any room occupied or to be occupied as sleeping accommodation by a tenant in relevant premises there is not fitted a relevant gas fitting of a type the installation of which would contravene the relevant regulation²¹ relating to room-sealed appliances²²; but this does not apply in relation to a room which since before 31 October 1998 has been occupied or intended to be occupied as sleeping accommodation²³.

Nothing done or agreed to be done by a tenant of relevant premises or by any other person in lawful occupation of them in relation to the maintenance or checking of a relevant gas fitting or flue in the premises, other than one in part of premises occupied for non-residential purposes, is to be taken into account in determining whether a landlord has discharged his obligations under the above provisions, except in so far as it relates to access to that gas fitting or flue for the purposes of such maintenance or checking²⁴. No person is, however, to be guilty of an offence by reason of contravention of the above provisions in any case in which he can show that he took all reasonable steps to prevent that contravention²⁵.

1 For these purposes, 'landlord' means (1) where the relevant premises are occupied under a lease, the person for the time being entitled to the reversion expectant on that lease or who, apart from any statutory tenancy, would be entitled to possession of the premises; and (2) where the relevant premises are occupied under a licence, the licensor, save that where the licensor is himself a tenant in respect of those premises, it means the person referred to in head (1) supra: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 36(1). 'Lease' means (a) a lease for a term of less than seven years; and (b) a tenancy for a periodic term; and (c) any statutory tenancy arising out of a lease or tenancy referred to in head (a) or (b) supra; and in determining whether a lease is one which falls within head (a) supra: (i) any part of the term which falls before the grant must be left out of account and the lease is to be treated as a lease for a term commencing with the grant; (ii) a lease which is determinable at the option of the lessor before the expiration of seven years from the commencement of the term is to be treated as a lease for a term of less than seven years; (iii) a lease (other than a lease to which head (b) supra applies) is not to be treated as a lease for a term of less than seven years if it confers on the lessee an option for renewal for a term which, together with the original term, amounts to seven years or more; and (iv) a 'lease' does not include a mortgage term: reg 2(1).

'Relevant premises' means premises or any part of premises occupied, whether exclusively or not, for residential purposes (such occupation being in consideration of money or money's worth) under a lease or a licence; and 'statutory tenancy' means a statutory tenancy within the meaning of the Rent Act 1977 and the Rent (Agriculture) Act 1976 (see LANDLORD AND TENANT VOL 27(2) (2006 Reissue) PARAS 831 et seq, 1146-1149): Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 36(1).

2 'Relevant gas fitting' means (1) any gas appliance (other than an appliance which the tenant is entitled to remove from the relevant premises) or any installation pipework installed in any relevant premises; and (2) any gas appliance or installation pipework which, directly or indirectly, serves the relevant premises and which either (a) is installed in any part of premises in which the landlord has an estate or interest; or (b) is owned by the landlord or is under his control; except that it does not include any gas appliance or installation pipework exclusively used in a part of premises occupied for non-residential purposes: *ibid* reg 36(1). For the meanings of 'installation pipework' and 'gas appliance' see PARA 911 notes 5-6 ante.

3 For the meaning of 'flue' see PARA 913 note 19 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 36(2). As to the application of reg 36 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. See, however, the text and note 25 *infra*.

For a case where a fine of £1,500 was imposed on the landlord of a property where a young woman died of carbon monoxide poisoning caused by the use of a defective gas fire see *R v Beedie* [1998] QB 356, CA.

5 *Ie* pursuant to the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended): see PARA 911 et seq ante, PARAS 944-945 post.

6 *Ie* the date when the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), came into force: see reg 1.

7 *Ie* the requirements of *ibid* reg 36(9): see the text and notes 19-20 *infra*.

8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

9 *Ie* for the purposes of the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3(3): see PARA 911 ante.

10 *Ibid* reg 36(3). See also note 4 *supra*.

11 *Ibid* reg 36(5). See also note 4 *supra*.

12 'Tenant' means a person who occupies relevant premises being (1) where the relevant premises are so occupied under a lease, the person for the time being entitled to the term of that lease; and (2) where the relevant premises are so occupied under a licence, the licensee: *ibid* reg 36(1).

13 *Ibid* reg 36(6). See also note 4 *supra*. A copy of the record given to a tenant pursuant to reg 36(6)(b) (see head (b) in the text) need not contain a copy of the signature of the individual carrying out the check if the copy of the record contains a statement that another copy containing a copy of such signature is available for inspection by the tenant on request to the landlord at an address specified in the statement, and on any such request being made the landlord must make such a copy available for inspection as soon as is practicable: reg 36(8).

14 *Ie* under *ibid* reg 36(6).

15 *Ibid* reg 36(7). See also note 4 *supra*.

16 For the meaning of 'work' in relation to a gas fitting see PARA 913 note 1 ante.

17 See note 9 *supra*.

18 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 36(4). See also note 4 *supra*.

19 *Ie* the matters referred to in *ibid* reg 26(9)(a)-(d): see PARA 934 ante.

20 *Ibid* reg 36(9). See also note 4 *supra*.

21 *Ie* *ibid* reg 30(2) or (3): see PARA 937 ante.

22 *Ibid* reg 36(11). See also note 4 *supra*.

23 Ibid reg 36(12). See also note 4 supra.

24 Ibid reg 36(10).

25 Ibid reg 39.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (G) Miscellaneous Matters/944. Escape of gas.

(G) MISCELLANEOUS MATTERS

944. Escape of gas.

Where any gas¹ escapes² from any pipe of a gas supplier³ or from any pipe, other gas fitting⁴ or gas storage vessel⁵ used by a person supplied with gas by a gas supplier, the supplier of the gas must, within 12 hours of being so informed of the escape, prevent the gas escaping, whether by cutting off the supply of gas to any premises or otherwise⁶. In any proceedings for an offence under the above provision, however, it is a defence for the supplier of the gas to prove that it was not reasonably practicable for him effectually to prevent the gas from escaping within that period of 12 hours, and that he did effectually prevent the escape of gas as soon as it was reasonably practicable for him to do so⁷.

If the responsible person⁸ for any premises knows or has reason to suspect that gas is escaping into those premises, he must immediately take all reasonable steps to cause the supply of gas to be shut off at such place as may be necessary to prevent further escape of gas⁹. If gas continues to escape into those premises after the supply of gas has been shut off or when a smell of gas persists, the responsible person for the premises discovering such escape or smell must immediately give notice of the escape or smell to the supplier of the gas¹⁰.

Where an escape of gas has been stopped by shutting off the supply, no person must cause or permit the supply to be reopened, other than in the course of repair, until all necessary steps have been taken to prevent a recurrence of such escape¹¹.

Nothing in the above provisions applies to an escape of gas from a network¹² or from a gas fitting supplied with gas from a network¹³.

1 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

2 For these purposes, any reference to an escape of gas from a gas fitting includes a reference to an escape or emission of carbon monoxide gas resulting from incomplete combustion of gas in a gas fitting, but, to the extent that the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37 (see the text and notes 2-13 infra) relates to such an escape or emission of carbon monoxide gas, the requirements imposed upon a supplier by reg 37(1) (see the text and notes 2-6 infra) are, where the escape or emission is notified to the supplier by the person to whom the gas has been supplied, limited to advising that person of the immediate action to be taken to prevent such escape or emission and the need for the examination and, where necessary, repair of the fitting by a competent person: reg 37(8).

3 For the meaning of 'supplier' see PARA 923 note 15 ante. The facts of fracture of a pipe and a consequent gas escape will not necessarily raise a prima facie case of negligence against a supplier which it must rebut, but they may do so in some circumstances: see *Lloyde v West Midlands Gas Board* [1971] 2 All ER 1240, [1971] 1 WLR 749, CA.

4 For the meaning of 'gas fitting' see PARA 911 note 3 ante.

5 For the meaning of 'gas storage vessel' see PARA 911 note 3 ante.

6 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(1). Nothing in the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(1) prevents the supplier of the gas appointing another person to act on his behalf to prevent an escape of gas supplied by that supplier: reg 37(6). As to the application of reg 37 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. See, however, the text and note 7 infra.

7 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(5). Nothing in reg 37(5) prevents the supplier of the gas appointing another person to act on his behalf to prevent an escape of gas supplied by that supplier: reg 37(6).

8 For the meaning of 'the responsible person' see PARA 927 note 4 ante.

9 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(2). See also note 6 supra.

10 Ibid reg 37(3). See also note 6 supra.

11 Ibid reg 37(4). See also note 6 supra.

12 Ie a network within the meaning of the Gas Safety (Management) Regulations 1996, SI 1996/551, reg 2: see PARA 903 note 2 ante.

13 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 37(7). As to such escapes of gas see PARA 907 ante.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/D. SAFE INSTALLATION AND USE OF GAS FITTINGS AND APPLIANCES/ (G) Miscellaneous Matters/945. Use of antifluatuators and valves.

945. Use of antifluatuators and valves.

Where a consumer uses gas¹ for the purpose of working or supplying plant which is liable to produce pressure fluctuation in the gas supply such as to cause any danger to other consumers, he must comply with such directions² as may be given to him by the transporter³ of the gas to prevent such danger⁴.

Where a consumer intends to use for or in connection with the consumption of gas any gaseous substance⁵ he must:

- 1806 (1) give to the transporter of the gas at least 14 days' notice in writing of that intention; and
- 1807 (2) during such use comply with such directions as the transporter may have given to him to prevent the admission of such substance into the gas supply⁶.

Where a direction under the above provisions⁷ requires the provision of any device, the consumer must ensure that the device is adequately maintained⁸.

1 For the meaning of 'gas' for these purposes see PARA 911 note 3 ante.

2 Any direction given pursuant to the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 38 must be in writing: reg 38(4).

3 For the meaning of 'transporter' see PARA 921 note 3 ante.

4 Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 38(1). As to the application of reg 38 see PARA 911 ante; and as to exemptions see PARA 912 ante.

The Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3), (4)(a), (5)(b), (6)(b), 82(3)(a), Sch 3 paras 1(1)-(3), 12, 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

5 For this purpose, 'gaseous substance' includes compressed air but does not include any gaseous substance supplied by the transporter: Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 38(2).

6 Ibid reg 38(2). See also note 4 supra.

7 Ie under ibid reg 38(1) or (2).

8 Ibid reg 38(3). See also note 4 supra.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(v) Gas Standards and Safety/E. PIPELINE SAFETY/946. General safety requirements.

E. PIPELINE SAFETY

946. General safety requirements.

The Pipelines Safety Regulations 1996¹ prescribe safety requirements for pipelines for the conveyance of gas and other fluids, other than (1) drains or sewers; (2) pipes or systems of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; or (3) pipes used in the control and monitoring of any plant²; and excluding certain other prescribed descriptions of pipes³. For the purposes of those regulations, a pipeline for supplying gas to premises is deemed not to include anything downstream of an emergency control⁴.

Part II of the 1996 Regulations⁵ sets out general safety requirements with regard to pipelines and Part III⁶ of those regulations deals with major accident hazard pipelines⁷. Contravention of the regulations is an offence⁸; but in any proceedings for such an offence, it is a defence for the person charged to prove that the commission of the offence was due to the act or default of another person not being one of his employees and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁹.

The 1996 Regulations are discussed in detail elsewhere in this work¹⁰.

1 Ie the Pipelines Safety Regulations 1996, SI 1996/825 (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq.

2 See *ibid* reg 3(1).

3 See *ibid* reg 4(2), Sch 1.

4 *Ibid* reg 3(4). 'Emergency control' means a valve for shutting off the supply of gas in an emergency, being a valve intended for use by a consumer of gas; and 'gas' has the same meaning as it has in the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 802 ante): Pipelines Safety Regulations 1996, SI 1996/825, reg 3(5).

5 Ie *ibid* Pt II (regs 5-17) (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611.

6 Ie *ibid* Pt III (regs 18-27): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 612 et seq.

7 Ie pipelines in which a dangerous fluid is being, or is to be, conveyed: see *ibid* reg 18, Sch 2.

8 The Pipelines Safety Regulations 1996, SI 1996/825 (as amended), are made under the Health and Safety at Work etc Act 1974 ss 15(1), (2), (3)(a), (4)(a), (5)(b), (6)(b), 43(2), (6), 82(3)(a), Sch 3 paras 15(1), 16 (as amended) (powers to make health and safety regulations: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425). As to criminal proceedings for contravention of health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. See, however, the text and note 23 *infra*.

9 Pipelines Safety Regulations 1996, SI 1996/825, reg 28(1). For restrictions on the circumstances in which such a defence may be relied on see reg 28(2), (3); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 630.

10 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq.

UPDATE

911-946 Safe Installation and Use of Gas Fittings and Appliances

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/A. METER TESTING AND STAMPING UNDER THE GAS ACT 1986/947. Prohibition on use of unstamped meters.

(vi) Stamping etc of Gas Meters

A. METER TESTING AND STAMPING UNDER THE GAS ACT 1986

947. Prohibition on use of unstamped meters.

In general¹, no meter must be used for the purpose of ascertaining the quantity of gas supplied through pipes to any person unless it is stamped either by, or on the authority of, a meter examiner appointed under the relevant statutory provisions² or in such other manner as may be authorised by regulations under those provisions³. If any person supplies gas through a meter which has not been so stamped, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴; and where the commission by any person of such an offence is due to the act or default of some other person, that other person is to be guilty of the offence⁵. In any proceedings for such an offence it is a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence⁶.

Nothing in the above provisions, however, restricts the use in Great Britain of any instrument which bears the mark of EEC initial verification⁷ for ascertaining the quantity of gas supplied, provided that the mark remains undefaced otherwise than by reason of fair wear and tear⁸.

1 The Gas Act 1986 s 17(1)-(13) (as substituted and amended) does not have effect in relation to the supply of gas to a person under any agreement providing for the quantity of gas supplied to him to be ascertained by a meter designed for rates of flow which, if measured at a temperature of 15°C and a pressure of 1013.25 millibars, would exceed 1600 cubic metres an hour: s 17(14) (s 17 substituted by the Gas Act 1995 s 10(1), Sch 3 para 13). Regulations under the Gas Act 1986 s 17 (as so substituted) may provide that s 17(14) (as substituted) is to have effect as if for the number of cubic metres an hour which is for the time being applicable for the purposes of that provision there were substituted such lower number of cubic metres an hour as the Gas and Electricity Markets Authority ('GEMA') considers appropriate: s 17(15) (as so substituted; amended by virtue of the Utilities Act 2000 s 3(2)). For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

The Gas Act 1986 s 8B, Sch 2B para 3 (as added and amended) (consumers' duty to keep meters in proper order: see PARA 857 ante) does not apply in relation to certain meters used, in pursuance of such an agreement, for ascertaining the quantity of gas supplied: see Sch 2B para 3(8) (as added and amended); and PARA 857 ante.

2 I.e. appointed under ibid s 17 (as substituted and amended): see PARA 948 post.

3 Ibid s 17(1) (as substituted: see note 1 supra). A meter which is stamped under s 17 (as substituted and amended) and put into use before 30 October 2016 is not a 'relevant instrument' for the purposes of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647 (gas meters used for trade: see PARA 954 et seq post): see reg 3(2).

If the meter which is a 'relevant instrument' is put into use within the meaning of and in accordance with those 2006 Regulations, it is deemed to have been stamped for the purposes of the Gas Act 1986 s 17(1), (11) (as substituted and amended) (Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 28(1), (2)); but this does not apply if the error of measurement of the meter exceeds certain prescribed limits (see reg 28(4)).

A meter to which the Gas (Meters) Regulations 1983, SI 1983/684, reg 3(1)(cc) (as added) applies (certain diaphragm meters: see PARA 949 note 8 post) which is manufactured or repaired in a member state other than the United Kingdom may be stamped by, or on the authority of, a person other than a meter examiner, if that

person is authorised by the Secretary of State for these purposes ('an authorised person'): reg 3A(1) (reg 3A added by SI 1993/1521). An authorised person must not stamp, or authorise the stamping of, any meter unless (1) he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Secretary of State for these purposes; and (2) he has been provided with the requisite documentation relating to that meter: Gas (Meters) Regulations 1983, SI 1983/684, reg 3A(2) (as so added). For these purposes, 'requisite documentation' in relation to any meter means (a) the examination report of an approved body that the meter which is the subject of that report conforms to the standards prescribed in reg 3(1)(a), 3(1)(cc) (as amended); and if requested by an authorised person the results of the tests on which the examination report is based: reg 3A(3) (as so added). A body making an examination report in respect of a meter is an 'approved body' if it is the body in the member state in which the meter has been manufactured or repaired which has responsibility for the metrological control of gas volume meters or is a laboratory which has been accredited in that member state as being a body which conforms with the criteria set out in EN 45001: Gas (Meters) Regulations 1983, SI 1983/684, reg 3A(4) (as so added). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

The Gas (Meters) Regulations 1983, SI 1983/684 (as amended) now have effect by virtue of the Gas Act 1995 s 17(1), Sch 5 para 22. They do not, however, apply to a meter which is a relevant instrument within the meaning of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647 (see PARA 954 post), except that the Gas (Meters) Regulations 1983, SI 1983/684, reg 4 (as amended) (see PARA 949 note 14 post) and (so far as is necessary for the interpretation of that regulation) reg 2 (as amended) do so apply (with modifications in the case of reg 4 (as amended)): see the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 28(5), (6).

4 Gas Act 1986 s 17(11) (as substituted: see note 1 supra). As to the standard scale see PARA 613 note 11 ante. See also note 3 supra; and PARA 949 the text and notes 16-19 post.

5 Ibid s 17(12) (as substituted: see note 1 supra). A person may be charged with and convicted of the offence by virtue of s 17(12) (as substituted) whether or not proceedings are taken against the first-mentioned person: s 17(12) (as so substituted). See also PARA 949 the text and note 20 post.

6 Ibid s 17(13) (as substituted: see note 1 supra). See also PARA 949 the text and note 21 post.

7 For the mark of EEC initial verification for these purposes see the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 4(1), (2), Sch 1 para 5 (amended by SI 1988/1128).

8 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 6 (substituted for these purposes by the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296, reg 2, Schedule para 6). As to such instruments see PARAS 950-952 post.

UPDATE

947-949 Meter Testing and Stamping under the Gas Act 1986

The functions of the Gas and Electricity Markets Authority ('the Authority') under gas meter legislation are transferred to the Secretary of State: Energy Act 2008 s 92(1). 'Gas meter legislation' means (1) the Gas Act 1986 s 17, and (2) gas meter regulations; and 'gas meter regulations' means (a) the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186; (b) the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296; (c) the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006, SI 2006/1270; (d) the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647; (e) any regulations made, or treated as made, under the Gas Act 1986 s 17: Energy Act 2008 s 92(5). References in gas meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 92(2). Regulations made, or treated as made, by the Authority under the Gas Act 1986 s 17 (gas meter testing and stamping) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 92(3). 'Commencement' means the day on which s 92 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 92(5). Anything else done by the Authority under gas meter legislation which has effect immediately before

commencement has effect on and after commencement as if it had been done by the Secretary of State: s 92(4).

947 Prohibition on use of unstamped meters

NOTE 1--Gas Act 1986 s 17 further amended: Energy Act 2008 s 93, Sch 6.

NOTE 7--SI 1988/186 Sch 1 para 5 further amended: SI 2008/1267.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/A. METER TESTING AND STAMPING UNDER THE GAS ACT 1986/948. Appointment of meter examiners; meter examiners' fees.

948. Appointment of meter examiners; meter examiners' fees.

The Gas and Electricity Markets Authority ('GEMA')¹ must appoint competent and impartial persons as meter examiners for the relevant² statutory purposes³. There must be paid out of money provided by Parliament to meter examiners who are members of the Authority's staff such remuneration and such allowances as may be determined by the Authority with the approval of the Treasury, and such pensions as may be so determined may be paid out of money provided by Parliament to or in respect of such examiners⁴.

All fees payable to meter examiners⁵ who are members of the Authority's staff for the performance of functions conferred by or under the relevant statutory provisions⁶ must be paid to the Authority; and any sums received by it under those provisions must be paid into the Consolidated Fund⁷. The fees to be paid to meter examiners who are members of the Authority's staff for the performance of functions so conferred, and the persons by whom they are to be paid, are to be such as the Authority may, with the approval of the Treasury, from time to time determine; and such a determination may make different provision for different areas or in relation to different cases or different circumstances and may make such supplementary, incidental or transitional provision as the Authority considers necessary or expedient⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 I.e. for the purposes of the Gas Act 1986 s 17 (as substituted and amended): see PARA 947 ante; the text and notes 3-8 infra; and PARA 949 post.

3 Ibid s 17(6) (s 17 substituted by the Gas Act 1995 s 10(1), Sch 3 para 13; the Gas Act 1986 s 17(6)-(8), (10) amended by virtue of the Utilities Act 2000 s 3(2)). As to the application of the Gas Act 1986 s 17 (as substituted and amended) see PARA 947 note 1 ante.

4 Gas Act 1986 s 17(7) (as substituted and amended: see note 3 supra).

5 As to the prescribed fees see the Gas (Meters) Regulations 1983, SI 1983/684, reg 5, Sch 1 (substituted by SI 1991/1471).

The Gas (Meters) Regulations 1983, SI 1983/684 (as amended) now have effect by virtue of the Gas Act 1995 s 17(1), Sch 5 para 22. They do not, however, apply to a meter which is a relevant instrument within the meaning of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647 (see PARA 954 post), except that the Gas (Meters) Regulations 1983, SI 1983/684, reg 4 (as amended) (see PARA 949 note 14 post) and (so far as is necessary for the interpretation of that regulation) reg 2 (as amended) do so apply (with modifications in the case of reg 4 (as amended)): see the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 28(5), (6).

6 I.e. conferred by or under the Gas Act 1986 s 17 (as substituted and amended).

7 Ibid s 17(8) (as substituted and amended: see note 3 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

8 Ibid s 17(10) (as substituted and amended: see note 3 supra).

UPDATE

947-949 Meter Testing and Stamping under the Gas Act 1986

The functions of the Gas and Electricity Markets Authority ('the Authority') under gas meter legislation are transferred to the Secretary of State: Energy Act 2008 s 92(1). 'Gas meter legislation' means (1) the Gas Act 1986 s 17, and (2) gas meter regulations; and 'gas meter regulations' means (a) the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186; (b) the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296; (c) the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006, SI 2006/1270; (d) the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647; (e) any regulations made, or treated as made, under the Gas Act 1986 s 17: Energy Act 2008 s 92(5). References in gas meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 92(2). Regulations made, or treated as made, by the Authority under the Gas Act 1986 s 17 (gas meter testing and stamping) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 92(3). 'Commencement' means the day on which s 92 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 92(5). Anything else done by the Authority under gas meter legislation which has effect immediately before commencement has effect on and after commencement as if it had been done by the Secretary of State: s 92(4).

948 Appointment of meter examiners; meter examiners' fees

TEXT AND NOTES--Gas Act 1986 s 17 further amended: Energy Act 2008 s 93.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/A. METER TESTING AND STAMPING UNDER THE GAS ACT 1986/949. Examination and stamping of meters.

949. Examination and stamping of meters.

It is the duty¹ of a meter examiner² who is a member of the Gas and Electricity Markets Authority's ('GEMA's')³ staff, on being required to do so by any person and on payment of the requisite fee⁴:

- 1808 (1) to examine any meter used or intended to be used for ascertaining the quantity of gas supplied⁵ to any person; and
- 1809 (2) to stamp, or authorise the stamping of, that meter⁶;

but a meter examiner must not stamp, or authorise the stamping of, any meter unless he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Authority and that the meter conforms with such standards as may be prescribed⁷ for these purposes⁸.

A meter examiner may, however, stamp or authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if:

- 1810 (a) the meter was manufactured or repaired by the person submitting it to the examiner;
- 1811 (b) that person has obtained the consent of the Authority to his submission; and
- 1812 (c) any conditions subject to which the consent was given have been satisfied⁹.

A meter examiner may also authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if:

- 1813 (i) the meter was manufactured or repaired by that person;
- 1814 (ii) that person has obtained the consent of the Authority to his stamping of the meter; and
- 1815 (iii) any conditions subject to which the consent was given have been satisfied¹⁰.

Regulations¹¹, which must be made by the Authority with the consent of the Secretary of State¹², may make provision:

- 1816 (A) for re-examining meters already stamped, and for the cancellation of stamps in the case of meters which no longer conform with the prescribed standards and in such other circumstances as may be prescribed¹³;
- 1817 (B) for requiring meters to be periodically overhauled¹⁴; and
- 1818 (C) for the revocation of any approval given by the Authority to any particular pattern or construction of meter, and for requiring existing meters of that pattern or construction to be replaced within such period as may be prescribed for these purposes¹⁵.

Any person who supplies gas through a meter which has not been overhauled¹⁶ or replaced¹⁷ in accordance with a requirement imposed, or notice published, under the relevant regulations¹⁸, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁹; and where the commission by any person of such an offence is due to the act or default of some other person, that other person is to be guilty of the offence²⁰. In any proceedings for such an offence it is, however, a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence²¹.

1 le subject to the Gas Act 1986 s 17(3)-(5) (as substituted and amended): see the text and notes 7-10 infra.

2 As to the appointment of meter examiners see PARA 948 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 As to meter examiners' fees see PARA 948 ante. For the prescribed fees see the Gas (Meters) Regulations 1983, SI 1983/684, reg 5, Sch 1 (substituted by SI 1991/1471).

The Gas (Meters) Regulations 1983, SI 1983/684 (as amended) now have effect by virtue of the Gas Act 1995 s 17(1), Sch 5 para 22. They do not, however, apply to a meter which is a relevant instrument within the meaning of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647 (see PARA 954 post), except that the Gas (Meters) Regulations 1983, SI 1983/684, reg 4 (as amended) (see note 13 infra) and (so far as is necessary for the interpretation of that regulation) reg 2 (as amended) do so apply (with modifications in the case of reg 4 (as amended)): see the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 28(5), (6).

5 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

6 Gas Act 1986 s 17(2) (s 17 substituted by the Gas Act 1995 s 10(1), Sch 3 para 13; the Gas Act 1986 s 17(2)-(5), (9) amended by virtue of the Utilities Act 2000 s 3(2)). As to the application of the Gas Act 1986 s 17 (as substituted and amended) see PARA 947 note 1 ante.

If the meter which is a 'relevant instrument' is put into use within the meaning of and in accordance with the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647 (see PARA 954 et seq post), the Gas Act 1986 s 17(2)(b), (as substituted and amended) (see head (2) in the text); and s 17(3)-(5) (as substituted and amended) must be disregarded (Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 28(1), (3)); but this does not apply if the error of measurement of the meter exceeds certain prescribed limits (see reg 28(4)).

7 For the meaning of 'prescribed' see PARA 797 note 5 ante.

8 Gas Act 1986 s 17(3) (as substituted and amended: see note 6 supra). As to the disapplication of this provision in certain circumstances see note 6 supra. For the prescribed standards for meters see the Gas (Meters) Regulations 1983, SI 1983/684, reg 3(1)-(3) (amended by SI 1993/1521). A meter must be such that no gas or air will escape from it: Gas (Meters) Regulations 1983, SI 1983/684, reg 3(1)(a). For the additional standards prescribed for diaphragm meters see reg 3(1)(b), (d)-(e), (2), (3) (as so amended); and for the additional standards prescribed for meters other than diaphragm meters see reg 3(1)(c), (cc), (2) (as so amended). 'Diaphragm meter' means a meter constructed so that it contains a flexible partition: reg 2. See also note 4 supra.

9 Gas Act 1986 s 17(4) (as substituted and amended: see note 6 supra). As to the disapplication of this provision in certain circumstances see note 6 supra.

10 Ibid s 17(5) (as substituted and amended: see note 6 supra). As to the disapplication of this provision in certain circumstances see note 6 supra.

11 le regulations under ibid s 17 (as substituted and amended): see PARAS 947-948 ante; and the text and notes 1-10 supra, 11-15 infra.

12 As to the Secretary of State see PARA 601 note 1 ante.

13 Gas Act 1986 s 17(9)(a) (as substituted and amended: see note 6 supra). Where there is a dispute between any person to whom gas is supplied and the person supplying the gas as to the accuracy with which a meter stamped under s 17 (as substituted and amended) registered the quantity of gas supplied to that person and either party to the dispute requires a meter examiner appointed under s 17 (as substituted and amended) to re-examine the meter, and the names and addresses of both parties to the dispute are communicated in writing to the meter examiner, it is the duty of the meter examiner, on payment of the requisite fee, to re-

examine the meter: Gas (Meters) Regulations 1983, SI 1983/684, reg 4(1) (reg 4(1), (3)-(5) amended by SI 1995/1251). If a meter examiner, on re-examining the meter, is satisfied that the meter does not conform with the standards prescribed by the Gas (Meters) Regulations 1983, SI 1983/684, reg 3 (as amended) (see note 8 supra), it is the duty of the meter examiner to cancel the stamp with which the meter is already stamped by defacing it: reg 4(2). If a meter examiner on re-examining a meter is satisfied that the meter does not conform with the standard prescribed by reg 3(1)(b)(i) or a standard prescribed by reg 3(1)(c) or reg 3(1)(cc) (as added), it is the duty of the meter examiner to give to each of the parties to the dispute a certificate signed by the meter examiner stating the degree exceeding the degree permissible for that standard to which the meter when re-examined registered erroneously: reg 4(3) (as so amended). If a meter examiner on re-examining a meter is satisfied that the meter conforms with the standard prescribed by reg 3(1)(b)(i) or the standards prescribed by reg 3(1)(c) or reg 3(1)(cc) (as added), it is the duty of the meter examiner to give to each of the parties to the dispute a certificate signed by the meter examiner stating that the meter when re-examined registered accurately: reg 4(4) (as so amended). If a meter examiner on re-examining a meter is satisfied that the meter is so defective that he cannot examine it for conformity with the standard prescribed by reg 3(1)(b)(i) or the standards prescribed by reg 3(1)(c) or reg 3(1)(cc) (as added), it is the duty of the meter examiner to give to each of the parties to the dispute a certificate signed by the meter examiner stating that the meter when re-examined could not be so examined and to cancel the stamp with which the meter is already stamped by defacing it: reg 4(5) (as so amended). See also note 4 supra.

The Authority may charge such reasonable fees as it may determine in respect of any costs reasonably incurred by it for the purpose of re-examining under reg 4 (as so amended) meters bearing the mark of EEC initial verification: Measuring Instruments (EEC Requirements) (Gas Volume Meters) (Amendment) Regulations 1996, SI 1996/319, reg 3(iii) (amended by virtue of the Utilities Act 2000 s 3(2)).

14 Gas Act 1986 s 17(9)(b) (as substituted and amended: see note 6 supra). Subject to the Gas (Meters) Regulations 1983, SI 1983/684, reg 3B(2) (as added), the Secretary of State may require, on approving the pattern and construction of any meter under the Gas Act 1986 s 17(3) (as substituted and amended: see note 6 supra) or for the purpose of the Gas (Meters) Regulations 1983, SI 1983/684, reg 3A(2)(a) (as added) (see PARA 947 note 3 ante), that meters of the approved pattern and construction which are used for the purpose of ascertaining the quantity of gas supplied through pipes to any person must be overhauled in a specified manner at specified intervals during the period of such use: reg 3B(1) (reg 3B added by SI 1993/1521). No requirement must, however, be so imposed on approving the pattern and construction of a modified prototype examined by a meter examiner before the date on which the relevant regulations came into force (ie 12 July 1993: see the Gas (Meters) (Amendment) Regulations 1993, SI 1993/1521, reg 1: Gas (Meters) Regulations 1983, SI 1983/684, reg 3B(2) (as so added). Where the Secretary of State so imposes an overhaul requirement, he must publish a notice in the London and Edinburgh Gazettes specifying the requirement and describing the meters in respect of which it applies: reg 3B(3) (as so added). The Secretary of State may at any time withdraw a requirement so imposed by publishing a notice of withdrawal in the London and Edinburgh Gazettes: reg 3B(4) (as so added). 'Modified prototype' means a prototype which was examined by a meter examiner prior to modification: reg 2 (definition added by SI 1993/1521). See also note 4 supra.

15 Gas Act 1986 s 17(9)(c) (as substituted and amended: see note 6 supra). The Secretary of State may, after consultation with such persons appearing to him to be interested as he thinks fit, revoke any approval of pattern and construction which was granted under s 17(3) (as substituted and amended) or for the purpose of the Gas (Meters) Regulations 1983, SI 1983/684, reg 3A(2)(a) (as added) (see PARA 947 note 3 ante), after the date on which the relevant regulations came into force (ie 12 July 1993: see the Gas (Meters) (Amendment) Regulations 1993, SI 1993/1521, reg 1) if he considers that (1) meters of the approved pattern and construction have revealed in service a defect of a general nature which makes them unsuitable for their intended use; or (2) meters of the approved pattern and construction can no longer be manufactured so as to comply with standards applicable under the Gas (Meters) Regulations 1983, SI 1983/684, reg 3 (as amended) (see note 8 supra): reg 4A(1) (reg 4A added by SI 1993/1521). Where the Secretary of State so revokes an approval of pattern and construction, (a) he must give a statement in writing of his grounds for doing so to any person appearing to him to be concerned; and (b) he may publish in the London and Edinburgh Gazettes a notice requiring all meters of the pattern and construction in question used for the purpose of ascertaining the quantity of gas supplied through pipes to any person to be replaced within a period of six months beginning with the date of the notice: Gas (Meters) Regulations 1983, SI 1983/684, reg 4A(2) (as so added). The Secretary of State may at any time withdraw a notice under head (b) supra by publishing a notice of withdrawal in the London and Edinburgh Gazettes: reg 4A(3) (as so added). See also note 4 supra.

16 Ie in accordance with a requirement imposed under *ibid* reg 3B(1) (as added): see note 14 supra.

17 Ie in accordance with a requirement of a notice published under *ibid* reg 4A(2)(b) (as added): see note 15 supra).

18 See notes 16-17 supra.

19 Gas (Meters) Regulations 1983, SI 1983/684, reg 4B(1) (reg 4B added by SI 1993/1521). As to the standard scale see PARA 613 note 11 ante. See also note 4 supra.

20 Gas (Meters) Regulations 1983, SI 1983/684, reg 4B(2) (as added: see note 19 supra). A person may be charged with and convicted of the offence by virtue of this provision whether or not proceedings are taken against the first-mentioned person: reg 4B(2) (as so added). See also note 4 supra.

21 Ibid reg 4B(3) (as added: see note 19 supra). See also note 4 supra.

UPDATE

947-949 Meter Testing and Stamping under the Gas Act 1986

The functions of the Gas and Electricity Markets Authority ('the Authority') under gas meter legislation are transferred to the Secretary of State: Energy Act 2008 s 92(1). 'Gas meter legislation' means (1) the Gas Act 1986 s 17, and (2) gas meter regulations; and 'gas meter regulations' means (a) the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186; (b) the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296; (c) the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006, SI 2006/1270; (d) the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647; (e) any regulations made, or treated as made, under the Gas Act 1986 s 17: Energy Act 2008 s 92(5). References in gas meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 92(2). Regulations made, or treated as made, by the Authority under the Gas Act 1986 s 17 (gas meter testing and stamping) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 92(3). 'Commencement' means the day on which s 92 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 92(5). Anything else done by the Authority under gas meter legislation which has effect immediately before commencement has effect on and after commencement as if it had been done by the Secretary of State: s 92(4).

949 Examination and stamping of meters

TEXT AND NOTES 6, 13-15--Gas Act 1986 s 17(2), (9) further amended: Energy Act 2008 s 93(2), (5), Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS/(A) Gas Volume Meters where Pattern Approval was granted before 30 October 2006/950. Initial verification of meters.

B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS

(A) GAS VOLUME METERS WHERE PATTERN APPROVAL WAS GRANTED BEFORE 30 OCTOBER 2006

950. Initial verification of meters.

The statutory restrictions on the use of unstamped meters¹ do not operate to restrict the use of any volumetric meter with deformable walls or rotary pistons, or of any turbine meter², which bears the mark of EEC initial verification³ for ascertaining the quantity of gas supplied⁴.

An application may be made⁵ to a meter examiner⁶ for consideration of any such instrument⁷ and the meter examiner must determine whether an EEC pattern approval⁸ is in force in respect of the instrument and, if so, whether it conforms to the approved pattern and to the requirements for EEC initial verification⁹. Where the examiner is satisfied that the meter conforms to those requirements and that an EEC pattern approval is in force in respect of it and that it conforms to the approved pattern, he must affix the appropriate mark or authorise it to be affixed¹⁰. If he refuses to do so, he must give the applicant a written statement of his reasons for refusing¹¹.

1 Ie the Gas Act 1986 s 17 (as substituted and amended): see PARAS 947-949 ante.

2 Ie any instrument to which EEC Council Directive 71/318 (OJ L202, 6.9.71, p 21) (as amended and now repealed) ('the Directive on Gas Volume Meters') applied: see the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296, reg 2. Those regulations, and the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended), which they apply with prescribed modifications, continue to apply to gas volume meters in respect of a pattern of which EEC pattern approval was granted before 30 October 2006: see the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 4(1)(i).

3 For the mark see the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 4, Sch 1 para 5 (amended by SI 1988/1128).

4 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 6 (substituted by SI 1988/296). This exemption operates only provided the mark remains undefaced otherwise than by reason of fair wear and tear: Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 6 (as so substituted).

5 The application must be made in such manner as the Gas and Electricity Markets Authority ('GEMA') may direct: *ibid* reg 13(1) (substituted by SI 1988/296; amended by SI 1996/319, reg 2; and by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante. The Authority may charge such reasonable fees as it may determine in respect of any costs reasonably incurred by it for the purpose of considering such an application: Measuring Instruments (EEC Requirements) (Gas Volume Meters) (Amendment) Regulations 1996, SI 1996/319, reg 3(ii) (amended by virtue of the Utilities Act 2000 s 3(2)).

6 'Meter examiner' means a meter examiner appointed or holding office under the Gas Act 1986 s 17 (as substituted and amended) (see PARA 948 ante): Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 2(1) (definition added by SI 1988/296).

7 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 13(1) (reg 13 substituted by SI 1988/296).

8 As to pattern approval see PARA 951 post.

9 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 13(2) (as substituted: see note 7 supra). The conduct of EEC initial verification is for this purpose governed by reg 13(4), Sch 3 (reg 13(4) as substituted (see note 7 supra); Sch 3 amended by SI 1988/296; SI 1996/319; and by virtue of the Utilities Act 2000 s 3(2)).

10 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 13(2) (as substituted: see note 7 supra). He must at the same time apply or authorise the application of any seals required by the Directive on Gas Volume Meters to be applied in connection with initial verification: reg 13(2) (as so substituted).

11 Ibid reg 13(3) (as substituted: see note 7 supra).

UPDATE

950 Initial verification of meters

NOTE 3--SI 1988/186 Sch 1 para 5 further amended: SI 2008/1267.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS/(A) Gas Volume Meters where Pattern Approval was granted before 30 October 2006/951. Approval and revocation of patterns.

951. Approval and revocation of patterns.

Pattern approval of a gas volume meter¹ might be granted by the Gas and Electricity Markets Authority ('GEMA')² on submission of the pattern for the purpose by the manufacturer or his authorised representative³. It must have been granted before 30 October 2006⁴ and is valid for ten years⁵.

The Authority may also revoke any pattern approval after consultation with such persons as appear to it to be interested⁶. A pattern approval may be revoked on any one or more of the following grounds:

- 1819 (1) if meters constructed according to the pattern in question reveal in service a defect of a general nature which makes them unsuitable for their intended use;
- 1820 (2) if meters which are exempt from EEC initial verification⁷ on the basis that they are constructed in accordance with the approved pattern do not conform to that pattern or to the relevant requirements⁸;
- 1821 (3) if the metrological requirements specified in the certificate of pattern approval are not satisfied;
- 1822 (4) if the Authority is satisfied that the approval was improperly procured;
- 1823 (5) if any condition imposed⁹ is contravened; or
- 1824 (6) if meters constructed according to the pattern in question frequently fail a statistical check of attributes¹⁰ and no improvement of the quality level is found once the shortcoming has been brought to the attention of the holder of the pattern approval¹¹.

If an approval is revoked, the Authority must give a statement in writing of the reasons to any person appearing to the Authority to be interested¹².

1 For the meaning of 'meter' for these purposes see PARA 950 the text and note 2 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 8, Schs 1, 2 (amended by SI 1988/296; SI 1988/1128; SI 1996/319; and by virtue of the Utilities Act 2000 s 3(2)). As to the Authority's power to charge such reasonable fees as it might determine in respect of any costs reasonably incurred by it for the purpose of an examination of any pattern of instrument so submitted for approval see the Measuring Instruments (EEC Requirements) (Gas Volume Meters) (Amendment) Regulations 1996, SI 1996/319, reg 3(i) (amended by virtue of the Utilities Act 2000 s 3(2)).

4 See the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 4(1)(i).

5 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 8(5).

6 Ibid reg 11(1) (reg 11 amended by SI 1996/319; and by virtue of the Utilities Act 2000 s 3(2)).

7 As to initial verification see PARA 950 ante.

8 le the requirements of EEC Council Directive 71/318 (OJ L202, 6.9.71, p 21) (as amended and now repealed).

9 le under the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 9(2) (conditions which might be imposed when pattern approval was granted).

10 le a statistical check of attributes carried out under ibid reg 13(4), Sch 3 (reg 13(4) substituted, and Sch 3 amended, by SI 1988/296).

11 Ibid reg 11(2) (as amended: see note 6 supra).

12 Ibid reg 11(4) (as amended: see note 6 supra).

UPDATE

951 Approval and revocation of patterns

NOTE 3--SI 1988/186 Sch 1 further amended: SI 2008/1267.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS/(A) Gas Volume Meters where Pattern Approval was granted before 30 October 2006/952. Restrictions on the use of meters of approved patterns.

952. Restrictions on the use of meters of approved patterns.

Where a pattern approval¹ is in force, the manufacturer must cause the sign of EEC pattern approval to be affixed to meters conforming to the approved pattern².

Where the Gas and Electricity Markets Authority ('GEMA')³ revokes⁴ an EEC pattern approval or it appears to the Authority to have been revoked by another member state, the Authority may publish in the London Gazette a notice requiring all meters of that pattern used to ascertain the quantity of gas supplied to any person to be replaced within six months from the date of the notice⁵. If after the end of that period any person supplies gas⁶ through such an instrument he is guilty of an offence⁷ and liable on summary conviction to a fine not exceeding £200⁸.

Where, in the case of meters constructed according to a pattern in respect of which a pattern approval granted by another member state is in force, the Authority is satisfied that such meters reveal in service a defect of a general nature which renders them unsuitable for their intended use, the Authority may publish in the London Gazette a notice requiring all instruments of that pattern used to ascertain the quantity of gas supplied to any person to be replaced within six months from the date of the notice⁹. Such a notice must give particulars of the pattern to which it relates and must include a statement of the grounds for publication of the notice¹⁰. If after the end of that period any person supplies gas¹¹ through such an instrument he is guilty of an offence¹² and liable on summary conviction to a fine not exceeding £200¹³.

1 Ie whether that approval has been granted by the United Kingdom or any other member state: Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 12(2). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 Ibid reg 12(2). The sign must be affixed at a visible point on the meter and must be legible and indelible: ibid reg 12(4).

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 As to revocations of pattern approvals see PARA 951 ante. As to offences in relation to EEC pattern approvals see PARA 953 post. As to the Secretary of State see PARA 601 note 1 ante.

5 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 15(1) (regs 15-16, 20 substituted for these purposes by SI 1988/296; amended by SI 1996/319; and by virtue of the Utilities Act 2000 s 3(2)).

6 For these purposes, where a person provides through an instrument of a category to which the Directive on Gas Volume Meters applied (see PARA 950 note 2 ante), for use in a flat or part of a building let by him, gas supplied by him, he and not the person supplying the gas to him is to be deemed to supply gas through the instrument: Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 15(2) (as substituted: see note 5 supra).

7 Ibid reg 15(1) (as substituted: see note 5 supra).

8 Ibid reg 20 (as substituted: see note 5 supra). Where an offence under any provision of the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended), which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or

any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly: reg 28(1) (as so substituted). Where the affairs of a body corporate are managed by its members, reg 28(1) (as so substituted) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 28(2) (as so substituted).

9 Ibid reg 16(1) (as substituted and amended: see note 5 supra). The Authority may at any time withdraw a notice by publishing a notice of withdrawal in the London Gazette: reg 16(4) (as so substituted and amended).

10 Ibid reg 16(2) (as substituted and amended: see note 5 supra).

11 Ibid reg 15(2) (as substituted and amended) (see note 6 supra) applies for these purposes: see reg 16(3) (as substituted: see note 5 supra).

12 Ibid reg 16(1) (as substituted: see note 5 supra).

13 Ibid reg 20 (as substituted: see note 5 supra). See also note 8 supra.

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953. Offences relating to EEC signs and marks on meters.

Any person who supplies gas through any volumetric meter with deformable walls or rotary pistons or any turbine meter¹ which to his knowledge either (1) bears any EEC sign or mark which is a forgery or counterfeit, or which has been transferred from another instrument, or which has been improperly altered or defaced²; or (2) does not comply with the relevant requirements³ by reason of any alteration made in it after any EEC sign or mark was properly applied to it⁴, is guilty of an offence⁵ and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁶.

Any person who is not a meter examiner, or acting under the authority of one⁷, who marks in any manner any plug, seal or plate used or designed for use for the reception of any EEC mark on a volumetric meter with deformable walls or rotary pistons or on any turbine meter⁸, is guilty of an offence⁹ and liable on summary conviction to the like penalty¹⁰.

Any person who is not a manufacturer¹¹ authorised or required¹² to mark any such meter with any EEC sign¹³, nor the duly authorised agent of any such manufacturer, but who does so mark any such meter¹⁴, and any person who forges, counterfeits or, except pursuant to a duty imposed on a meter examiner, alters or defaces any EEC sign or mark¹⁵, or who removes any EEC sign or mark from such a meter and inserts it into any other measuring instrument¹⁶, is guilty of an offence¹⁷ and is also liable on summary conviction to the like penalty¹⁸.

Any person who makes any alteration in a meter after any EEC sign or mark has been properly¹⁹ applied to it, so that the meter no longer complies with the relevant requirements²⁰, is guilty of an offence²¹ and is also liable on summary conviction to the like penalty²².

1 Ie a meter to which EEC Council Directive 71/318 (OJ L202, 6.9.71, p 21) (as amended; now repealed) applied: see PARA 950 note 2 ante.

2 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 17(3)(a) (regs 17-20 substituted for these purposes by SI 1988/296). As to the applicable EEC signs and marks see PARAS 950-952 ante.

3 Ie those of the Directive cited in note 1 supra.

4 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 17(3)(b) (as substituted: see note 2 supra).

5 Ibid reg 17(3) (as substituted: see note 2 supra). Proceedings for an offence under reg 17 (as substituted) may only be instituted by or with the consent of the Gas and Electricity Markets Authority ('GEMA') or the Director of Public Prosecutions: reg 19 (as so substituted; amended by SI 1996/319; and by virtue of the Utilities Act 2000 s 3(2)). As to the position where the offence is committed by a body corporate see PARA 952 note 8 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 20 (as substituted (see note 2 supra); amended by virtue of the Criminal Justice Act 1988 s 52). As to the standard scale see PARA 613 note 11 ante.

7 As to the appointment and functions of meter examiners see PARAS 948-949 ante.

8 See note 1 supra.

9 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 17(1)(a) (as substituted: see note 2 supra).

10 See *ibid* reg 20 (as substituted and amended: see notes 2, 6 supra). A person may not be guilty of an offence under reg 17(1) (as substituted) by reason solely of the destruction or obliteration of any sign, mark, plug, seal or plate in the course of the adjustment or repair of a meter by, or by the duly authorised agent of, a person who is the manufacturer of such meters or is regularly engaged in the business of repairing them: reg 17(2) (as so substituted). For the meaning of 'manufacturer' see note 11 *infra*. As to the institution of proceedings for such an offence see note 5 supra; and as to the position where the offence is committed by a body corporate see PARA 952 note 8 *ante*.

11 Where more than one person is responsible for the manufacture of a meter, including its ancillary equipment, the manufacturer is taken to be the person responsible for the final stage of manufacture: *ibid* reg 2(1).

12 *Ie* under the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended). In the case of gas volume meters the requirement is under reg 12(2).

13 For the signs of EEC pattern approval see *ibid* reg 4(1), Sch 1 (as amended).

14 See *ibid* reg 17(1)(b) (as substituted: see note 2 supra). See also note 10 supra.

15 See *ibid* reg 17(1)(c) (as substituted: see note 2 supra). See also note 10 supra.

16 See *ibid* reg 17(1)(d) (as substituted: see note 2 supra). See also note 10 supra.

17 See *ibid* reg 17(1)(b)-(d) (as substituted: see note 2 supra). See also note 10 supra.

18 See *ibid* reg 20 (as substituted and amended: see notes 2, 6 supra).

19 *Ie* under the provisions of *ibid* reg 12(2) or reg 13(2) (reg 13(2) substituted by SI 1988/296).

20 See note 3 supra.

21 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 17(1)(e) (as substituted: see note 2 supra). See also note 10 supra.

22 See note 18 supra.

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(B) REQUIREMENTS OF THE MEASURING INSTRUMENTS (GAS METERS) REGULATIONS 2006

954. Relevant instruments.

For the purposes of the Measuring Instruments (Gas Meters) Regulations 2006¹, a 'relevant instrument' is a gas meter² which is for use for trade³.

A relevant instrument is not, however:

1825 (1) an instrument which is stamped under the relevant provisions of the Gas Act 1986⁴ and put into use before 30 October 2016⁵, or stamped under the corresponding Northern Ireland provisions⁶ and put into use before that date⁷;

1826 (2) an instrument:

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225. (a) in respect of a pattern of which EEC pattern approval was granted before 30 October 2006 under the Measuring Instruments (EEC Requirements) Regulations 1988⁸, as applied to gas meters by the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988⁹, or by any other member state in accordance with the relevant provisions of measures in force which implement the 1971 Directive on Gas Volume Meters¹⁰, and which is in force; and

226. (b) which bears a mark of EEC initial verification¹¹ affixed under those regulations, as so applied, or by any other member state in accordance with those provisions¹²;

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1827 (3) an instrument which is used under an agreement providing for the supply of a quantity of gas at a rate of flow which, if measured at a temperature of 15°C and a pressure of 1013.25 millibars, would exceed 1600 cubic metres an hour or the equivalent quantity in kilograms¹³;

1828 (4) an instrument which is not compliant with the essential requirements¹⁴ and which is displayed or presented at a trade fair, exhibition or demonstration, if a sign displayed visibly on or near the instrument clearly indicates that the instrument is not compliant with those requirements and cannot be acquired or used until it is made compliant with those requirements by the manufacturer¹⁵.

1 Ie the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: see PARA 955 et seq post.

2 For these purposes, 'gas meter' means an instrument designed to measure, memorise and display the quantity of fuel gas (volume or mass) that has passed it: *ibid* reg 2(1).

3 *Ibid* reg 3(1).

4 Ie under the Gas Act 1986 s 17 (as substituted and amended): see PARAS 947-949 ante.

5 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 3(2).

6 Ie under the Gas (Northern Ireland) Order 1996, SI 1996/275, art 22.

7 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 3(3).

8 Ie under the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended): see PARA 951 ante.

9 Ie by the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988, SI 1988/296 (as amended): see PARAS 950-953 ante.

10 See PARA 950 note 2 ante.

11 As to such marks see PARA 950 ante.

12 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 3(4).

13 Ibid reg 3(5).

14 'Essential requirements' means the requirements set out in *ibid* Sch 1 Pt 1 (reg 2(1)) and are the relevant requirements relating to relevant instruments contained in European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1) on measuring instruments, Annex 1 and Annex M1-002, as so set out (Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 1 Pt 1 para 1). Those requirements relate to: (1) allowable errors; (2) reproducibility; (3) repeatability; (4) discrimination and sensitivity; (5) reliability; (6) protection against corruption; (7) information to be borne by and to accompany the relevant instrument; (8) indication of result; (9) conformity evaluation; (10) rated operating conditions; (11) maximum permissible error ('MPE'); (12) permissible effect of disturbances; (13) durability; (14) suitability; and (15) units: see Sch 1 Pt 1 paras 3-17. For the applicable statutory definitions of certain terms used therein see Sch 1 Pt 1 para 2.

15 Ibid reg 3(6).

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955. Requirements for placing on the market and putting into use of gas meters.

No person must place on the market¹ or put into use² a relevant instrument³ unless the following requirements, or the corresponding requirements of the relevant European Directive⁴ as implemented under the law of another member state, are met:

- 1829 (1) the instrument is compliant with the essential requirements⁵;
- 1830 (2) the manufacturer⁶ has demonstrated its compliance with the essential requirements⁷;
- 1831 (3) the instrument has affixed to it the CE marking⁸, the M marking⁹ and the identification number of the notified body¹⁰ which carried out the conformity assessment procedure¹¹ in respect of the instrument; and
- 1832 (4) the instrument is put into use in accordance¹² with the prescribed putting into use requirements¹³.

Where a person fails to comply with the requirements of head (1), head (2) or head (3) above, he is guilty of an offence¹⁴ and any relevant instrument to which the offence relates and which has not been put into use is liable to be forfeited¹⁵.

1 'Place on the market' means making available for the first time in a member state a relevant instrument intended for an end user, whether for reward or free of charge: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 2(1). A reference to a member state for these purposes includes Norway, Iceland and Liechtenstein: reg 2(2).

2 'Put into use' means the first use of a relevant instrument intended for the end user for the purposes for which it was intended: *ibid* reg 2(1).

3 For the meaning of 'relevant instrument' see PARA 954 ante.

4 *Ie* European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).

5 As to the essential requirements see PARA 954 note 14 ante.

6 'Manufacturer' means a person responsible for the conformity of a relevant instrument with the essential requirements with a view to either placing it on the market under his own name or putting it into use for his own purposes, or both: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 2(1).

7 *Ie* in accordance with *ibid* reg 5. A manufacturer may demonstrate that a relevant instrument is compliant with the essential requirements by (1) using any technical solution that is compliant with the essential requirements; (2) correctly applying solutions set out in the relevant national standard; or (3) correctly applying solutions set out in the relevant normative document, and selecting and following one of the conformity assessment procedures: reg 5(1). A relevant instrument which is compliant with the relevant national standard or relevant normative document is to be presumed to be compliant with the essential requirements: reg 5(2). Where the relevant instrument is compliant only in part with the relevant national standard or relevant normative document, it is to be presumed to be compliant only with that part of the essential requirements which corresponds to the element of the relevant national standard or relevant normative document with which the instrument is compliant: reg 5(3). 'Relevant national standard' means a standard applicable to a relevant instrument (1) implementing a harmonised standard that has been published in the Official Journal C series; and (2) the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to the third sub-paragraph of European Parliament and EC Council

Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 13.1; 'relevant normative document' means a normative document applicable to a relevant instrument, the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to the third sub-paragraph of art 13.2; 'normative document' means a document containing technical specifications adopted by the Organisation Internationale de Métrologie Légale, subject to the procedure stipulated in art 16.1, the reference of which is published by the Commission in the Official Journal pursuant to art 16.1(b); and 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation ('CEN'), the European Committee for Electrotechnical Standardisation ('CENELEC') or the European Telecommunications Standards Institute ('ETSI') or jointly by two or all of these organisations, at the request of the Commission pursuant to European Parliament and EC Council Directive 98/34 (OJ L204, 21.7.98, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, as amended by European Parliament and EC Council Directive 98/48 (OJ L217, 5.8.98, p 18), and prepared in accordance with the general guidelines agreed between the Commission and one or more of CEN, CENELEC and ETSI: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 2(1).

8 As to the CE marking see *ibid* reg 12(3)(a), Sch 4 paras 1, 4-5.

9 As to the M marking see *ibid* reg 12(3)(b), Sch 4 paras 2, 4-5.

10 As to the identification number of the notified body see *ibid* reg 12(3)(c), Sch 4 paras 3-5. 'Notified body' means (1) the Secretary of State; or (2) a United Kingdom notified body (ie a person designated under reg 7: see PARA 956 post); and (3) for the purposes of reg 4(1)(c) (see head (3) in the text), reg 15(6) (see PARA 959 post) and reg 17(1)(b) (see PARA 961 post), a person designated by another member state, who has been notified to the European Commission and the other member states pursuant to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 11(1): Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 2(1).

11 'Conformity assessment procedure' means any procedure referred to in *ibid* reg 6: reg 2(1). The conformity assessment procedures are the procedures as follows: (1) B and F; (2) B and D; and (3) H1; and (a) 'B' means type examination, set out in European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), Annex B; (b) 'D' means declaration of conformity to type based on quality assurance of the production process, set out in Annex D; (c) 'F' means declaration of conformity to type based on product verification, set out in Annex F; and (d) 'H1' means declaration of conformity based on full quality assurance plus design examination, set out in Annex H1: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 6(1), (3). The manufacturer or his authorised representative must provide to the notified body carrying out the relevant conformity assessment procedure the technical documentation set out in Sch 3: reg 6(2). The technical documentation must render the design, manufacture and operation of the relevant instrument intelligible and must permit an assessment of its conformity with the appropriate requirements of the 2006 Regulations: Sch 3 para 1. The technical documentation must be sufficiently detailed to ensure the definition of the metrological characteristics, the reproducibility of the metrological performances of produced relevant instruments when properly adjusted using appropriate intended means and the integrity of the instrument: Sch 3 para 2. It must include, in so far as relevant for assessment and identification of the type and/or instrument: (i) a general description of the instrument; (ii) conceptual design and manufacturing drawings and plans of components, sub-assemblies and circuits; (iii) manufacturing procedures to ensure consistent production; (iv) if applicable, a description of the electronic devices with drawings, diagrams, flow diagrams of the logic and general software information explaining their characteristics and operation; (v) descriptions and explanations necessary for the understanding of heads (ii)-(iv) *supra*, including the operation of the instrument; (vi) a list of the relevant national standards and/or relevant normative documents, applied in full or in part; (vii) descriptions of the solutions adopted to meet the essential requirements where the relevant national standards and/or relevant normative documents have not been applied; (viii) results of design calculations and examinations; (ix) the appropriate test results, where necessary, to demonstrate that the type and/or instrument is compliant with the requirements of those regulations under declared rated operating conditions and under specified environmental disturbances and the durability specifications; and (x) the EC-type examination certificates or EC design examination certificates in respect of instruments containing parts identical to those in the design: Sch 3 para 3. The manufacturer must specify where seals and markings have been applied (Sch 3 para 4); and must indicate the conditions for compatibility with interfaces and sub-assemblies, where relevant (Sch 3 para 5).

12 *Ie* in accordance with *ibid* Sch 1 Pt 2 (para 18).

13 *Ibid* reg 4(1). There are prescribed requirements for the measurement of residential use and of commercial and/or light/industrial use: see Sch 1 Pt 2 para 18(1), (2). The person responsible for installing a relevant instrument must have regard to the requirements under Sch 1 Pt 1 para 12(b) and (c) (rated operating conditions: see PARA 954 note 14 head (10) *ante*) and must ensure that the relevant instrument is appropriate for the accurate measurement of consumption that is foreseen or foreseeable: Sch 1 Pt 2 para 18(3).

14 A person guilty of an offence under the 2006 Regulations is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: *ibid* reg 21. As to the standard scale see *PARA 613* note 11 *ante*. As to proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see *PARA 964* *post*.

15 *Ibid* reg 4(2).

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956. Designation of notified bodies.

The Gas and Electricity Markets Authority ('GEMA')¹, on the application of a person resident, incorporated or carrying on business in Great Britain², and the Northern Ireland Authority for Energy Regulation ('NIAER'), on the application of a person resident, incorporated or carrying on business in Northern Ireland, may designate that person to be a United Kingdom notified body³. GEMA (or, as the case may be, NIAER) must not, however, make such a designation unless it is satisfied that the person meets the notified body criteria⁴. A person who meets the criteria laid down in a national standard⁵ is to be presumed to meet that part of the notified body criteria which corresponds to the criteria in the national standard⁶.

A designation must be in writing⁷. It may be made subject to such conditions as may be specified in the designation, which may include conditions which:

- 1833 (1) are to apply upon or following termination of the designation;
- 1834 (2) require the use of test equipment for the purpose of conformity assessment appropriate to the relevant instrument⁸ being assessed; and
- 1835 (3) limit the description of any relevant instrument for which the person is designated⁹.

A designation may¹⁰ be for such period as may be specified in the designation¹¹. It must specify the conformity assessment procedures¹² and specific tasks, which may be framed by reference to any circumstances, which the person has been designated to carry out¹³; and may include a requirement to publish from time to time the scale of fees which the person charges¹⁴ or such information about the basis of calculation of such fees as may be specified¹⁵.

GEMA (except in relation to designations made by NIAER) and NIAER (in relation to designations made by it) must, from time to time, publish a list of notified bodies indicating, in the case of each United Kingdom notified body, the descriptions of any relevant instrument in respect of which that notified body is designated; and such a list may include information concerning any condition to which the designation of any United Kingdom notified body is subject¹⁶. GEMA (in relation to designations made by it) and NIAER (in relation to designations made by it) must also, from time to time, carry out an inspection of each United Kingdom notified body with a view to verifying that it:

- 1836 (a) meets the notified body criteria;
- 1837 (b) complies with any condition to which its designation is subject; and
- 1838 (c) complies with the relevant regulations¹⁷,

but, unless it appears that there are circumstances which make it necessary or expedient to do so, must not carry out an inspection within two years from the date of designation or of any later inspection¹⁸. GEMA or NIAER may charge any person fees to recover the full costs reasonably incurred by it in making a designation or in carrying out such an inspection¹⁹.

GEMA (in relation to designations made by it) or NIAER (in relation to designations made by it) may:

- 1839 (i) vary a designation made under the above provisions if:
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 227. (A) the United Kingdom notified body so requests; or
 228. (B) it appears to GEMA (or, as the case may be, NIAER) necessary or expedient to do so²⁰;
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 1840 (ii) terminate a designation so made:
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 229. (A) on the expiry of 90 days' notice in writing at the request of the United Kingdom notified body;
 230. (B) if it appears to GEMA (or, as the case may be, NIAER) that any condition of the designation is not complied with; or
 231. (C) if in the opinion of GEMA (or, as the case may be, NIAER) the United Kingdom notified body ceases to satisfy the notified body criteria²¹.
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Where GEMA or NIAER is minded to vary a designation pursuant to head (i)(B) above or to terminate a designation pursuant to head (ii)(B) or head (ii)(C) above, it must give notice in writing to the United Kingdom notified body of its reasons and give that notified body the opportunity to make representations within a period of 21 days from the date of that notice and consider any representations made to it within that period²². If a designation is terminated, GEMA (or, as the case may be, NIAER) may give such directions, either to the United Kingdom notified body the subject of the termination or to another United Kingdom notified body, for the purposes of making arrangements for the determination of outstanding applications as it considers appropriate; and may, notwithstanding that power to give directions, authorise another United Kingdom notified body to take over the functions of the United Kingdom notified body the subject of the termination in respect of such cases as GEMA (or, as the case may be, NIAER) may specify²³.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 7(1). In exercising the power so conferred on it, GEMA (or, as the case may be, NIAER) may (in addition to the matters of which it is required to satisfy itself pursuant to reg 7(2): see the text and note 4 infra) have regard to any matter appearing to it to be relevant: reg 7(5).

4 Ibid reg 7(2). 'Notified body criteria' means the criteria set out in ibid Sch 2 Pt 1 (paras 1-8): reg 2(1). Those criteria are as follows (Sch 2 Pt 1 paras 1-8), ie:

- 49 (1) the body, its director and staff involved in conformity assessment tasks must not be the designer, manufacturer, supplier, installer or user of the relevant instrument that they inspect, nor the authorised representative of any of them; in addition, they may not be directly involved in the design, manufacture, marketing or maintenance of the relevant instrument, nor represent the parties engaged in these activities; but the preceding criterion does not preclude in any way the possibility of exchanges of technical information between the manufacturer and the body for the purposes of conformity assessment;
- 50 (2) the body, its director and staff involved in conformity assessment tasks must be free from all pressures and inducements, in particular financial inducements, that might influence their judgment or the results of their conformity assessment, especially from persons or groups of persons with an interest in the results of the assessments;

- 51 (3) the conformity assessment must be carried out with the highest degree of professional integrity and requisite competence in the field of metrology; should the body sub-contract specific tasks, it must first ensure that the sub-contractor meets the requirements of the 2006 Regulations, and in particular of Sch 1; and the body must keep the relevant documents assessing the sub-contractor's qualifications and the work carried out by him under those regulations at the disposal of GEMA (or NIAER, where that authority designates the body);
 - 52 (4) the body must be capable of carrying out all the conformity assessment tasks for which it has been designated, whether those tasks are carried out by the body itself or on its behalf and under its responsibility; it must have at its disposal the necessary staff and must have access to the necessary facilities for carrying out in a proper manner the technical and administrative tasks entailed in conformity assessment;
 - 53 (5) the body's staff must have:
 49. (a) sound technical and vocational training, covering all conformity assessment tasks for which the body was designated;
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 50. (b) satisfactory knowledge of the rules governing the tasks which it carries out, and adequate experience of such tasks;
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 51. (c) the requisite ability to draw up the certificates, records and reports demonstrating that the tasks have been carried out;
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 - 54 (6) the impartiality of the body, its director and staff must be guaranteed; the remuneration of the body must not depend on the results of the tasks it carries out and the remuneration of the body's director and staff must not depend on the number of tasks carried out or on the results of such tasks;
 - 55 (7) the body must satisfy GEMA (or NIAER, where that authority designates the body) that it has adequate civil liability insurance;
 - 56 (8) the body's director and staff must be bound to observe professional secrecy with regard to all information obtained in the performance of their duties pursuant to the 2006 Regulations, except vis-à-vis the authority of GEMA (or NIAER, where that authority designates the body).
- 5 For these purposes, 'national standard' means a standard applicable to the designation of notified bodies (1) implementing a harmonised standard that has been published in the Official Journal; and (2) the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 11.2: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 7(6). For the meaning of 'harmonised standard' see PARA 955 note 7 ante.
- 6 Ibid reg 7(3).
- 7 Ibid reg 7(4)(a). 'In writing' includes text that is (1) transmitted by electronic means; (2) received in legible form; and (3) capable of being used for subsequent reference: reg 2(1).
- 8 For the meaning of 'relevant instrument' see PARA 954 ante.
- 9 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 7(4)(b).
- 10 Ie subject to ibid reg 10: see the text and notes 20-23 infra.
- 11 Ibid reg 7(4)(c).
- 12 For the meaning of 'conformity assessment procedure' see PARA 955 note 12 ante.
- 13 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 7(4)(d).
- 14 Ie pursuant to ibid reg 11. A United Kingdom notified body may charge such fees in connection with, or incidental to, the carrying out of conformity assessment procedures or specific tasks as it may determine: reg 11(1). Those fees must not, however, exceed the following: (1) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to the character and extent of the work done or to be done by that notified body on behalf of the applicant and the commercial rate normally charged on account of profit for

that work or similar work: reg 11(2). The power to charge fees includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant: reg 11(3). Where any fees payable to a United Kingdom notified body pursuant to reg 11 remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, the notified body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate or notification appropriate to the relevant conformity assessment procedure will be suspended until payment of the fees has been received: reg 11(4).

15 Ibid reg 7(4)(e).

16 Ibid reg 9(1).

17 It complies with the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647.

18 Ibid reg 9(2).

19 Ibid reg 11(5). Where, in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), GEMA, acting on behalf of NIAER, makes a designation under reg 7 or carries out an inspection under reg 9, GEMA may charge any person fees to recover the full costs reasonably incurred by it in making the designation or carrying out the inspection: reg 11(6).

20 Ibid reg 10(1).

21 Ibid reg 10(2).

22 Ibid reg 10(3).

23 Ibid reg 10(4).

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957. Functions of notified bodies.

A notified body¹ must carry out the following functions².

It must³ assess an application made by a manufacturer⁴ for the issue of a certificate of conformity, a design or type examination certificate or a notification of approval of the manufacturer's quality system, in accordance with the Annex to the relevant European Directive⁵ which is applicable to the relevant conformity assessment procedure⁶ in respect of a relevant instrument⁷. In determining such an application, the notified body must have regard to the actual or usual environment of the relevant instrument and may have regard to any other standard or other technical criteria appearing to it to be relevant⁸. Where in the opinion of the notified body the relevant instrument to which an application relates is compliant with the essential requirements⁹, it must issue a certificate or notification in accordance with the prescribed procedure¹⁰; and where such a certificate or notification is issued by a United Kingdom notified body¹¹, it must send a copy to the Gas and Electricity Markets Authority ('GEMA'), or to the Northern Ireland Authority for Energy Regulation ('NIAER'), where that authority has designated the body¹². Where, however, in the opinion of the notified body, the relevant instrument to which an application relates is not compliant with the essential requirements, it must issue a notice to the applicant in accordance with the prescribed procedure¹³.

A notified body must not accept an application for a certificate or notification in respect of a relevant instrument unless the application is in writing¹⁴, in English or another language acceptable to that notified body, is accompanied by all relevant documentation, in which all writing is in English or another language acceptable to that notified body, and includes particulars of which applicable standards the manufacturer has applied or proposes to apply in respect of the instrument¹⁵. A notified body is not to be required to determine an application for a certificate or notification where the manufacturer has not:

- 1841 (1) granted the notified body access to a relevant instrument to which the application relates or the production facilities for the instrument, including, where applicable, the production facilities envisaged in relation to a representative instrument, to the extent that the notified body reasonably requests; and
- 1842 (2) made available to the notified body such information as it may reasonably require to determine the application¹⁶;

and a notified body is not to be required to carry out specified conformity assessment procedures and specific tasks¹⁷ if either the person making the application has not submitted with the application the amount of the fee which the notified body requires to be submitted with the application¹⁸ or the notified body reasonably believes that, having regard to the number of applications made to it pursuant to its designation which are outstanding, it will be unable to commence the required work within three months of receiving the application¹⁹.

A notified body may, in exercising its functions, either arrange for some other person to carry out any test, assessment or inspection on its behalf or require the applicant to satisfy another person with respect to any matter at the applicant's expense²⁰; but nothing in this provision

authorises a notified body to rely on the opinion of another person with regard to whether a relevant instrument is compliant with any of the essential requirements²¹.

A certificate or notification issued by a notified body must be in writing and, in addition to the requirements provided for in the conformity assessment procedures, it must be in English and must give the name and address of the applicant and, where the applicant is not the manufacturer, of the manufacturer²². It must be signed by or on behalf of the notified body and give the identification number²³ of the notified body²⁴; and must bear the date of issue and the number of the certificate or notification²⁵. It must also give particulars of the relevant instrument (where applicable, in relation to each variant) to which it relates sufficient to identify it, and must state whether the instrument to which it relates is a single item or a representative, or if it covers a number of variants of that instrument²⁶; and it must certify that the instrument to which it relates is compliant with the essential requirements²⁷.

A certificate or notification may be unconditional or may be subject to such conditions as the notified body considers appropriate²⁸. Such conditions may include:

- 1843 (a) a limitation on the environment for which the relevant instrument is stated to be suitable; or
- 1844 (b) a requirement that the instrument is only to be installed at a specific site²⁹.

The conditions so imposed may be varied³⁰ by the notified body which issued the certificate or notification and such variation may include the imposition of new conditions or the removal of conditions³¹.

The notified body which issued the certificate or notification must withdraw that certificate or notification in accordance with the following provisions if it appears that the relevant instrument to which it relates is not compliant with the essential requirements³². Where a notified body is minded to:

- 1845 (i) refuse to issue a certificate or notification;
- 1846 (ii) vary a certificate or notification, other than at the request of the person to whom it was given; or
- 1847 (iii) withdraw a certificate or notification,

it must give the applicant, or the person to whom the certificate or notification was given, a notice in writing:

- 1848 (A) giving reasons for the refusal, variation or withdrawal;
- 1849 (B) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- 1850 (C) giving the applicant or person the opportunity to make representations within 21 days from the date of the notice and stating that the notified body must consider any representations made to it within that period by that applicant or person³³.

Where a notified body, having considered representations so made to it, remains of the opinion that an application for a certificate or notification should be refused, or that a certificate or notification should be varied or withdrawn, it must give notice in writing to the applicant or the person to whom the certificate or notification was given, and give that applicant or person information about the judicial remedies available to him³⁴.

1 For the meaning of 'notified body' see PARA 955 note 10 ante.

- 2 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 8.
- 3 le subject to *ibid* Sch 2 para 10: see the text and notes 14-19 *infra*.
- 4 For the meaning of 'manufacturer' see PARA 955 note 6 *ante*.
- 5 le the relevant Annex to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).
- 6 For the meaning of 'conformity assessment procedure' see PARA 955 note 11 *ante*.
- 7 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 2 para 9(1). For the meaning of 'relevant instrument' see PARA 954 *ante*.
- 8 *Ibid* Sch 2 para 9(2).
- 9 For the meaning of 'the essential requirements' see PARA 954 note 14 *ante*.
- 10 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 2 para 9(3). The certificate or notification must be issued in accordance with Sch 2 para 12 (see the text and notes 22-27 *infra*): Sch 2 para 9(3).
- 11 As to United Kingdom notified bodies see PARA 956 *ante*.
- 12 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 2 para 9(5). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq ante*.
- 13 *Ibid* Sch 2 para 9(4). The notice must be issued in accordance with Sch 2 para 15 (see the text and notes 33-34 *infra*): Sch 2 para 9(4).
- 14 For the meaning of 'in writing' see PARA 956 note 7 *ante*.
- 15 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 2 para 10(1).
- 16 *Ibid* Sch 2 para 10(2).
- 17 le the functions referred to in *ibid* reg 7(4)(d): see PARA 956 *ante*.
- 18 le pursuant to *ibid* reg 11: see PARA 956 *ante*.
- 19 *Ibid* Sch 2 para 10(3).
- 20 *Ibid* Sch 2 para 11(1). Nothing in the relevant regulations precludes such other person from charging any fee in respect of any work so undertaken by him: Sch 2 para 11(3).
- 21 *Ibid* Sch 2 para 11(2).
- 22 *Ibid* Sch 2 para 12(a), (b).
- 23 As to the identification number see PARA 955 note 10 *ante*.
- 24 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, Sch 2 para 12(c).
- 25 *Ibid* Sch 2 para 12(d).
- 26 *Ibid* Sch 2 para 12(e).
- 27 *Ibid* Sch 2 para 12(f).
- 28 *Ibid* Sch 2 para 13(1).
- 29 *Ibid* Sch 2 para 13(2).
- 30 le in accordance with *ibid* Sch 2 para 15: see the text and notes 33-34 *infra*.
- 31 *Ibid* Sch 2 para 13(3).
- 32 *Ibid* Sch 2 para 14.

33 Ibid Sch 2 para 15(1). Where a notice is given under Sch 2 para 15(1) or (2) by a United Kingdom notified body, it must send a copy to GEMA (or to NIAER, where that authority has designated the body): Sch 2 para 15(3).

34 Ibid Sch 2 para 15(2). See also note 33 *supra*.

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958. Marking and identification requirements.

Where a relevant instrument¹ is compliant with the essential requirements², the manufacturer³ must affix the CE mark⁴ and the M mark⁵ to the instrument and the notified body⁶ which carries out the conformity assessment procedure⁷ in respect of that instrument must affix its identification number⁸ to the instrument, or may agree that the manufacturer is to do so on its behalf⁹. Any other marking may be affixed to the relevant instrument provided that the visibility and legibility of the CE marking, the M marking and the identification number of the notified body are not reduced¹⁰.

Where a relevant instrument falls within the scope of other European Directives¹¹ which provide for the affixing of the CE marking, the affixing of the CE marking under the above provisions indicates that the instrument is also presumed to be compliant with the requirements of those other Directives¹².

1 For the meaning of 'relevant instrument' see PARA 954 ante.

2 For the meaning of 'the essential requirements' see PARA 954 note 14 ante.

3 For the meaning of 'manufacturer' see PARA 955 note 6 ante.

4 As to the CE mark see PARA 955 note 8 ante.

5 As to the M mark see PARA 955 note 9 ante.

6 For the meaning of 'notified body' see PARA 955 note 10 ante.

7 For the meaning of 'conformity assessment procedure' see PARA 955 note 11 ante.

8 As to the identification number see PARA 955 note 10 ante.

9 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 12(1).

10 Ibid reg 12(2).

11 Ie Directives other than European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).

12 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 13(1). Where reg 13(1) applies, the publication reference of such other Directives in the Official Journal must be given in the documents, notices or instructions required to accompany the relevant instrument: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 13(2).

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959. Unauthorised application of authorised marks.

A person is guilty of an offence¹ if, in the case of an relevant instrument², he:

- 1851 (1) affixes an authorised mark³ to the instrument otherwise than in accordance with the relevant regulations⁴;
- 1852 (2) alters or defaces an authorised mark affixed to the instrument⁵;
- 1853 (3) removes an authorised mark affixed to the instrument; or
- 1854 (4) affixes any other marking to the instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark⁶.

Where, however, the alteration or defacement of an authorised mark is occasioned solely in the course of the adjustment or repair of a relevant instrument by a person regularly engaged in the business of repair of such instruments, or by his authorised agent, that person or his authorised agent is not guilty of an offence under head (2) above⁷; and where the alteration or defacement of an authorised mark is occasioned solely in the course of a duty imposed on a meter examiner⁸, that person is not guilty of such an offence⁹.

A person is also guilty of an offence¹⁰ if he places on the market¹¹ or puts into use¹² a relevant instrument:

- 1855 (a) which, to his knowledge, bears:
 - 153 232. (i) an authorised mark affixed otherwise than in accordance with the relevant regulations¹³;
 - 233. (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to above¹⁴;
 - 234. (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
- 154 1856 (b) from which, to his knowledge, an authorised mark has been removed¹⁵.

Where an offence under heads (1) to (4) or head (a) or head (b) above has been committed in respect of a relevant instrument which has not been put into use, the instrument, and any implement used in the commissioning of the offence, is liable to be forfeited¹⁶.

1 A person guilty of an offence under the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: *ibid* reg 21. As to the standard scale see PARA 613 note 11 ante. As to proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see PARA 964 post.

2 For the meaning of 'relevant instrument' see PARA 954 ante.

3 For these purposes, 'authorised mark' means the CE marking, the M marking or the identification number of the notified body which carried out the conformity assessment procedure in respect of the relevant instrument: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 15(7). As to those

markings and that number see PARA 955 notes 8-10 ante; and for the meaning of 'conformity assessment procedure' see PARA 955 note 11 ante.

4 Ie otherwise than in accordance with the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647. A reference in reg 15 to other provisions of those regulations includes a reference to corresponding provisions under the laws of other member states: reg 15(6). For the meaning of 'member state' for these purposes see PARA 955 note 1 ante.

5 See, however, *ibid* reg 15(2), (3); and the text and notes 7-9 *infra*.

6 *Ibid* reg 15(1).

7 *Ibid* reg 15(2).

8 Ie a duty imposed by the Gas (Meters) Regulations 1983, SI 1983/684, reg 4 (as amended): see PARA 949 note 13 ante.

9 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 15(3).

10 See note 1 *supra*.

11 For the meaning of 'place on the market' see PARA 955 note 1 ante.

12 For the meaning of 'put into use' see PARA 955 note 2 ante.

13 See note 4 *supra*.

14 Ie other than in the circumstances referred to in the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 15(2) or (3): see the text and notes 7-9 *supra*.

15 *Ibid* reg 15(4).

16 *Ibid* reg 15(5).

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960. Compliance notice procedures.

Where an enforcement authority¹ establishes that, in the case of a relevant instrument² that has been placed on the market³ or put into use⁴, the CE marking⁵ or the M marking⁶ has, or both have, been affixed unduly⁷, the following provisions have effect⁸. The enforcement authority must serve a compliance notice⁹ on the manufacturer¹⁰ or his authorised representative¹¹ which must:

- 1857 (1) be in writing¹²;
- 1858 (2) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- 1859 (3) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the relevant instrument and give reasons for its opinion;
- 1860 (4) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- 1861 (5) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- 1862 (6) warn that person that, where the non-conformity continues beyond the date specified in head (5) above, the enforcement authority may take further action¹³ in respect of that relevant instrument¹⁴.

1 The following authorities must enforce the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, ie: (1) the Gas and Electricity Markets Authority ('GEMA'), in relation to England and Wales; (2) the Northern Ireland Authority for Energy Regulation ('NIAER'), in relation to Northern Ireland; (3) GEMA, in relation to Northern Ireland, to the extent that any arrangements entered into in accordance with reg 25 provide that GEMA is to act on behalf of NIAER for, or in connection with, the carrying out of the functions conferred on NIAER under Pt 3 (regs 14-23); (4) any other third party designated to act on behalf of GEMA or (in relation to Northern Ireland) NIAER: reg 14(1).

2 For the meaning of 'relevant instrument' see PARA 954 ante.

3 For the meaning of 'place on the market' see PARA 955 note 1 ante.

4 For the meaning of 'put into use' see PARA 955 note 2 ante.

5 As to the CE marking see PARA 955 note 8 ante.

6 As to the M marking see PARA 955 note 9 ante.

7 For these purposes, the CE marking is to be considered to have been affixed unduly if it is not compliant with the requirements of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 12(3)(a) (see PARA 955 note 8 ante) and the M marking is to be considered to have been affixed unduly if it is not compliant with the requirements of reg 12(3)(b) (see PARA 955 note 9 ante): reg 16(3).

8 Ibid reg 16(1).

9 'Compliance notice' means a notice served in accordance with ibid reg 16(2) (see the text and notes 10-14 infra): reg 2(1). Any document required or authorised by the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, to be served on a person may be so served (1) by delivering it to him or by leaving it at his

proper address or by sending it by post to him at that address; (2) if the person is a body corporate, by serving it in accordance with head (1) supra on the secretary or clerk of that body corporate; or (3) if the person is a partnership, by serving it in accordance with head (1) supra on a partner or on a person having control or management of the partnership business: reg 26(1). For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (which relates to the service of documents by post) in its application to the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 26(1), the proper address of any person on whom a document is to be served by virtue of the 2006 Regulations is his last known address except that (a) in the case of service on a body corporate or its secretary or clerk, it is the address of the registered or principal office of the body corporate; and (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the principal office of the partnership; and for these purposes the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: reg 26(2).

Where an enforcement authority other than GEMA or NIAER serves a compliance notice, it must at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf): reg 16(4). Where GEMA, acting in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), serves a compliance notice, it must at the same time send a copy of the notice to NIAER: reg 16(5).

10 For the meaning of 'manufacturer' see PARA 955 note 6 ante.

11 'Authorised representative' means a person who is established in a member state and is authorised by a manufacturer, in writing, to act on his behalf: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 2(1). For the meaning of 'member state' for these purposes see PARA 955 note 1 ante.

12 For the meaning of 'in writing' see PARA 956 note 7 ante.

13 Ie under the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 17: see PARA 961 post.

14 Ibid reg 16(2).

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961. Immediate enforcement action.

Where an enforcement authority¹ has reasonable grounds for considering that:

- 1863 (1) the manufacturer² or his authorised representative³ has failed to comply with a compliance notice⁴;
- 1864 (2) a relevant instrument⁵, which is placed on the market⁶ or put into use⁷, does not bear one or more of the CE marking⁸, the M marking⁹ and the identification number¹⁰ of the notified body¹¹ which carried out the conformity assessment procedure¹² in respect of that instrument; or
- 1865 (3) a relevant instrument which bears the marking and identification requirements referred to in head (2) above does not meet the essential requirements¹³ when placed on the market or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions have effect¹⁴.

The enforcement authority must serve an enforcement notice¹⁵ on the manufacturer or his authorised representative which must:

- 1866 (a) be in writing¹⁶;
- 1867 (b) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- 1868 (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of the relevant regulations¹⁷ have not been complied with;
- 1869 (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- 1870 (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject¹⁸.

Such a notice may:

- 1871 (i) require the relevant instrument to be withdrawn from the market; or
 - 1872 (ii) prohibit or restrict the placing on the market or putting into use of the relevant instrument; and
 - 1873 (iii) specify that unless steps are taken which ensure:
- 155
- 235. (A) that the relevant instrument is compliant with the requirements of the relevant regulations; or
 - 236. (B) that the manufacturer or his authorised representative acts as required under head (i) or head (ii) above,
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any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the relevant instrument, that the instrument satisfies the essential requirements, may be withdrawn by that notified body¹⁹.

If, in the case of a certificate or notification granted by a United Kingdom notified body²⁰, the Gas and Electricity Markets Authority ('GEMA'), in relation to a notified body which it has designated, or the Northern Ireland Authority for Energy Regulation ('NIAER'), in relation to a notified body which it has designated, is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, GEMA (or, as the case may be, NIAER) must inform that notified body of that fact²¹; and if, in the case of a certificate or notification granted under the law of another member state²², GEMA or NIAER is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, it must inform the relevant competent authority of that fact²³.

1 For the meaning of 'enforcement authority' see PARA 960 note 1 ante.

2 For the meaning of 'manufacturer' see PARA 955 note 6 ante.

3 For the meaning of 'authorised representative' see PARA 960 note 11 ante.

4 For the meaning of 'compliance notice' see PARA 960 note 9 ante.

5 For the meaning of 'relevant instrument' see PARA 954 ante.

6 For the meaning of 'place on the market' see PARA 955 note 1 ante.

7 For the meaning of 'put into use' see PARA 955 note 2 ante.

8 As to the CE marking see PARA 955 note 8 ante.

9 As to the M marking see PARA 955 note 9 ante.

10 As to the identification number see PARA 955 note 10 ante.

11 For the meaning of notified body' see PARA 955 note 10 ante.

12 For the meaning of 'conformity assessment procedure' see PARA 955 note 11 ante.

13 For the meaning of 'essential requirements' see PARA 954 note 14 ante.

14 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 17(1).

15 'Enforcement notice' means a notice served in accordance with *ibid* reg 17(2) (see the text and notes 16-18 *infra*): reg 2(1). As to service of notices see PARA 960 note 9 ante.

Where an enforcement authority other than the Gas and Electricity Markets Authority ('GEMA') or the Northern Ireland Authority for Energy Regulation ('NIAER') serves an enforcement notice, it must at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf): reg 17(4). Where GEMA, acting in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), serves an enforcement notice, it must at the same time send a copy of the notice to NIAER: reg 17(5). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante.

16 For the meaning of 'in writing' see PARA 956 note 7 ante.

17 *Ie* the requirements of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: see PARA 954 *et seq* ante, PARA 962 *et seq* post.

18 *Ibid* reg 17(2).

19 *Ibid* reg 17(3).

20 For the meaning of 'United Kingdom notified body' see PARA 955 note 10 ante.

21 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 17(6).

- 22 For the meaning of 'member state' for these purposes see PARA 955 note 1 ante.
- 23 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 17(7).

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962. Powers of entry and inspection.

Subject to the production if so requested of his credentials¹, an enforcement officer² may:

- 1874 (1) for the purpose of the relevant regulations³, at all reasonable times:
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237. (a) inspect and test, or remove for testing, any relevant instrument⁴ which has not been put into use⁵ in such manner as he considers appropriate;
238. (b) inspect and take copies of any document relating to such a relevant instrument; and
239. (c) enter any premises at which he has reasonable cause to believe there to be such a relevant instrument, not being premises used only as a private dwelling house⁶;
- 158
- 1875 (2) at any time, seize and detain:
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240. (a) a relevant instrument which he has reasonable cause to believe is liable to be forfeited under the relevant regulations⁷; and
241. (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under those regulations⁸.
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If a justice of the peace, on written information on oath, is satisfied that there are reasonable grounds to believe that any such relevant instrument or document as is mentioned in head (1) or head (2) above is on any premises, or that an offence under the relevant regulations⁹ has been, is being or is about to be committed on any premises, and is also satisfied either that:

- 1876 (i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
- 1877 (ii) an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant under his hand, which is to continue in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force¹⁰.

An enforcement officer entering any premises by virtue of the above provisions may take such other persons and such equipment as may appear to him necessary, and on leaving such premises which he has entered by virtue of a warrant¹¹, being premises which are unoccupied or the occupier of which is temporarily absent, he must leave them as effectively secured against a trespasser as he found them¹². If an enforcement officer or other person who enters any workplace by virtue of the above provisions discloses to any person any information obtained by him in the workplace with regard to any secret manufacturing process or trade secret, he is guilty of an offence¹³, unless the disclosure was made in the performance of his

duty¹⁴. It is not, however, such an offence for a person to disclose information in circumstances where either the person from whom the information was received has consented to its disclosure, or the information is disclosed more than 50 years after it was received¹⁵.

Nothing in the above provisions authorises any person to stop any vehicle on a highway¹⁶.

A person is guilty of an offence¹⁷ if he:

- 1878 (A) wilfully obstructs an enforcement officer in the execution of any of his functions under the relevant regulations¹⁸; or
- 1879 (B) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under those regulations¹⁹.

A person is also guilty of an offence²⁰ if, in giving an enforcement officer such information as is mentioned in head (B) above, that person gives any information he knows to be false²¹. Nothing in the relevant regulations is, however, to be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege, or as authorising a person to take possession of any documents or records which are in the possession of a person who would be so entitled²²; and nothing in those regulations is to be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner²³.

1 For these purposes, 'credentials' means evidence of appointment or designation as an enforcement officer: Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 18(9).

2 'Enforcement officer' means a person appointed by an enforcement authority to act on its behalf to enforce the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: reg 2(1). For the meaning of 'enforcement authority' see PARA 960 note 1 ante.

3 Ie for the purposes of the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: see PARA 954 et seq ante, PARAS 963-964 post.

4 For the meaning of 'relevant instrument' see PARA 954 ante.

5 For the meaning of 'put into use' see PARA 955 note 2 ante.

6 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 18(1).

7 Ie under the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647.

8 Ibid reg 18(2).

9 See note 7 supra.

10 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 18(3).

11 Ie under ibid reg 18(3): see the text and notes 9-10 supra.

12 Ibid reg 18(5).

13 A person guilty of an offence under the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: ibid reg 21. As to the standard scale see PARA 613 note 11 ante. As to proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see PARA 964 post.

14 Ibid reg 18(6).

15 Ibid reg 18(7).

- 16 Ibid reg 18(8).
- 17 See note 13 *supra*.
- 18 See note 7 *supra*.
- 19 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 19(1).
- 20 See note 13 *supra*.
- 21 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 19(2).
- 22 Ibid reg 27(1).
- 23 Ibid reg 27(2). The Civil Evidence Act 1968 s 14(1) (as amended) (which relates to the privilege against self-incrimination: see CIVIL PROCEDURE vol 11 (2009) PARA 974) applies to the right conferred by the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 27(2) as it applies to the right described in the Civil Evidence Act 1968 s 14(1) (as amended): Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 27(3).

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963. Review of decisions of enforcement authority.

Where a person is aggrieved¹ by a compliance notice² or an enforcement notice³ served by an enforcement authority⁴ other than the Gas and Electricity Markets Authority ('GEMA')⁵ or the Northern Ireland Authority for Energy Regulation ('NIAER'), that person may apply to GEMA (or to NIAER, where the enforcement authority is acting on NIAER's behalf) to review that notice⁶. Such an application must:

- 1880 (1) be in writing⁷;
- 1881 (2) state the grounds on which the application is made;
- 1882 (3) be sent to GEMA (or, as the case may be, NIAER) within 21 days from the date of the relevant compliance notice or enforcement notice⁸.

GEMA, or, as the case may be, NIAER, may:

- 1883 (a) hold an inquiry in connection with the notice which is the subject of its review; and
- 1884 (b) appoint an assessor for the purposes of assisting it with its review⁹;

and must, within a reasonable time, inform the aggrieved person and the enforcement authority in writing of its decision whether to uphold the decision of that authority, together with reasons for its decision¹⁰. Where GEMA or, as the case may be, NIAER, does not uphold any compliance notice or enforcement notice, it must give reasons for the withdrawal of that notice¹¹.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 For the meaning of 'compliance notice' see PARA 960 note 9 ante.

3 For the meaning of 'enforcement notice' see PARA 961 note 15 ante.

4 For the meaning of 'enforcement authority' see PARA 960 note 1 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante.

6 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 20(1).

7 For the meaning of 'in writing' see PARA 956 note 7 ante.

8 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 20(2).

9 Ibid reg 20(3).

10 Ibid reg 20(4).

11 Ibid reg 20(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vi) Stamping etc of Gas Meters/B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS/(B) Requirements of the Measuring Instruments (Gas Meters) Regulations 2006/964. Further provisions with regard to offences.

964. Further provisions with regard to offences.

No proceedings for an offence under the relevant regulations¹ may be instituted in England and Wales except by or on behalf of an enforcement authority².

In proceedings against a person for such an offence, it is³ a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence⁴.

Where, however, in proceedings against a person for such an offence, the defence so provided involves an allegation that the commission of the offence was due to the act or default of another, or to reliance on information given by another, that person is not, without the leave of the court, to be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings, he has served a notice⁵ on the person bringing the proceedings⁶. Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it⁷.

Furthermore, a person is not to be entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to:

- 1885 (1) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 1886 (2) whether he had any reason to disbelieve the information⁸.

Where the commission by a person of an offence under the relevant regulations⁹ is due to the act or default of another person in the course of any business of his, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person¹⁰.

Where a body corporate¹¹ commits an offence and it is proved that the offence was committed:

- 1887 (a) with the consent or connivance of an officer of the body corporate¹²; or
- 1888 (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, is guilty of the offence¹³.

¹ ie under the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: see PARA 954 et seq ante.

² Ibid reg 14(2). For the meaning of 'enforcement authority' see PARA 960 note 1 ante.

³ ie subject to ibid reg 22(2)-(4): see the text and notes 5-8 infra.

⁴ Ibid reg 22(1).

5 le in accordance with *ibid* reg 22(3): see the text and note 7 *infra*. As to the service of notices see PARA 960 note 9 *ante*.

6 *Ibid* reg 22(2).

7 *Ibid* reg 22(3). See, however, reg 27 (savings for certain privileges), cited in PARA 962 *ante*.

8 *Ibid* reg 22(4).

9 See note 1 *supra*.

10 Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647, reg 23(1).

11 For these purposes, references to a 'body corporate' include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner: *ibid* reg 23(4).

12 For these purposes, a reference to an officer of a body corporate includes a reference to (1) a director, manager, secretary or other similar officer of the body corporate; (2) a person purporting to act as a director, manager, secretary or other similar officer; and (3) if the affairs of the body corporate are arranged by its members, a member: *ibid* reg 23(3). See also note 11 *supra*.

13 *Ibid* reg 23(2).

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(vii) Determination of Disputes and Investigation of Complaints

965. Determination of certain disputes.

Any dispute arising under:

- 1889 (1) specified statutory provisions relating to the general powers and duties of gas transporters¹, the duty to connect certain premises² and the power to require security³;
- 1890 (2) regulations with regard to connection charges⁴; or
- 1891 (3) any of the specified provisions of the gas code relating to gas meters, the maintenance of service pipes etc and the alteration, adjustment or replacement of burners⁵,

between a gas transporter⁶ or gas supplier⁷ and a person who is, or wishes to become, a customer of a person authorised by a licence⁸ or exemption⁹ to supply gas¹⁰, may¹¹ be referred to the Gas and Electricity Markets Authority ('GEMA')¹² by either party, or with the agreement of either party, by the Gas and Electricity Consumer Council¹³ and must¹⁴, on such a reference, be determined by order made either by the Authority, or if it thinks fit, by an arbitrator appointed by the Authority¹⁵. However, no dispute which:

- 1892 (a) arises under the statutory provision imposing a duty on a gas transporter to comply, so far as it is economical to do so, with a reasonable request for the connection of premises or a pipeline system¹⁶ and which relates to the connection of any premises to a pipeline system operated by a gas transporter; or
- 1893 (b) arises under the statutory duty to connect certain premises¹⁷, or regulations under the provisions imposing that duty¹⁸, and which relates to the connection of any premises to a main of such a transporter,

may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made¹⁹.

Any person making an order for the determination of a dispute²⁰ must include in the order his reasons for reaching his decision with respect to the dispute²¹; and the practice and procedure to be followed in connection with any such determination is to be such as the Authority may consider appropriate²². An order under these provisions:

- 1894 (i) may include such incidental, supplemental and consequential provision, including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order, as that person considers appropriate; and
- 1895 (ii) is to be final and enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of a county court²³.

In including in such an order any such provision as to costs or expenses, the person making the order must have regard to the conduct and means of the parties and any other relevant circumstances²⁴.

Where any dispute between a gas transporter and a person requiring a connection to a main of the transporter falls to be determined under the above provisions, the Authority may give directions as to the circumstances in which, and the terms on which, the transporter is to connect or, as the case may be, to maintain the connection pending the determination of the dispute²⁵. Similarly, where any dispute between a gas supplier and a person requiring a supply of gas falls to be so determined, the Authority may give directions as to the circumstances in which, and the terms on which, the supplier is to give or, as the case may be, to continue to give the supply pending the determination of the dispute²⁶; and where any dispute arising under the power to require security for making a connection²⁷ falls to be so determined, the Authority may give directions as to the security, if any, to be given pending the determination of the dispute²⁸. Any direction under these provisions may be expressed to apply either in relation to a particular case or in relation to a class of case²⁹.

1 Ie under the Gas Act 1986 s 9(1)(b) or (2) (as substituted and amended): see PARA 835 ante.

2 Ie under *ibid* s 10 (as substituted and amended): see PARAS 836-837, 838 ante.

3 Ie under *ibid* s 11 (as substituted and amended): see PARA 839 ante.

4 Ie under regulations under *ibid* s 10 (as substituted and amended): see the Gas (Connection Charges) Regulations 2001, SI 2001/3267; and PARA 838 ante.

5 Ie any provision of the Gas Act 1986 Sch 2B paras 2, 3, 15 or 16 (as added and amended): see PARAS 857, 864 ante.

6 For the meaning of 'gas transporter' see PARA 805 ante.

7 For the meaning of 'gas supplier' see PARA 807 ante.

8 For the meaning of 'licence' see PARA 789 note 9 ante.

9 For the meaning of 'exemption' see PARA 789 note 19 ante.

10 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

11 Ie subject to the Gas Act 1986 s 27A(2) (as added): see the text and notes 16-19 *infra*.

12 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

13 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

14 See note 11 *supra*.

15 Gas Act 1986 s 27A(1) (s 27A added by the Gas Act 1995 s 10(1), Sch 3 para 26; the Gas Act 1986 s 27A(1), (2), (5) amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1); and by virtue of s 3(2)).

16 Ie which arises under the Gas Act 1986 s 9(1)(b) (as substituted and amended): see PARA 835 ante.

17 See note 2 *supra*.

18 See note 4 *supra*.

19 Gas Act 1986 s 27A(2) (as added and amended: see note 15 *supra*).

20 Ie an order under *ibid* s 27A(1) (as added and amended): see the text and notes 1-15 *supra*.

- 21 Ibid s 27A(3) (as added: see note 15 supra).
- 22 Ibid s 27A(4) (as added (see note 15 supra); amended by virtue of the Utilities Act 2000 s 3(2)).
- 23 Gas Act 1986 s 27A(9) (as added: see note 15 supra).
- 24 Ibid s 27A(10) (as added: see note 15 supra).
- 25 Ibid s 27A(5) (as added and amended: see note 15 supra). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.
- 26 Ibid s 27A(6) (as added (see note 15 supra); amended by virtue of the Utilities Act 2000 s 3(2)). As to the enforcement of the requirements so imposed see PARA 968 et seq post; and as to penalties for the contravention of such requirements see PARA 972 et seq post.
- 27 le any dispute arising under the Gas Act 1986 s 11(1) (as substituted and amended): see PARA 839 ante.
- 28 Ibid s 27A(7) (as added (see note 15 supra); amended by virtue of the Utilities Act 2000 s 3(2)).
- 29 Gas Act 1986 s 27A(8) (as added: see note 15 supra).

UPDATE

965 Determination of certain disputes

TEXT AND NOTES--As to 'Article 25 disputes' see PARA 965A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vii) Determination of Disputes and Investigation of Complaints/965A. Article 25 disputes.

965A. Article 25 disputes.

An Article 25 dispute, other than one which may be referred to the Authority (the Gas and Electricity Markets Authority; see PARA 965) under or by virtue of any other provision of the Gas Act 1986, may be referred to the Authority under s 27C by the person who is the complainant in relation to the dispute: s 27C(1) (ss 27B-27D added by SI 2009/1349). An Article 25 dispute referred to the Authority under the Gas Act 1986 s 27C must be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator appointed by the Authority: s 27C(2). The practice and procedure to be followed in connection with an Article 25 dispute referred to the Authority under s 27C is to be such as the Authority may consider appropriate: s 27C(3). An order under s 27C (1) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and (2) will be final: s 27C(4). The provision that may be included in an order under s 27C by virtue of head (1) includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order ('costs provision'): s 27C(6). Costs provision included in an order under s 27C is to be enforceable as if it were a judgment of the country court: s 27C(7). In the case of a gas transporter or the holder of a licence under s 7ZA (see PARA 806), ss 28-30F (see PARAS 968-974) are to have effect as if references in those provisions to a relevant requirement, other than the reference in s 28(8) included references to any duty or other requirement imposed on that person by an order under s 27C: s 27C(8). In the case of the owner of an LNG facility to which s 19D (see PARA 829) applies, s 22 (see PARA 832) is to have effect as if the directions referred to in s 22 as 'relevant directions' included any duty or other requirement imposed on that person by an order under s 27C: s 27C(9).

An order determining an Article 25 dispute, whether made under s 27C or made under or by virtue of any other provision of the Gas Act 1986, must be made within the permitted period: s 27D(1). The permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority: s 27D(2). However, where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period by two months, or with the agreement of the complainant, by a longer period: s 27D(3). If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice specifying information which it requires in order to assess whether the dispute is an Article 25 dispute, or whether there is a dispute at all, and requesting the person to provide that information, the dispute must be treated for the purposes of s 27C(2) as not referred to the Authority until the information is provided: s 27C(4).

For the purposes of ss 27C, 27D, a dispute is an 'Article 25 dispute' if (a) it is wholly or mainly a dispute with respect to an issue mentioned in the European Parliament and EC Council Directive 2003/55 (see PARA 653) art 19 or art 25 paras 1, 2 or 4; and (b) it arises from a written complaint made against a gas transporter, the holder of a licence under the Gas Act 1986 s 7ZA (licences for operation of gas interconnectors), or the owner of an LNG import facility to which s 19D applies, and is a dispute between the complainant and the person complained against: s 27B(1). The reference to a complaint does not include a reference to (i) a term or condition of a relevant licence held by the person complained against, or an obligation or right contained in any code or other document and having effect by virtue of such a term or condition; or (ii) a complaint made by a person as a household customer or potential household customer: s 27B(2). 'Household customer' has the meaning given by Directive 2003/55 art

2(25); 'LNG import facility' has the meaning given in the Gas Act 1986 s 19E(1) (see PARA 829); 'owner', in relation to an LNG import facility, includes any person occupying or having control of the facility; 'relevant licence' means a licence under s 7(2) (see PARA 805) or s 7ZA: s 27B(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vii) Determination of Disputes and Investigation of Complaints/966. Consumer complaints.

966. Consumer complaints.

The following provisions apply to a complaint which any customer or potential customer of, or user of gas supplied¹ by, an authorised supplier² ('the complainant') has in his capacity as such against:

- 1896 (1) the supplier, in respect of any matter connected with the services provided by him in the course of carrying on regulated activities³; or
- 1897 (2) any other person authorised by a licence⁴ or exemption⁵, in respect of any matter affecting those services which is connected with the carrying on by that other person of regulated activities⁶.

Where such a complaint, other than one appearing to it to be frivolous or vexatious, is referred to the Gas and Electricity Consumer Council⁷ by or on behalf of the complainant, the Council must⁸ investigate the complaint for the purpose of determining whether it is appropriate to take⁹ any action¹⁰. Where it appears to the Council that the complaint relates to a matter in respect of which any enforcement function¹¹ is or may be exercisable, the Council must, unless it considers that the Gas and Electricity Markets Authority ('GEMA')¹² already has notice of that matter, inform the Authority of the matter¹³; and where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority under any provision of the Gas Act 1986, the Council must inform the complainant that he may have the right to refer the dispute to the Authority¹⁴. The Council is not, however, required by these provisions:

- 1898 (a) to investigate a complaint, until the complainant has taken such steps as appear to the Council to be reasonable for him to take for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with the complaint;
- 1899 (b) to investigate any matter in respect of which any enforcement function is or may be exercisable¹⁵, until the Authority has had a reasonable opportunity to exercise any enforcement function in respect of that matter; and
- 1900 (c) to investigate any matter constituting a dispute which has been referred to the Authority under any provision of the Gas Act 1986¹⁶.

Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under the above provisions, the Council must make representations on behalf of the complainant to the person against whom the complaint is made about anything to which the complaint relates¹⁷. After investigating a complaint the Council may make a report to the Authority; and such a report may include information about any representations so made by the Council and the response of the person against whom the complaint is made to the complaint or any such representations¹⁸. No such report, or information about a complaint referred to the Council under these provisions from which the complainant may be identified, must be published or disclosed by the Council or the Authority in the exercise of any power under the Utilities Act 2000 or the Gas Act 1986 without the consent of the complainant¹⁹.

Where a representation made to the Authority about any matter, other than one appearing to it to be frivolous or vexatious, appears to the Authority to be about a matter which is or amounts to a complaint to which the above provisions apply, and to have been made by or on behalf of the complainant, the Authority must refer the complaint to the Council²⁰.

As from a day to be appointed²¹, the provisions set out above are repealed²² and new arrangements for dealing with consumer complaints under the Consumers, Estate Agents and Redress Act 2007 will be introduced²³.

1 For the meanings of 'gas', and references to the supply of gas, see PARA 802 ante.

2 For the meaning of 'authorised supplier' see PARA 797 note 3 ante.

3 For these purposes, 'regulated activities' means activities which are authorised or regulated by a licence or exemption: Gas Act 1986 s 32(10) (s 32 substituted by the Utilities Act 2000 s 22(1)).

4 For the meaning of 'licence' see PARA 789 note 9 ante.

5 For the meaning of 'exemption' see PARA 789 note 19 ante.

6 Gas Act 1986 s 32(1) (as substituted: see note 3 supra).

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

8 le subject to the Gas Act 1986 s 32(5) (as substituted): see the text and notes 15-16 infra.

9 le appropriate to take any action under ibid s 32(6) (as substituted): see the text and note 17 infra.

10 Ibid s 32(2) (as substituted: see note 3 supra).

11 For these purposes, 'enforcement function' means a function under ibid s 28 (as amended) (see PARA 968 post) or 30A (as added) (see PARA 973 post): s 32(10) (as substituted: see note 3 supra).

12 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

13 Gas Act 1986 s 32(3) (as substituted: see note 3 supra).

14 Ibid s 32(4) (as substituted: see note 3 supra). As to the reference of disputes to the Authority see s 15A (as prospectively added); and PARA 872 ante; s 27A (as added and amended); and PARA 965 ante.

15 le any matter to which ibid s 32(3) (as substituted) applies: see the text and notes 11-13 supra.

16 Ibid s 32(5) (as substituted: see note 3 supra).

17 Ibid s 32(6) (as substituted: see note 3 supra).

18 Ibid s 32(7) (as substituted: see note 3 supra).

19 Ibid s 32(8) (as substituted: see note 3 supra).

20 Ibid s 32(9) (as substituted: see note 3 supra).

21 le as from a day to be appointed under the the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.

22 See ibid s 64, Sch 8 (not in force).

23 See ibid Pt 2 (ss 42-52) (not in force). For transitional provisions see s 30(5), Sch 3 para 1 (not in force).

UPDATE

966 Consumer complaints

TEXT AND NOTE 21--Day appointed is 1 October 2008: SI 2008/2550.

NOTES 22, 23--Provisions cited all in force: SI 2007/3546, SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(vii) Determination of Disputes and Investigation of Complaints/967. Power of the Gas and Electricity Consumer Council to investigate other matters.

967. Power of the Gas and Electricity Consumer Council to investigate other matters.

The Gas and Electricity Consumer Council¹ may investigate any matter, not being a matter which it is its duty to investigate², which appears to it to be a matter relating to the interests of consumers in relation to gas³ conveyed through pipes⁴. The power to undertake an investigation under this power includes, without prejudice to the generality of the above provision, power to investigate any matter relating to or to anything connected with gas fittings⁵, or their use, or the use of gas supplied⁶ by authorised suppliers⁷.

Where the Council has investigated a matter under these provisions it may make a report on that matter to the Gas and Electricity Markets Authority ('GEMA')⁸, the Secretary of State⁹, the Office of Fair Trading¹⁰ or any other public authority whose functions appear to the Council to be exercisable in relation to that matter¹¹. The Council may¹² also:

- 1901 (1) send a report on any matter so investigated to any person who appears to the Council to have an interest in that matter; and
- 1902 (2) publish any such report in such manner as the Council thinks appropriate¹³.

Information¹⁴ which relates to the affairs of any particular individual or body of persons, corporate or unincorporate:

- 1903 (a) must not be included in a report which is to be sent to any person under head (1) above, unless one or more of heads (i) to (iii) below applies; and
- 1904 (b) must be excluded from any such report which is to be published under head (2) above, unless one or more of heads (A) to (C) below applies¹⁵.

Information relating to a particular individual or body may, however, be included in a report to be sent under head (1) above if:

- 1905 (i) that individual or body has consented to the disclosure;
- 1906 (ii) it is information that is available to the public from some other source; or
- 1907 (iii) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body¹⁶;

and information relating to a particular individual or body may be included in a report to be published under head (2) above if:

- 1908 (A) that individual or body has consented to the publication;
- 1909 (B) it is information that is available to the public from some other source; or
- 1910 (C) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body¹⁷.

Before deciding to include in such a report any information relating to a particular individual or body in pursuance of head (iii) above or head (c) above, the Council must consult that individual or body¹⁸ and must have regard to any opinion expressed by the Authority as to the application of head (iii) above or head (c) above to the information or as to the desirability or otherwise of its inclusion in the report¹⁹.

As from a day to be appointed²⁰, the provisions set out above are repealed²¹ and the National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 will have new investigatory powers²².

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 In which it is its duty to investigate under the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 968 et seq post. As to the duty to investigate consumer complaints see PARA 966 ante.

3 For the meaning of 'gas' see PARA 802 ante.

4 Gas Act 1986 s 33(1) (s 33 substituted by the Utilities Act 2000 s 23(1)). For the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

5 For these purposes, 'gas fittings' means gas fittings used or intended to be used by persons supplied with gas by authorised suppliers: Gas Act 1986 s 33(3) (as substituted: see note 4 supra). For the meaning of 'gas fittings' generally see PARA 861 note 1 ante; and for the meaning of 'authorised supplier' see PARA 797 note 3 ante.

6 For the meaning of references to the supply of gas see PARA 802 ante.

7 Gas Act 1986 s 33(2) (as substituted: see note 4 supra).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 As to the Secretary of State see PARA 601 note 1 ante.

10 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

11 Gas Act 1986 s 33(4) (as substituted (see note 4 supra); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 15(1), (7)).

12 In subject to the Gas Act 1986 s 33(6) (as substituted): see the text and notes 14-15 infra.

13 Ibid s 33(5) (as substituted: see note 4 supra).

14 For the meaning of 'information' see PARA 792 note 8 ante.

15 Gas Act 1986 s 33(6) (as substituted: see note 4 supra).

16 Ibid s 33(7) (as substituted: see note 4 supra).

17 Ibid s 33(8) (as substituted: see note 4 supra).

18 Ibid s 33(9)(a) (as substituted: see note 4 supra).

19 Ibid s 33(9)(b) (as substituted: see note 4 supra). Section 33(9)(b) (as so substituted) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: s 33(9).

20 In as from a day to be appointed under the the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.

21 See ibid s 64, Sch 8 (not in force).

22 See ibid ss 11-15 (not in force). For transitional provisions see s 30(5), Sch 3 para 1 (not in force).

UPDATE

967 Power of the Gas and Electricity Consumer Council to investigate other matters

TEXT AND NOTES 20-22--Day appointed is 1 October 2008 and provisions cited all in force: SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS/968. Final and provisional orders.

(viii) Enforcement

A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS

968. Final and provisional orders.

Where the Gas and Electricity Markets Authority ('GEMA')¹ is satisfied that a licence holder² is contravening³, or is likely to contravene, any relevant condition⁴ or requirement⁵, the Authority must⁶ by a final order⁷ make such provision as is requisite for the purpose of securing compliance with that condition or requirement⁸.

Where, however, it appears to the Authority:

- 1911 (1) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
- 1912 (2) that it is requisite that a provisional order⁹ be made,

the Authority must¹⁰, instead of taking steps towards the making of a final order, by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement¹¹. In determining for the purposes of head (2) above whether it is requisite that a provisional order be made, the Authority must have regard, in particular:

- 1913 (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
- 1914 (b) to the fact that the effect of the relevant statutory provisions¹² is to exclude the availability of any remedy, apart from under those provisions or for negligence, in respect of any contravention of a relevant condition or requirement¹³.

The Authority must¹⁴ confirm a provisional order, with or without modifications¹⁵, if:

- 1915 (i) it is satisfied that the licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
- 1916 (ii) the provision made by the order, with any modifications, is requisite for the purpose of securing compliance with that condition or requirement¹⁶.

The Authority must not, however, make a final order or make or confirm a provisional order if it is satisfied that the general duties in relation to gas imposed on it¹⁷ preclude the making or, as the case may be, the confirmation of the order, or that the most appropriate way of proceeding is under the Competition Act 1998¹⁸. Furthermore, the Authority is not required to make a final order or make or confirm a provisional order if it is satisfied:

- 1917 (A) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- 1918 (B) that the contraventions were or the apprehended contraventions are of a trivial nature¹⁹.

Where the Authority is satisfied as mentioned above²⁰, it must give notice that it is so satisfied to the licence holder²¹ and must publish a copy of the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them²².

A final or provisional order must require the licence holder, according to the circumstances of the case, to do, or not to do, such things as are specified in the order or are of a description so specified²³. It takes effect at such time, being the earliest practicable time, as is determined by or under the order²⁴ and may be revoked at any time by the Authority²⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 789 note 9 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 779 note 3 ante.

4 For the purposes of the Gas Act 1986 ss 28-30F (as amended) (see the text and notes 1-3 supra, 5-25 infra; and PARA 969 et seq post), 'relevant condition', in relation to a licence holder, means any condition of his licence: s 28(8) (amended by the Utilities Act 2000 s 95(2)(b)); definition of 'relevant condition' amended by the Gas Act 1995 s 10(1), Sch 3 para 27(5)(a)). For the meaning of 'licence' see PARA 789 note 9 ante.

5 For the purposes of the Gas Act 1986 ss 28-30F (as amended) (see the text and notes 1-4 supra, 6-25 infra; and PARA 969 et seq post), 'relevant requirement', in relation to a licence holder, means any requirement imposed on him by or under s 9(1), (1A) or (2) (as substituted and amended) (see PARA 835 ante), s 10(2), (3) or (14) (as substituted and amended) (see PARA 836 ante), s 10A(1) (as added) (see PARA 840 ante), s 11(2) (as substituted and amended) (see PARA 839 ante), s 12(1) or (6) (as substituted and amended) (see PARA 869 ante), s 16(10) (as added) (see PARA 899 ante), s 18(11) (as added) (see PARA 900 note 3 ante), s 22A(1) (as added and amended) (see PARA 843 ante), s 27A(5) or (6) (as added and amended) (see PARA 965 ante), s 33B (as added and amended) (see PARA 892 ante), s 33BA (as added) (see PARA 893 ante), s 33C (as added and amended) (see PARA 896 ante), s 33D (as added) (see PARA 894 ante), as from a day to be appointed, s 33DB (as prospectively added) (see PARA 708 ante), s 33F (as added) (see PARA 898 ante), s 41A or 41B (each as added) (see PARA 871 ante) or any provision of Sch 2B paras 3, 6, 15, 16, 20(5) (now repealed) and 28(2) (as added and amended) (see PARAS 857, 864, 867 ante) or the Utilities Act 2000 s 27(4)(b) (prospectively repealed) (see PARAS 727-728 ante) (or, as from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), s 25(5) (directions to comply with requirements under s 24)) or s 43, s 46 or s 47 (complaints): Gas Act 1986 s 28(8) (as amended (see note 4 supra); definition substituted by the Gas Act 1995 Sch 3 para 27(5)(b); amended by the Utilities Act 2000 ss 77(2), 108, Sch 6 Pt I paras 1, 12, Sch 8; and, as from a day to be appointed, by the Consumers, Estate Agents and Redress Act 2007 ss 25(8), 45(4), 52(1), Sch 2 para 1, Sch 5 para 1; at the date at which this title states the law, no such day had been appointed and ss 24, 25, 43, 45-47, 52, Schs 2, 5 were not in force).

6 le subject to the Gas Act 1986 s 28(2), (5) (as amended) and s 28(5A) (as added) (see the text and note 19 infra) and to s 29 (as amended) (see PARA 969 post).

7 For the purposes of ibid ss 28-30F (as amended) (see the text and notes 1-6 supra, 8-25 infra; and PARA 969 et seq post), 'final order' means an order under s 28 (as amended) other than a provisional order: s 28(8) (as amended: see note 4 supra).

8 Ibid s 28(1) (s 28(1), (2), (4) amended by the Competition and Service (Utilities) Act 1992 s 48(1), (2); the Gas Act 1995 Sch 3 para 27(1); the Gas Act 1986 s 28(1) also amended by the Utilities Act 2000 s 96(1), (2); and by virtue of s 3(2)).

9 For the purposes of the Gas Act 1986 ss 28-30F (as amended) (see the text and notes 1-8 supra, 10-25 infra; and PARA 969 et seq post), 'provisional order' means an order under s 28 (as amended) which, if not

previously confirmed under s 28(4) (as amended), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order: s 28(8) (as amended: see note 4 supra).

10 le subject to ibid s 28(5) and (5A) (as respectively amended and added): see the text and notes 17-19 infra.

11 Ibid s 28(2) (as amended (see note 8 supra); also amended by the Utilities Act 2000 s 96(1), (3); and by virtue of s 3(2)).

12 le the effect of the Gas Act 1986 ss 28, 30 (as amended): see the text and notes 1-11 supra, 12-25 infra; and PARA 971 post.

13 Ibid s 28(3) (amended by virtue of the Utilities Act 2000 s 3(2)).

14 le subject to the Gas Act 1986 s 28(5) and (5A) (as respectively amended and added) (see the text and notes 17-19 infra) and to s 29 (as amended) (see PARAS 969-970 post).

15 For the meaning of 'modifications' see PARA 778 note 7 ante.

16 Gas Act 1986 s 28(4) (as amended (see note 8 supra); also amended by the Utilities Act 2000 s 96(1), (3); and by virtue of s 3(2)).

17 le imposed by the Gas Act 1986 s 4AA (as added and amended), s 4AB (as added) or s 4A (as substituted): see PARAS 789-791 ante.

18 Ibid s 28(5) (amended by the Gas Act 1995 Sch 3 para 27(2); the Competition Act 1998 ss 54(3), 74(3), Sch 10 para 10(5), Sch 14 Pt I; the Utilities Act 2000 ss 96(1), (4), 108, Sch 6 Pt I paras 1, 11, Sch 8; and by virtue of s 3(2)). As to proceedings under the Competition Act 1998 see COMPETITION.

19 Gas Act 1986 s 28(5A) (added by the Utilities Act 2000 s 96(1), (5)).

20 le as mentioned in ibid s 28(5), (5A) (as respectively amended and added): see the text and notes 17-19 supra. As from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), the Authority need be satisfied as mentioned in either the Gas Act 1986 s 28(5) (as amended) or s 28(5A) (as added): see the Consumers, Estate Agents and Redress Act 2007 s 63(1), Sch 7 paras 4, 6 (not in force).

21 Ibid s 28(6)(a) (amended by the Gas Act 1995 Sch 3 para 27(3); the Utilities Act 2000 s 96(1), (3); and by virtue of s 3(2); also amended, as from a day to be appointed (see note 20 supra) by the Consumers, Estate Agents and Redress Act 2007 Sch 7 paras 4, 6: see note 20 supra). For the meaning of 'notice' see PARA 804 note 6 ante; and as to the service of notices see PARA 980 post. The particulars of every such notice must be entered in the register kept by the Authority under the Gas Act 1986 s 36 (as amended): see PARA 794 ante.

22 Ibid s 28(6)(b) (amended by the Utilities Act 2000 s 96(1), (3); and by virtue of s 3(2)). As to publication by the Authority see PARA 793 note 5 ante.

23 Gas Act 1986 s 28(7)(a) (amended by the Gas Act 1995 Sch 3 para 27(3)).

24 Gas Act 1986 s 28(7)(b).

25 Ibid s 28(7)(c) (amended by virtue of the Utilities Act 2000 s 3(2)).

UPDATE

968 Final and provisional orders

NOTES 5, 20--Days appointed are 21 December 2007 and 1 October 2008 and provisions cited all in force: SI 2007/3546, SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS/969. Procedural requirements for making final, or confirming provisional, order.

969. Procedural requirements for making final, or confirming provisional, order.

Before making a final order¹ or confirming a provisional order², the Gas and Electricity Markets Authority ('GEMA')³ must give notice⁴ stating:

- 1919 (1) that it proposes to make or confirm the order and setting out its effect; and
- 1920 (2) the relevant condition⁵ or requirement⁶, the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions⁷ of it, and the other facts which, in the Authority's opinion, justify the making or confirmation of the order⁸.

The notice must also specify the time, not being less than 21 days from the date of publication of the notice, within which representations or objections to the proposed order or confirmation of the order may be made⁹; and the Authority must consider any representations or objections which are duly made and not withdrawn¹⁰. Such a notice must be given:

- 1921 (a) by publishing it in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them¹¹; and
- 1922 (b) by sending a copy of the notice and a copy of the proposed order, or of the order proposed to be confirmed, to the licence holder¹².

The Authority must not make a final order, or confirm a provisional order, with modifications¹³ except:

- 1923 (i) with the consent of the licence holder; or
- 1924 (ii) after complying with the following requirements¹⁴, namely that the Authority:

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- 242. (A) must give to the licence holder such notice as appears to the Authority requisite of its proposal to make or confirm the order with modifications;
- 243. (B) must specify the time, not being less than 21 days from the service of the notice, within which representations or objections to the proposed modifications may be made; and
- 244. (C) must consider any representations or objections which are duly made and not withdrawn¹⁵.

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As soon as practicable after a final order is made or a provisional order is made or confirmed, the Authority must serve a copy of the order on the licence holder and must publish such a copy in such manner as the Authority considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it¹⁶. The provisions of every such order must be entered in the register¹⁷ kept by the Authority¹⁸.

- 1 For the meaning of 'final order' see PARA 968 note 7 ante.
- 2 For the meaning of 'provisional order' see PARA 968 note 9 ante.
- 3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 4 For the meaning of 'notice' see PARA 804 note 6 ante; and as to service of notices see PARA 980 post.
- 5 For the meaning of 'relevant condition' see PARA 968 note 4 ante.
- 6 For the meaning of 'relevant requirement' see PARA 968 note 5 ante.
- 7 For the meaning of 'contravention' see PARA 779 note 3 ante.
- 8 Gas Act 1986 s 29(1)(a), (b) (s 29(1)-(7) amended by virtue of the Utilities Act 2000 s 3(2)).
- 9 Gas Act 1986 s 29(1)(c) (amended by the Utilities Act 2000 s 96(1), (6)).
- 10 Gas Act s 29(1) (as amended: see note 8 supra).
- 11 Ibid s 29(2)(a) (as amended: see note 8 supra). As to publication by the Authority see PARA 793 note 5 ante.
- 12 Ibid s 29(2)(b) (as amended (see note 8 supra); s 29(2)-(4), (7) also amended by the Gas Act 1995 s 10(1), Sch 3 para 28). For the meaning of 'licence holder' see PARA 789 note 9 ante.
- 13 For the meaning of 'modifications' see PARA 778 note 7 ante.
- 14 Gas Act 1986 s 29(3) (as amended: see notes 8, 12 supra). This requirement does not, however, apply if a provisional order is to be confirmed without modifications: see s 29(3) (as so amended).
- 15 Ibid s 29(4) (as amended (see notes 8, 12 supra); also amended by the Utilities Act 2000 s 96(1), (6)).
- 16 Gas Act s 29(7) (as amended: see notes 8, 12 supra). As to publication by the Authority see PARA 793 note 5 ante.
- 17 Ie the register kept under ibid s 36 (as amended): see PARA 794 ante.
- 18 See PARA 794 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS/970. Revocation of final or provisional order.

970. Revocation of final or provisional order.

Before revoking a final order¹ or a provisional order² which has been confirmed, the Gas and Electricity Markets Authority ('GEMA')³ must give notice⁴ stating that the Authority proposes to revoke the order and setting out its effect and specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections to the proposed revocation may be made⁵. The Authority must consider any representations or objections which are duly made and not withdrawn⁶. Such a notice must be given by publishing it in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the licence holder⁷.

The provisions of every such revocation must be entered in the register⁸ kept by the Authority⁹.

1 For the meaning of 'final order' see PARA 968 note 7 ante.

2 For the meaning of 'provisional order' see PARA 968 note 9 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For the meaning of 'notice' see PARA 804 note 6 ante; and as to service of notices see PARA 980 post.

5 Gas Act 1986 s 29(5)(a), (b) (amended by virtue of the Utilities Act 2000 s 3(2)).

6 Gas Act s 29(5) (as amended: see note 5 supra).

7 Ibid s 29(6) (as amended (see note 5 supra); also amended by the Gas Act 1995 s 10(1), Sch 3 para 28). For the meaning of 'licence holder' see PARA 789 note 9 ante. As to publication by the Authority see PARA 793 note 5 ante.

8 Ie the register kept under the Gas Act 1986 s 36 (as amended): see PARA 794 ante.

9 See PARA 794 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS/971. Validity and effect of final and provisional orders.

971. Validity and effect of final and provisional orders.

If the licence holder¹ is aggrieved by a final² or provisional order³ and desires to question its validity⁴ on the ground that its making or confirmation was not within the statutory powers of the Gas and Electricity Markets Authority ('GEMA')⁵ or that any of the procedural requirements⁶ have not been complied with, he may make an application to the High Court⁷. The application must be made within 42 days from the date of service on the licence holder of a copy of the order⁸.

On any such application the court may quash the order or any provision of the order if satisfied that its making or confirmation was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements⁹.

The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it¹⁰ and where a duty is so owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person¹¹. In any proceedings so brought against any person it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order¹². Compliance with any final or provisional order is also enforceable by civil proceedings by the Authority for an injunction or any other appropriate relief¹³; but no criminal proceedings lie against any person by virtue of the making of a final order or the making or confirmation of a provisional order on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order¹⁴.

1 For the meaning of 'licence holder' see PARA 789 note 9 ante.

2 For the meaning of 'final order' see PARA 968 note 7 ante.

3 For the meaning of 'provisional order' see PARA 968 note 9 ante.

4 Except as provided by the Gas Act 1986 s 30 (as amended) (see the text and notes 5-14 infra), the validity of a final or provisional order may not be questioned by any legal proceedings whatever: s 30(3). As to ouster clauses generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

5 Ie within the powers of the Authority under *ibid* s 28 (as amended): see PARA 968 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Ie the requirements of *ibid* s 29 (as amended): see PARA 969 ante.

7 *Ibid* s 30(1), (9)(a) (s 30(1) amended by the Gas Act 1995 s 10(1), Sch 3 para 29(1)).

8 Gas Act 1986 s 30(1) (as amended: see note 7 supra).

9 *Ibid* s 30(2) (substituted by the Gas Act 1995 s 10(1), Sch 3 para 29(2); amended by the Utilities Act 2000 ss 95(3), 108, Sch 8).

10 Gas Act 1986 s 30(5). For the meaning of 'contravention' see PARA 779 note 3 ante.

11 *Ibid* s 30(6).

12 Ibid s 30(7).

13 Ibid s 30(8) (amended by virtue of the Utilities Act 2000 s 3(2)). This is without prejudice to any right which any person may have by virtue of the Gas Act 1986 s 30(6) (see the text and note 11 supra) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order: s 30(8).

14 Ibid s 30(4).

UPDATE

971 Validity and effect of final and provisional orders

TEXT AND NOTE 14--See further Serious Crime Act 2007 Sch 6 para 12 (references to common law offence of incitement).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/B. PENALTIES UNDER THE GAS ACT 1986/972. Statement of policy with respect to penalties.

B. PENALTIES UNDER THE GAS ACT 1986

972. Statement of policy with respect to penalties.

The Gas and Electricity Markets Authority ('GEMA')¹ must prepare and publish a statement of policy with respect to the imposition of penalties² and the determination of their amount³. Publication under these provisions must be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them⁴.

The Authority may revise its statement of policy and where it does so it must publish the revised statement⁵. The Authority must undertake such consultation as it considers appropriate when preparing or revising its statement of policy⁶.

In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention⁷ or failure the Authority must have regard to its statement of policy most recently published at the time when the contravention or failure occurred⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the power to impose penalties see PARA 973 post.

3 Gas Act 1986 s 30B(1) (s 30B added by the Utilities Act 2000 s 95(1)).

4 Ibid s 30B(4) (as added: see note 3 supra). As to publication by the Authority see PARA 793 note 5 ante.

5 Ibid s 30B(3) (as added: see note 3 supra).

6 Ibid s 30B(5) (as added: see note 3 supra).

7 For the meaning of 'contravention' see PARA 779 note 3 ante.

8 Gas Act 1986 s 30B(2) (as added: see note 3 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/B. PENALTIES UNDER THE GAS ACT 1986/973. Power to impose penalties.

973. Power to impose penalties.

Where the Gas and Electricity Markets Authority ('GEMA')¹ is satisfied that a licence holder² has contravened³ or is contravening any relevant condition⁴ or requirement⁵, or has failed or is failing to achieve any prescribed standard of performance⁶, the Authority may, subject to the statutory time limits⁷, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case⁸. The Authority must not, however, impose such a penalty on a licence holder where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998⁹.

Before so imposing a penalty on a licence holder the Authority must give notice¹⁰:

- 1925 (1) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- 1926 (2) setting out the relevant condition or requirement or the standard of performance in question;
- 1927 (3) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- 1928 (4) specifying the period, not being less than 21 days from the date of publication of the notice, within which representations or objections with respect to the proposed penalty may be made,

and must consider any representations or objections which are duly made and not withdrawn¹¹.

Before varying any proposal stated in a notice under head (1) above, the Authority must give notice¹² setting out the proposed variation and the reasons for it and specifying the period, not being less than 21 days from the date of publication of the notice, within which representations or objections with respect to the proposed variation may be made; and must consider any representations or objections which are duly made and not withdrawn¹³.

As soon as practicable after imposing a penalty, the Authority must give notice¹⁴:

- 1929 (a) stating that it has imposed a penalty on the licence holder and its amount;
- 1930 (b) setting out the relevant condition or requirement or the standard of performance in question;
- 1931 (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
- 1932 (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid¹⁵.

The licence holder may, within 21 days of the date of service on him of a notice under heads (a) to (d) above, make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid¹⁶.

No penalty imposed by the Authority under the above provisions may exceed 10 per cent of the turnover of the licence holder, determined in accordance with provisions specified in an order made by the Secretary of State¹⁷. For these purposes, the turnover of the licence holder is the applicable turnover¹⁸ for the business year¹⁹ preceding the date of the notice²⁰ proposing the penalty²¹. Where, however, the business year preceding the date of the notice does not equal 12 months, the turnover is the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year²². Where there is no preceding business year the turnover is the applicable turnover of the licence holder for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls²³; and where in the application of that provision the licence holder has applicable turnover for a period of less than 12 months the turnover is the amount which bears the same proportion to the applicable turnover during the period for which he has applicable turnover as 12 months does to that period²⁴.

Any sums received by the Authority by way of penalty under the above provisions must be paid into the Consolidated Fund²⁵.

Where a penalty so imposed, or any portion of it, has not been paid by the date on which it is required to be paid, and either no application relating to the penalty has been made to the court²⁶ during the period within which such an application can be made, or such an application has been made and determined, the Authority may recover from the licence holder, as a civil debt due to the Authority, any of the penalty and any interest which has not been paid²⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 789 note 9 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 779 note 3 ante.

4 For the meaning of 'relevant condition' see PARA 968 note 4 ante.

5 For the meaning of 'relevant requirement' see PARA 968 note 5 ante.

6 Ie any standard of performance prescribed under the Gas Act 1986 s 33A (as added and amended) (see PARA 874 ante) or s 33AA (as added) (see PARA 875 ante). For the meaning of 'prescribed' see PARA 798 note 5 ante; and for the prescribed standards of performance see PARA 876 et seq ante.

7 Ie subject to *ibid* s 30C (as added) (time limits on the imposition of penalties). Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period (1) the notice under s 30A(3) (as added) (see heads (1)-(4) in the text) relating to the penalty is served on the licence holder under s 30A(7) (as added) (see note 10 *infra*); or (2) a notice relating to the contravention or failure is served on the licence holder under s 38(1) (as amended) (power to require information: see PARA 798 ante): s 30C(1) (ss 30A-30F added by the Utilities Act 2000 s 95(1)). Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under s 30A(3) (as added) was served on the licence holder under s 30A(7) (as added) (a) within three months from the confirmation of the provisional order or the making of the final order; or (b) where the provisional order is not confirmed, within six months from the making of the provisional order: s 30C(2) (as so added).

8 *Ibid* s 30A(1) (as added: see note 7 *supra*). The power of the Authority under s 30A(1) (as so added) is not exercisable in respect of any contravention or failure before the commencement of the Utilities Act 2000 s 95 (ie 1 October 2001: see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule): Gas Act 1986 s 30A(11) (as so added).

9 *Ibid* s 30A(2) (as added: see note 7 *supra*). As to proceedings under the Competition Act 1998 see COMPETITION.

10 Any notice required to be given under *ibid* s 30A (as added) must be given (1) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; (2) by serving a copy of the notice on the licence holder; and (3) by serving a copy of the notice on the Gas and Electricity Consumer Council: s 30A(7) (as

added: see note 7 supra). For the meaning of 'notice' see PARA 804 note 6 ante; and as to service of notices see PARA 980 post. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

11 Ibid s 30A(3) (as added: see note 7 supra).

12 See note 10 supra.

13 Gas Act 1986 s 30A(4) (as added: see note 7 supra).

14 See note 10 supra.

15 Gas Act 1986 s 30A(5) (as added: see note 7 supra).

16 Ibid s 30A(6) (as added: see note 7 supra).

If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended) (see CIVIL PROCEDURE vol 12 (2009) PARA 1149): Gas Act 1986 s 30D(1) (as added: see note 7 supra). If an application is made under s 30A(6) (as added) in relation to a penalty, the penalty is not required to be paid until the application has been determined (s 30D(2) (as so added)); and if the Authority grants such an application in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under s 30A(6) (as added), the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately (s 30D(3) (as so added)).

17 Ibid s 30A(8) (as added: see note 7 supra). No such order may be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament: s 30A(9) (as so added). As to the Secretary of State see PARA 601 note 1 ante; and as to the exercise of this power to make an order see the Electricity and Gas (Determination of Turnover for Penalties) Order 2002, SI 2002/1111; and the text and notes 18-24 infra.

18 For these purposes, 'applicable turnover' means the amounts, ascertained in conformity with normal accounting practice in Great Britain, which are (1) derived by the licence holder from the provision of goods and services falling within all the licence holder's ordinary activities (whether or not such activities are authorised by a licence); and (2) computed on an accruals basis so that the amounts referred to in head (1) supra relating to the period for which applicable turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment, after deduction of trade discounts, value added tax and any other taxes based on such amounts: ibid reg 2.

19 For these purposes, 'business year' means a period of more than six months in respect of which a licence holder publishes accounts or, if no such accounts have been published for the period, prepares accounts: ibid reg 2.

20 Ie the notice under the Gas Act 1986 s 30A(3) (as added): see heads (1)-(4) in the text.

21 Electricity and Gas (Determination of Turnover for Penalties) Order 2002, SI 2002/1111, reg 3(1).

22 Ibid reg 3(2).

23 Ibid reg 3(3).

24 Ibid reg 3(4).

25 Gas Act 1986 s 30A(10) (as added: see note 7 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

26 Ie under ibid s 30E (as added): see PARA 974 post.

27 Ibid s 30F (as added: see note 7 supra).

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974. Appeals.

If the licence holder¹ on whom a penalty is imposed² is aggrieved by:

- 1933 (1) the imposition of the penalty;
- 1934 (2) the amount of the penalty; or
- 1935 (3) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the licence holder may make an application to the High Court under these provisions³. Such an application must be made:

- 1936 (a) within 42 days from the date of service on the licence holder of a notice stating that a penalty has been imposed⁴; or
- 1937 (b) where the application relates to a decision of the Authority on an application by the licence holder to specify different dates by which different portions of the penalty are to be paid⁵, within 42 days from the date the licence holder is notified of the decision⁶.

On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the specified grounds⁷, the court:

- 1938 (i) may quash the penalty;
- 1939 (ii) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
- 1940 (iii) in the case of an application under head (3) above, may substitute for the date or dates imposed by the Authority an alternative date or dates⁸.

The specified grounds are that:

- 1941 (A) the imposition of the penalty was not within the statutory power of the Gas and Electricity Markets Authority ('GEMA')⁹;
- 1942 (B) any of the relevant procedural requirements¹⁰ have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
- 1943 (C) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid¹¹.

If an application is made under these provisions in relation to a penalty, the penalty is not required to be paid until the application has been determined¹². Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable¹³; and where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under these provisions it may require the payment of

interest on the penalty, or portion, from that date at such rate as it considers just and equitable¹⁴.

Except as so provided, the validity of a penalty may not be questioned by any legal proceedings whatever¹⁵.

- 1 For the meaning of 'licence holder' see PARA 789 note 9 ante.
- 2 As to the imposition of penalties see PARA 973 ante.
- 3 Gas Act 1986 s 30E(1), (9)(a) (s 30E added by the Utilities Act 2000 s 95(1)).
- 4 Ie a notice under ibid s 30A(5) (as added): see PARA 973 ante at heads (a)-(d) in the text.
- 5 Ie an application under ibid s 30A(6) (as added): see PARA 973 ante.
- 6 Ibid s 30E(2) (as added: see note 3 supra).
- 7 Ie the grounds falling within ibid s 30E(4) (as added): see heads (A)-(C) in the text.
- 8 Ibid s 30E(3) (as added: see note 3 supra).
- 9 Ie the power under ibid s 30A (as added): see PARA 973 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 10 Ie any of the requirements of ibid s 30A(3)-(5) or (7) (as added): see PARA 973 ante.
- 11 Ibid s 30E(4) (as added: see note 3 supra).
- 12 Ibid s 30E(5) (as added: see note 3 supra).
- 13 Ibid s 30E(6) (as added: see note 3 supra).
- 14 Ibid s 30E(7) (as added: see note 3 supra).
- 15 Ibid s 30E(8) (as added: see note 3 supra). As to ouster clauses generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(5) SUPPLY AND USE OF GAS/(viii) Enforcement/C. ENFORCEMENT OF HEALTH AND SAFETY REGULATIONS ETC/975. Enforcement of relevant regulations.

C. ENFORCEMENT OF HEALTH AND SAFETY REGULATIONS ETC

975. Enforcement of relevant regulations.

The Health and Safety Executive¹ is the enforcing authority with regard to the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting, carried on at any premises by persons who do not normally work in the premises². It is also the enforcing authority with regard to any activity in relation to a pipeline falling within the provisions of the Pipelines Safety Regulations 1996³. The enforcement of health and safety regulations is discussed elsewhere in this work⁴.

Enforcement authorities under the Measuring Instruments (Gas Meters) Regulations 2006⁵ and the actions which they may take have already been discussed⁶.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, reg 4(4)(b), Sch 2 para 4(b). For the meaning of 'gas' for these purposes see PARA 802 ante, and for the meaning of 'gas fitting' for these purposes see PARA 861 note 1 ante (definitions applied by reg 2(1)). 'Gas system' does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance: reg 2(1). As to the safe installation and use of gas fittings etc see the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 (as amended); and PARA 911 et seq ante; and as to safety cases with regard to the management of gas see the Gas Safety (Management) Regulations 1996, SI 1996/551 (as amended); and PARA 903 et seq ante.

3 See the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494, Sch 2 para 11. As to the Pipelines Safety Regulations 1996, SI 1996/825 (as amended) see PARA 946 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq.

4 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq. As to fees payable to the Health and Safety Executive with regard to the enforcement of gas safety regulations see the Health and Safety (Fees) Regulations 2007, SI 2007/813, regs 16, 17.

5 Ie the Measuring Instruments (Gas Meters) Regulations 2006, SI 2006/2647: see PARA 954 et seq ante.

6 See PARA 960 et seq ante.

UPDATE

975 Enforcement of relevant regulations

NOTE 4--SI 2007/813 regs 16, 17 replaced: Health and Safety (Fees) Regulations 2009, SI 2009/515, regs 15, 17.

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(6) GENERAL OFFENCES; NOTICES

976. Offences relating to false statements etc.

If any person, in giving any information¹ or making any application, for the purposes of Part II of the Gas Act 1965², Part I of the Gas Act 1986³ or any regulation made thereunder, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine⁴. Proceedings for such an offence may not, however, be instituted except by or with the consent of the Secretary of State⁵ or the Director of Public Prosecutions⁶.

Any person who with intent to deceive:

- 1944 (1) impersonates an officer⁷ of a gas transporter⁸, gas supplier⁹ or gas shipper¹⁰ for the purpose of obtaining entry to any premises; or
- 1945 (2) for that purpose makes any statement or does any act calculated falsely to suggest that he is an officer, or an authorised officer, of such a transporter, supplier or shipper,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale¹¹.

A person commits an offence if (1) in furnishing information in purported compliance with any specified directly applicable Community obligation¹² or for the purposes of the Energy Act 1976¹³ or of an order made or direction given under it, or in a notice given for any of those purposes, he makes or causes to be made on his behalf a statement which he knows to be false or which he does not believe to be true¹⁴; or (2) he has in his possession without lawful excuse a document purporting to be one issued for the purposes of that Act or of an order made or direction given under it which is not such a document but which so closely resembles it as to be calculated to deceive¹⁵. The person guilty in the case of such an offence is liable on summary conviction to imprisonment for a term of not more than three months or a fine of not more than the prescribed sum, or to both, and on conviction on indictment to imprisonment for a term of not more than two years or a fine, or to both¹⁶.

1 For the meaning of 'information' see PARA 792 note 8 ante.

2 Ie the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq post.

3 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 977 et seq post.

4 Gas Act 1965 s 21(1) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6); Gas Act 1986 s 43(1). As to the statutory maximum see PARA 689 note 2 ante; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Gas Act 1965 s 21(2) (amended by the Gas Act 1986 Sch 7 para 6); Gas Act 1986 s 43(2).

- 7 For the meaning of 'officer' see PARA 867 note 1 ante.
- 8 For the meaning of 'gas transporter' see PARA 805 ante.
- 9 For the meaning of 'gas supplier' see PARA 807 ante.
- 10 For the meaning of 'gas shipper' see PARA 807 ante.
- 11 Gas Act 1986 s 43(1A) (added by the Gas Act 1995 Sch 3 para 51; amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)). As to the standard scale see PARA 613 note 11 ante.
- 12 Is any directly applicable Community obligation specified in the Energy Act 1976 s 18(2)(c), Sch 3: see PARA 613 note 4 ante.
- 13 See PARAS 612-613 ante, PARAS 981-982 post.
- 14 See the Energy Act 1976 s 18(2)(d).
- 15 See *ibid* s 18(2)(e).
- 16 *Ibid* s 19(3) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante.

UPDATE

976 Offences relating to false statements etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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977. Offences against regulations.

Regulations made under Part I of the Gas Act 1986¹ may provide that any person contravening them is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale². Proceedings for an offence under any regulations so made may not, however, be instituted except by or with the consent of the Secretary of State³, the Gas and Electricity Markets Authority ('GEMA')⁴ or the Director of Public Prosecutions⁵. In any such proceedings against any person, it is a defence for that person to show that he was prevented from complying with the regulations by circumstances not within his control or that circumstances existed by reason of which compliance with the regulations would or might have involved danger to the public and that he took all such steps as it was reasonable for him to take both to prevent the circumstances from occurring and to prevent them from having that effect⁶.

1 le the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARA 978 et seq post.

2 Ibid s 47(4). See further PARA 778 ante. As to the standard scale see PARA 613 note 11 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Gas Act 1986 s 47(5).

6 Ibid s 47(6).

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978. Offences by bodies corporate.

Where a body corporate is guilty of an offence under Part I of the Gas Act 1986¹ or Part II of the Gas Act 1965² and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director³, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly⁴.

Similar provisions apply to an offence under the Energy Act 1976⁵.

1 le the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante, PARAS 979-980 post.

2 le the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq post.

3 Where the affairs of a body corporate are managed by its members, the Gas Act 1986 s 45(1) (see the text and note 4 infra) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of that body: s 45(2). See also the Gas Act 1965 s 21(3) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6).

4 Gas Act 1986 s 45(1); and see the Gas Act 1965 s 21(3) (as amended: see note 3 supra).

5 See the Energy Act 1976 s 18(4), (5); and PARA 613 ante.

UPDATE

978 Offences by bodies corporate

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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979. Extraterritorial operation of the Gas Act 1986.

Where by virtue of the Gas Act 1986 an act or omission taking place outside Great Britain¹ constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain². Provision made by or under that Act in relation to places outside Great Britain:

1946 (1) so far as it applies to individuals, applies to them whether or not they are British citizens; and

1947 (2) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom³.

1 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

2 Gas Act 1986 s 64A(1) (s 64A added by the Energy Act 2004 s 153).

3 Gas Act 1986 s 64A(1) (as added: see note 2 supra). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

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980. Service of notices etc.

Any notice¹ or other document required or authorised to be given, delivered or served under Part I of the Gas Act 1986² or Part II of the Gas Act 1965³ or regulations made thereunder may be given, delivered or served either:

- 1948 (1) by delivering it to the person on whom it is to be given or delivered or on whom it is to be served; or
- 1949 (2) by leaving it at his usual or last known place of abode; or
- 1950 (3) by sending it in a prepaid letter addressed to him there; or
- 1951 (4) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office, or sending it in a prepaid letter addressed to him there; or
- 1952 (5) if it is not practicable after reasonable inquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having any interest in premises, by addressing it to him by the description of the person having that interest in those premises (naming them) to which it relates and delivering it to some responsible person on the premises or affixing it or a copy of it to some conspicuous part of the premises⁴.

Without prejudice to heads (1) to (5) above, where:

- 1953 (a) a gas supplier⁵ divides the premises specified in his licence⁶ into such areas as he thinks fit and
 - 163 245. (i) in the case of each area, fixes offices of his which are to be appropriate offices in relation to notices relating to matters arising in that area;
 - 246. (ii) publishes in each area, in such manner as he considers adequate, the addresses of the offices fixed by him for that area; and
 - 247. (iii) indorses on every demand note for gas charges payable to him the addresses of the offices fixed for the area in question⁷; or
- 164 1954 (b) a gas transporter⁸ divides any authorised area⁹ of his into such areas as he thinks fit and
 - 165 248. (i) in the case of each area, fixes offices of his which are to be appropriate offices in relation to notices relating to matters arising in that area; and
 - 249. (ii) publishes in each area, in such manner as he considers adequate, the addresses of the offices fixed by him for that area¹⁰;
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any notice to be given to or served on the transporter or supplier under:

- 1955 (A) any condition of his licence;
- 1956 (B) any provision of the gas code¹¹; or

1957 (c) in the case of a transporter, the statutory duty to connect certain premises¹²,

may be given or served by delivering it at, or sending it in a prepaid letter to, an appropriate office of the transporter or supplier¹³.

1 For the meaning of 'notice' see PARA 804 note 6 ante.

2 Ie the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante.

3 Ie the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq post.

4 Gas Act 1986 s 46(1) (amended by the Gas Act 1995 ss 10(1), 17(5), Sch 3 para 52(1), Sch 6); Gas Act 1965 s 22(1) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (21)).

5 For the meaning of 'gas supplier' see PARA 807 ante.

6 For these purposes, references to premises specified in a licence include references to premises of a description, or situated in an area, so specified: Gas Act 1986 s 46(5) (s 46(2)-(3) substituted, and s 46(4)-(5) added, by the Gas Act 1995 s 10(1), Sch 3 para 52(2)). For the meaning of 'licence' see PARA 789 note 9 ante.

7 See the Gas Act 1986 s 46(4) (as added: see note 6 supra).

8 For the meaning of 'gas transporter' see PARA 805 ante.

9 For the meaning of 'authorised area' see PARA 805 note 3 ante.

10 See the Gas Act 1986 s 46(3) (as added (see note 6 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1), 18).

11 Ie any provision of the Gas Act 1986 Sch 2B (as added and amended): see PARA 857 et seq ante.

12 Ie ibid s 10 (as substituted and amended): see PARAS 836-838 ante.

13 Ibid s 46(2) (as added (see note 6 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt I paras 1, 2(1)).

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(7) LIQUEFACTION AND DISPOSAL OF NATURAL GAS

981. Liquefaction of offshore natural gas.

The Secretary of State's¹ consent is needed for offshore natural gas² to be subjected in Great Britain³ to any process of liquefaction which results in the production of liquid methane or ethane, except where:

- 1958 (1) methane or ethane is liquefied for the purpose of enabling it to be stored;
- 1959 (2) the process of liquefaction is carried out by a gas transporter⁴; or
- 1960 (3) small quantities of liquid methane or ethane are produced⁵ in the course of a gas processing operation⁶.

Such consent may be given either with reference to particular cases⁷ or by means of orders of general application⁸. Such consent may also be made subject to conditions which may, in particular, be framed by reference to the description or origin of the gas⁹.

Criminal proceedings do not lie in respect of contraventions of, or failure to comply with, any of these provisions or any condition of a consent so given by the Secretary of State; but this is without prejudice to other methods of obtaining compliance with statutory obligations¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'natural gas' see PARA 603 note 3 ante. 'Offshore natural gas' means natural gas won under the authority of licences granted under the Petroleum Act 1998 Pt I (ss 1-9) (see PARA 1626 et seq post) by virtue of s 3(2)(b) (see PARA 1639 post), but does not include gas derived from offshore crude otherwise than as a by-product of crude stabilisation; 'offshore crude' means crude liquid petroleum won under such authority; and 'crude stabilisation' means the treating of offshore crude to enable it to be safely stored or transported: Energy Act 1976 s 9(6) (s 9 substituted by the Oil and Gas (Enterprise) Act 1982 s 37(1), Sch 3 para 37(1); the Energy Act 1976 s 9(6) amended by the Petroleum Act 1998 s 50, Sch 4 para 12).

3 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

4 I.e. a gas transporter within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante. For the meaning of 'gas transporter' see PARA 805 ante.

5 I.e. produced in the course of a gas processing operation within the meaning of the Gas Act 1995 s 12 (as amended): see PARA 834 ante.

6 Energy Act 1976 s 9(1) (as substituted (see note 2 supra); amended by the Gas Act 1995 s 16(1), Sch 4 para 11(1); and by virtue of the Utilities Act 2000 s 76(7)).

7 Such a specific consent is irrevocable and may be given for a specified period or indefinitely: Energy Act 1976 s 9(3) (as substituted: see note 2 supra).

8 Ibid s 9(2) (as substituted: see note 2 supra). Where such a general consent has been given, any person who proposes to undertake a relevant process of liquefaction may notify the Secretary of State of his proposal, whereupon a specific consent is deemed to be provided for an unlimited period or for the period specified in the order: s 9(3), (4) (as substituted: see note 2 supra). At the date at which this title states the law, no such orders had been made.

9 Ibid s 9(5) (as substituted: see note 2 supra).

10 Ibid s 18(3) (amended by the Oil and Gas (Enterprise) Act 1982 s 37(2), Sch 4; and by the Gas Act 1986 s 67(4), Sch 9 Pt I).

UPDATE

981-982 Liquefaction and Disposal of Natural Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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982. Disposal of natural gas by flaring or release.

The Secretary of State's¹ consent is required for natural gas² to be disposed of, whether at source or elsewhere, by releasing it unignited into the atmosphere or, save in certain cases³, by flaring⁴. The consent may be given either with reference to particular cases or by means of orders of general application⁵, and may in any case be made subject to conditions⁶.

Consent to the flaring of gas is not required if:

- 1961 (1) it is permitted under the terms of a United Kingdom production licence⁷;
- 1962 (2) it is necessary in connection with the start-up or shut-down of manufacturing plant⁸;
- 1963 (3) it is necessary in the interests of the safety of any such plant⁹; or
- 1964 (4) it is necessary in order to comply with a requirement imposed by or under any enactment¹⁰.

The Secretary of State's consent is required for the flaring of refinery tail gas produced in refining crude liquid petroleum if the refining is for the sole purpose of enabling it to be safely stored or transported, but not otherwise¹¹.

Criminal proceedings do not lie in respect of contraventions of, or failure to comply with, any of these provisions or any condition of a consent so given by the Secretary of State; but this is without prejudice to other methods of obtaining compliance with statutory obligations¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The Energy Act 1976 s 12 (as amended) (see the text and notes 3-11 infra) applies to all natural gas of the United Kingdom, whether obtained there or in territorial waters or in areas designated under the Continental Shelf Act 1964, except gas conveyed through pipes to premises by a gas transporter within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 et seq ante): Energy Act 1976 s 12(2) (amended by the Gas Act 1986 s 67(1), Sch 7 para 26(2); the Gas Act 1995 s 16(1), Sch 4 para 11(2); and by virtue of the Utilities Act 2000 s 76(7)). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. For the meaning of 'natural gas' see PARA 603 note 3 ante; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante. For the meaning of 'gas transporter' see PARA 805 ante; and for the meaning of references to the conveyance of gas through pipes to premises see PARA 803 note 4 ante.

3 See the Energy Act 1976 s 12(3); and the text and notes 8-11 infra.

4 Ibid s 12(1).

5 Ibid s 12(5)(a). At the date at which this title states the law, no such order had been made.

6 Ibid s 12(5)(b). The conditions may in particular be framed by reference to the description or origin of the gas or to the quantities of gas to be disposed of: s 12(5)(b).

7 Ibid s 12(3)(a). As to production licences see PARA 1639 et seq post.

8 Ibid s 12(3)(c). 'Manufacturing plant' means plant used for any of the activities referred to in any of the minimum list headings in Orders III-XIX (inclusive) of the Standard Industrial Classification: Energy Act 1976 s 12(4). 'Standard Industrial Classification' means the revised edition published by HM Stationery Office in 1968 of the publication of that name prepared by the Central Statistical Office of the Chancellor of the Exchequer: Energy Act 1976 s 21 (definition substituted by the Co-operative Development Agency and Industrial

Development Act 1984 s 5(2), Sch 1 Pt II; amended by the Transfer of Functions (Economic Statistics) Order 1989, SI 1989/992, art 6(4), Sch 2 para 2(b)).

9 Energy Act 1976 s 12(3)(d).

10 Ibid s 12(3)(e). For the meaning of 'enactment' see PARA 606 note 6 ante.

11 See ibid s 12(3)(b).

12 Ibid s 18(3) (amended by the Oil and Gas (Enterprise) Act 1982 s 37(2), Sch 4; and by the Gas Act 1986 s 67(4), Sch 9 Pt I).

UPDATE

981-982 Liquefaction and Disposal of Natural Gas

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(i) Storage Authorisation Orders/A. FORM AND EFFECT OF ORDERS/983. Nature and form of storage authorisation orders.

(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS

(i) Storage Authorisation Orders

A. FORM AND EFFECT OF ORDERS

983. Nature and form of storage authorisation orders.

The Secretary of State¹ may by order (a 'storage authorisation order') authorise the storage by a gas transporter² in natural porous strata underground of such kinds of gas³ as are in his opinion suitable for such storage⁴, and the transporter may not develop or use any such strata for gas storage except in accordance with such an order⁵. In forming an opinion as to the suitability of gas for such storage the Secretary of State must have regard to the safety of the public and the need to protect water resources⁶, and both he and the transporter, at all stages in the formulation of proposals for such an order and in their consideration, must have regard to those factors⁷ and also to the desirability of preserving natural beauty, conserving flora, fauna and geological or physiographical features of special interest, protecting buildings and other objects of architectural or historic interest, and must take into account any effect which the proposals might have on those matters⁸.

A storage authorisation order must specify the nature of the gas authorised to be stored⁹. It must specify by reference to a large-scale map attached to it and drawn on a scale not less than 1 in 10,560¹⁰ the extent and location of the stratum within which gas is to be stored and the surface perimeter of the area within which it may be stored¹¹. It must also specify by reference to a similar map the perimeter of any protective area¹² to be created by the order and specify, for the whole of the storage and protective areas, the depth or depths below which the Secretary of State may exercise control over excavation, mining, quarrying and boring operations¹³. The order must state the name of the gas transporter in whose favour it is made¹⁴.

A storage authorisation order is a local land charge¹⁵.

Land in which there is a Crown or Duchy interest¹⁶ may be included in a storage or protective area with the consent of the appropriate authority¹⁷ for that land¹⁸.

A storage authorisation order does not authorise a gas transporter to disregard any enactment or rule of law or exonerate a gas transporter from any indictment, claim or other proceedings for any nuisance caused by it¹⁹.

In so far as the bringing into use or operation of an underground gas storage in accordance with a storage authorisation order constitutes development of land²⁰, that development is to be deemed²¹ to have been authorised by the Secretary of State in making the order²².

1 The Gas Act 1965 originally referred to the Minister of Power: see s 32(2). As to the subsequent transfer of that minister's functions, and their exercise by the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry), see PARA 601 ante. In this part of this title, the words 'the minister' in the Gas Act 1965 have been replaced throughout by the words 'the Secretary of State'.

2 The Gas Act 1965 s 4 originally referred to gas authorities. The Gas Act 1965 is now amended throughout by virtue of the Utilities Act 2000 s 76(7) to refer to gas transporters. As to gas transporters see PARA 805 ante.

3 This includes natural gas: Gas Act 1965 s 4(1). 'Natural gas' means any gas derived from natural strata, including gas originating outside the United Kingdom: *ibid* s 28(1). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 *Ibid* s 4(1) (as amended: see note 2 supra), s 28(1). 'Underground gas storage' means a storage of gas in a stratum below the surface of the ground in accordance with a storage authorisation order or, if the context so requires, the stratum where gas is so stored: s 28(1).

5 *Ibid* s 4(2) (as amended: see note 2 supra).

6 *Ibid* s 4(1) (as amended: see note 2 supra). For these purposes, unless the context otherwise requires, 'danger' means danger of bodily harm or injury or danger to property, and 'safe' and 'safety' are to be construed accordingly: s 28(1).

7 *Ibid* s 4(3) (as amended: see note 2 supra).

8 *Ibid* s 4(4) (as amended: see note 2 supra).

9 *Ibid* s 4(8), Sch 2 para 1(1)(c). Such provision may be varied by a further order made in accordance with the provisions of Sch 2 paras 15, 16 (as amended): s 4(8); and see PARA 994 post.

10 *Ie* a 'large scale map' (*ibid* s 28(1)) (definition substituted by the Gas Act 1986 Sch 7 para 6(24), Sch 9 Pt I).

11 Gas Act 1965 Sch 2 para 1(1)(b). The area within the specified surface perimeter is called the 'storage area' (Sch 2 para 1(2)) and includes all land and strata at all depths below the surface of the ground in the area (s 28(2)).

12 'Protective area' means the area created for the purposes of *ibid* s 5 (as amended) (see PARA 995 post) and includes all land and strata at all depths below the surface of the ground in the area (s 28(2)).

13 *Ibid* Sch 2 para 2; and see s 5 (as amended); and PARA 995 post.

14 *Ibid* Sch 2 para 1(1)(a) (as amended: see note 2 supra).

15 *Ibid* s 5(10) (substituted by the Local Land Charges Act 1975 s 17(2), Sch 1). For the purposes of the Local Land Charges Act 1975, the gas transporter concerned is treated as the originating authority as respects any matter which is a local land charge by virtue of the Gas Act 1965 Pt II (ss 4-28) (as amended): s 27(1) (substituted by the Local Land Charges Act 1975 Sch 1; amended by the Gas Act 1986 s 67(1), Sch 7 para 6(23); and by virtue of the Utilities Act 2000 s 76(7)).

16 'Crown or Duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall or a government department or held in trust for Her Majesty for the purposes of a government department: Gas Act 1965 s 25(3).

17 'Appropriate authority' in relation to land belonging (1) to Her Majesty in right of the Crown and forming part of the Crown estate, means the Crown Estate Commissioners and, in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land (*ibid* s 25(3)(a)); (2) to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy of Lancaster (s 25(3)(b)); (3) to the Duchy of Cornwall, means the person appointed by the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall (s 25(3)(c)); and (4) to a government department or held in trust for Her Majesty for the purposes of a government department, means that department (s 25(3)(d)). Any question as to what authority is the appropriate authority in relation to any land must be referred to the Treasury, whose decision is final: s 25(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

18 *Ibid* s 25(1).

19 *Ibid* s 4(2) (as amended (see note 2 supra); also amended by the Gas Act 1986 Sch 7 para 6(4), Sch 9).

20 *Ie* for the purposes of the Town and Country Planning Act 1990: see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq.

21 *Ie* for the purposes of *ibid* s 90 (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238.

22 Gas Act 1965 s 4(6)(b) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 12(1)(a), (b)).

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B. PROCEDURE

(A) MAKING THE APPLICATION

984. Preliminary submission of proposals.

Before applying formally for a storage authorisation order¹, the applicant must submit written proposals to the Secretary of State², which must include the name and address of the applicant³ and must:

- 1965 (1) specify, by reference to a large-scale map⁴, the perimeter of the storage area⁵ and of any protective area⁶;
- 1966 (2) state the depth or depths below which it is proposed that the Secretary of State is to exercise control over workings and borings in the various parts of those areas⁷;
- 1967 (3) state the nature and volume of the gas proposed to be stored and the depths and nature of the stratum in which it is to be stored and of the strata contiguous to it⁸;
- 1968 (4) include information as to the proposed method of operating the storage, including the methods of injecting and withdrawing gas⁹; and
- 1969 (5) state what exploratory work has been carried out to prove the proposed storage and the results obtained from the work¹⁰.

The Secretary of State may require the applicant to furnish further written information concerning its proposals¹¹.

The applicant must publish in two successive weeks in the London Gazette and in one or more local newspapers circulating in the locality of the storage area a notice of the submission of its proposals, setting out prescribed details of them, and naming a place in the locality where copies of the proposals and of the accompanying map can be inspected¹².

The applicant must also serve a notice containing the same particulars and such further information as the Secretary of State may direct¹³ on:

- 1970 (a) every local planning authority¹⁴ and every local authority¹⁵ which is not a local planning authority within whose area any part of the storage area or protective area lies¹⁶;
- 1971 (b) all statutory water undertakers¹⁷ within whose area any part of those areas lies or who are holders of a statutory licence to abstract water¹⁸ within either of those areas¹⁹;
- 1972 (c) the Environment Agency²⁰; and
- 1973 (d) such other bodies or individuals as the Secretary of State may direct²¹.

After taking the proposals into consideration, the Secretary of State may either (i) allow the applicant to proceed with the proposals in a formal application, with or without any modifications specified by him; or (ii) refuse to allow the applicant to proceed²². Any such

modifications to the application must not vary the storage area so as to include any area not included in it in the applicant's submitted proposals²³. The Secretary of State must inform the applicant of his decision and if he refuses to allow the applicant to proceed with the proposals he must upon the applicant's written request furnish a written statement of the reasons for his decision²⁴.

1 le in accordance with the Gas Act 1965 s 4(8), Sch 2 para 6 (as amended): see PARA 985 post. As to storage authorisation orders see PARA 983 ante.

2 Ibid Sch 2 para 3(1) (Sch 2 amended throughout by the Gas Act 1986 s 67(1), Sch 7 para 6(26) to substitute 'the applicant', meaning, by virtue of the Utilities Act 2000 s 76(7), the gas transporter applying for a storage authorisation order under the Gas Act 1965 s 4 (as amended), for the British Gas Corporation). As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante; and as to gas transporters see PARAS 805, 983 note 2 ante.

3 Ibid Sch 2 para 3(2) (as amended: see note 2 supra).

4 As to the scale see PARA 983 the text to note 10 ante.

5 For the meaning of 'storage area' see PARA 983 note 11 ante.

6 Gas Act 1965 Sch 2 para 3(2)(a). For the meaning of 'protective area' see PARA 983 note 12 ante.

7 Ibid Sch 2 para 3(2)(b); and see PARA 995 post.

8 Ibid Sch 2 para 3(2)(c).

9 Ibid Sch 2 para 3(2)(d).

10 Ibid Sch 2 para 3(2)(e).

11 Ibid Sch 2 para 3(3) (as amended: see note 2 supra).

12 Ibid s 28(1), Sch 2 para 4(1) (as amended: see note 2 supra). The prescribed details are a description of the surface areas of the storage and protective areas, and a statement of the nature and volume of gas proposed to be stored and of the minimum depth below the surface of the ground of the stratum in which it is to be stored: Sch 2 para 4(1).

13 Ibid Sch 2 para 4(2) (as amended: see note 2 supra). As to service of notices see PARA 980 ante.

14 'Local planning authority' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28 et seq): Gas Act 1965 s 28(1) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 12(2)).

15 'Local authority' means, in England, the council of a county or district, the council of a London borough and the Common Council of the City of London, and in Wales, the council of a county or county borough: Gas Act 1965 s 28(1) (amended by the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 3(12); and by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 25, Sch 18).

16 Gas Act 1965 Sch 2 para 4(2)(a) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(6)).

17 'Statutory water undertakers' means any water undertaker: Gas Act 1965 s 28(1) (definition substituted by the Water Act 1989 s 190(1), Sch 15 para 32(5)(b)). As to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq; 318 et seq.

18 'Statutory licence to abstract water' means a licence under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq): Gas Act 1965 s 28(1); Interpretation Act 1978 s 17(2)(a).

19 Gas Act 1965 Sch 2 para 4(2)(b) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(6)).

20 Gas Act 1965 Sch 2 para 4(2)(bb) (added by the Water Act 1989 Sch 25 para 32(6); amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

21 Gas Act 1965 Sch 2 para 4(2)(c).

22 Ibid Sch 2 para 5(1) (as amended: see note 2 supra).

23 Ibid Sch 2 para 5(2) (as amended: see note 2 supra).

24 Ibid Sch 2 para 5(3) (as amended: see note 2 supra).

UPDATE

984 Preliminary submission of proposals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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985. Formal application for storage authorisation order.

After consideration of the informal proposals made to him¹ the Secretary of State may allow the applicant to make a formal application to him in writing for a storage authorisation order². There must be included in the application:

- 1974 (1) a specification of the surface works, boreholes and pipes associated with the storage and any limits of deviation that may be required in their construction³;
- 1975 (2) a large-scale map⁴, showing the perimeters of the storage area⁵ and of any protective area⁶ and the intended positions of surface works, boreholes and pipes so far as they are known, and any limits of deviation that may be required in siting them⁷;
- 1976 (3) sufficient particulars of any additional surface works which will be or are likely to be required but the position of which cannot be determined at the time when the application is made⁸;
- 1977 (4) a statement of the depth or depths below which the Secretary of State's control over workings and borings is to have effect in various parts of the storage and protective areas⁹; and
- 1978 (5) particulars of the nature and volume of the gas which it is proposed to store and of the depth and nature of the stratum in which it is to be stored and of the strata contiguous to it¹⁰.

The Secretary of State may require the applicant to furnish further written information concerning his application¹¹.

The application may also contain a request for the Secretary of State to include in the order an approval¹² of the surface works, boreholes or pipes, or any of them, associated with the storage the intended positions of which are shown in the accompanying map¹³. The effect of such an approval is that the carrying out or construction of the approved works, boreholes or pipes is deemed to have any planning permission required¹⁴.

At the time of making the application the applicant must inform the Secretary of State of the extent to which it has been, or expects to be, able to acquire by negotiation the land and rights which it must possess in order to develop and operate the underground gas storage¹⁵. If, after consultation with the applicant, the Secretary of State is satisfied that a compulsory purchase order¹⁶ will be required to put the applicant into possession of any such land or right, he may give notice to the applicant¹⁷ that he will not proceed with the application until the applicant has made the necessary order and applied to him for his confirmation and that he will then proceed concurrently with respect to both the application and the confirmation of the compulsory purchase order¹⁸. The Secretary of State need not then proceed with the application except as provided in the notice, and he may at any stage decline to proceed with the application if the compulsory purchase order is withdrawn or cannot be proceeded with¹⁹.

¹ As to the proposals and the Secretary of State's decision see PARA 984 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 Gas Act 1965 s 4(8), Sch 2 para 5(1) (Sch 2 amended throughout by the Gas Act 1986 s 67(1), Sch 7 para 6(26) to substitute 'the applicant', meaning, by virtue of the Utilities Act 2000 s 76(7), the gas transporter applying for a storage authorisation order under the Gas Act 1965 s 4 (as amended), for the British Gas Corporation). The application may proceed with or without any modifications specified by the Secretary of State: Sch 2 para 5(1) (as so amended). As to modifications see PARA 984 ante.

3 Ibid Sch 2 para 6(1)(a).

4 For the meaning of 'large-scale map' see PARA 983 the text and note 10 ante.

5 For the meaning of 'storage area' see PARA 983 note 11 ante.

6 For the meaning of 'protective area' see PARA 983 note 12 ante.

7 Gas Act 1965 Sch 2 para 6(1)(b).

8 Ibid Sch 2 para 6(1)(c).

9 Ibid Sch 2 para 6(1)(d). As to these controlled operations see PARA 995 post.

10 Ibid Sch 2 para 6(1)(e).

11 Ibid Sch 2 para 6(2) (as amended: see note 2 supra).

12 Ie for the purposes of ibid s 4(6) (as amended): see PARA 983 ante.

13 Ibid Sch 2 para 13(1).

14 See ibid s 4(6)(a) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 12(1)). See also TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 341. 'Planning permission' means permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended), other than ss 88, 89 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq): Gas Act 1965 s 28(1) (definition amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 12(2)(b)).

15 Gas Act 1965 Sch 2 para 9(1) (as amended: see note 2 supra). As to the acquisition of land see PARAS 997-1000 post.

16 'Compulsory purchase order' means an order confirmed under the Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq): Gas Act 1965 s 28(1); Interpretation Act 1978 s 17(2)(a).

17 Where the Secretary of State gives such notice to the applicant, he must also give a like notice to every person on whom notice of the application was served under the Gas Act 1965 Sch 2 para 7(3) (as amended: see PARA 986 post) and who has duly made an objection which has not been withdrawn: Sch 2 para 9(3) (as amended: see note 2 supra).

18 Ibid Sch 2 para 9(2) (as amended: see note 2 supra).

19 Ibid Sch 2 para 9(4) (as amended: see note 2 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(i) Storage Authorisation Orders/B. PROCEDURE/(A) Making the Application/986. Publication of applications.

986. Publication of applications.

The applicant must publish in two successive weeks in the London Gazette and in one or more local newspapers circulating in the locality of the storage area¹ a notice of its application for a storage authorisation order², setting out prescribed details³ of the application and naming a place in the locality where copies of the application and its accompanying map can be inspected⁴. The notice must also state the time within which objections to it may be made to the Secretary of State, which must be not less than 28 days from the date of first publication of the notice⁵, and it must require any person so objecting to state the grounds of his objections⁶.

A notice containing the same particulars must be served on the same bodies on whom the transporter was required to serve notice of the preliminary submission of its proposals⁷, as well as on every highway authority, not being a local authority, responsible for any part of a highway within the storage or protective areas⁸, and on every owner⁹, lessee and occupier of any land within either of those areas¹⁰. The notice must state that those persons may make representations to the Secretary of State within 28 days of service of the notice¹¹ and require them, if objecting to the application, to state their grounds of objection¹².

The applicant must inform the Secretary of State of the dates on which these notices are published or served¹³, and before making the storage authorisation order the Secretary of State must take reasonable steps to satisfy himself that all the proper notices have been so published or served¹⁴.

1 For the meaning of 'storage area' see PARA 983 note 11 ante.

2 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

3 The prescribed details are a description of the surface areas of the storage and protective areas, and a statement of the nature and volume of the gas to be stored and of the minimum depth below the surface of the ground of the stratum in which it is to be stored: Gas Act 1965 s 4(8), Sch 2 para 7(1). For the meaning of 'protective area' see PARA 983 note 12 ante.

4 Ibid s 28(1), Sch 2 para 7(1) (Sch 2 amended throughout by the Gas Act 1986 s 67(1), Sch 7 para 6(26) to substitute 'the applicant', meaning, by virtue of the Utilities Act 2000 s 76(7), the gas transporter applying for a storage authorisation order under the Gas Act 1965 s 4 (as amended), for the British Gas Corporation). As to the application see PARA 985 ante. If the application contains a request for the Secretary of State's approval to any surface works, boreholes or pipes for planning permission purposes, the notice must state that the request has been made in the application: Sch 2 para 13(1) (as so amended); and see s 4(6)(a) (as amended); para 985 the text and note 14 ante; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 341. For the meaning of 'planning permission' see PARA 985 note 14 ante; for the meaning of 'gas transporter' see PARA 805 ante; and as to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

5 Ibid Sch 2 para 7(2).

6 Ibid Sch 2 para 7(5).

7 See ibid Sch 2 para 7(3)(a), (b), (bb), (e) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(6); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1); and see the Gas Act 1965 Sch 2 para 4(2) (as amended); and PARA 984 the text and notes 14-20 ante.

8 Ibid Sch 2 para 7(3)(c). As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq.

9 'Owner' means a person, other than a mortgagee not in possession, for the time being entitled to dispose of the fee simple of land, whether in possession or reversion: *ibid* s 28(1). In the case of land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction, the notice is to be served on the Church Commissioners: s 26(1), (5). Where the fee simple of any such land is in abeyance it must be treated as vesting in the Church Commissioners and the notice must be served accordingly: s 26(4) (amended by the Gas Act 1986 Sch 7 para 6(3)). As to service of notices generally see PARA 980 *ante*.

10 Gas Act 1965 Sch 2 para 7(3)(d). Service is not required on lessees or occupiers who are tenants for a month or any period less than a month: Sch 2 para 7(3)(d).

11 *Ibid* Sch 2 para 7(3) (as amended: see note 4 *supra*).

12 *Ibid* Sch 2 para 7(5).

13 *Ibid* Sch 2 para 7(4) (as amended: see note 4 *supra*).

14 *Ibid* Sch 2 para 10(2).

UPDATE

986 Publication of applications

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(i) Storage Authorisation Orders/B. PROCEDURE/(B) Objections and Inquiries/987. In general.

(B) OBJECTIONS AND INQUIRIES

987. In general.

If the Secretary of State thinks fit, he may hold a public local inquiry¹ into any application for a storage authorisation order²; and he must hold such an inquiry if an objection to the application is duly made by a person on whom notice of the application was required to be served³, unless the objection is withdrawn⁴, or if in the Secretary of State's opinion it is either trivial or frivolous⁵ or it relates exclusively to matters which can be dealt with by the Lands Tribunal⁶ on a claim for compensation⁷. If such an objector disclaims in writing the right to a public local inquiry and requests an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose, the Secretary of State may, instead of holding an inquiry into that objection, afford to the objector the opportunity requested⁸. If the objector avails himself of it, the Secretary of State must afford to the applicant, and any other person to whom he may deem it expedient to offer it, an opportunity of being heard on the same occasion⁹.

1 'Public local inquiry' means an inquiry under the Gas Act 1972 s 46 (repealed by the Gas Act 1986 s 67(4), Sch 9 Pt I but saved for the purposes of the Gas Act 1965 by the Gas Act 1986 s 67(3), Sch 8 para 15): Gas Act 1965 s 4(8), Sch 2 para 8(5). The Gas Act 1972 s 46 (as so saved) applies as if any reference therein included a reference to the Gas Act 1965 Pt II (ss 4-28) (as amended) (see PARA 983 et seq ante, 992 et seq post), and the provisions of the Gas Act 1972 s 46 apply to any public local inquiry held by the Secretary of State in pursuance of the Gas Act 1965 Pt II (as amended), other than an inquiry under s 17(2), Sch 5 (see PARA 1024 post): Gas Act 1965 s 22(2) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6). As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

The Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to such an inquiry and has effect as if the expression 'department' included the Secretary of State; but no local authority may be ordered to pay costs under s 250(4) (as amended) unless it is a party to the inquiry: Gas Act 1972 s 46(1); Local Government Act 1972 s 272(1), (2); Interpretation Act 1978 s 17(2)(a).

2 Gas Act 1965 Sch 2 para 8(1) (amended by the Gas Act 1972 s 49(1), Sch 6 para 14(12)). As to the procedure of the inquiry see the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375; and PARA 988 et seq post. For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

3 Ie under the Gas Act 1965 Sch 2 para 7(3) (as amended): see PARA 986 ante.

4 See *ibid* Sch 2 para 8(1) (as amended: see note 2 supra).

5 *Ibid* Sch 2 para 8(2)(b).

6 As to the Lands Tribunal generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

7 Gas Act 1965 Sch 2 para 8(2)(b), (3).

8 *Ibid* Sch 2 para 8(2)(a).

9 *Ibid* Sch 2 para 8(4) (Sch 2 amended throughout by the Gas Act 1986 s 67(1), Sch 7 para 6(26) to substitute 'the applicant', meaning, by virtue of the Utilities Act 2000 s 76(7), the gas transporter applying for a storage authorisation order under the Gas Act 1965 s 4 (as amended), for the British Gas Corporation). For the meaning of 'gas transporter' see PARA 805 ante.

UPDATE

987 In general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 7--Reference to the Lands Tribunal is now to the Upper Tribunal: Gas Act 1965 Sch 2 para 8(3) (amended by SI 2009/1307).

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988. Procedure before the inquiry.

As soon as may be, the Secretary of State¹ must notify the applicant² of the substance of each objection received by him from a statutory objector³ and must, so far as practicable, also notify the applicant of the substance of other objections⁴. A date, time and place for the holding of the inquiry must be fixed⁵. These may be varied by the Secretary of State, who must give not less than 42 days' notice in writing of them to the applicant and to every statutory objector at the address which he has furnished⁶.

Unless it has already done so, the applicant must serve on each statutory objector a written statement of the submissions it proposes to make at the inquiry and must supply a copy of the statement to the Secretary of State⁷. The statement must be accompanied by a list of any documents⁸ which the applicant intends to refer to or put in evidence at the inquiry, together with a notice stating the times and places at which the documents may be inspected by any statutory objector⁹.

Where a government department has expressed in writing a view to the applicant in support of the application and the applicant proposes to rely on that expression of view in its submissions at the inquiry, it must include it in the statement of submissions and must send a copy of the statement to the government department concerned¹⁰.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 The 'applicant' means the gas transporter making the application: Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 3(3) (amended by virtue of the Gas Act 1986 s 67(1), Sch 7 para 6(26); the Gas Act 1995 (Consequential Modifications of Subordinate Legislation) Order 1996, SI 1996/252, art 2, Schedule; and the Utilities Act 2000 s 76(7)). Notices or documents required or authorised to be served or sent under the provisions of the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, may be sent by post: r 12. For the meaning of 'gas transporter' see PARA 805 ante.

3 'Statutory objector' means any person who, being entitled to be served with a notice of the application, has duly objected to it in accordance with the Gas Act 1965 s 4(8), Sch 2 para 7 (as amended) (see PARA 986 ante): Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 3(3); Interpretation Act 1978 s 17(2).

4 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 4(1).

5 Ibid r 4(2). The Secretary of State may require the applicant (1) to publish in one or more newspapers circulating in the locality or localities in which the storage and protective areas are, such notices of the inquiry as he may direct; (2) to serve notice of the inquiry in such form and on such persons or classes of persons as he may specify; and (3) to give such other notices of the inquiry as he may direct: r 4(3). 'Inquiry' means a public local inquiry to which the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, apply: r 3(3). For the meanings of 'storage area' and 'protective area' see PARA 983 notes 11-12 ante.

6 Ibid r 4(2). With the consent in writing of the statutory objectors and of the applicant, the Secretary of State may give such lesser period of notice as may be agreed with the statutory objectors and the applicant and in that event he may specify a date for service of the statement referred to in r 5(1) (see the text and note 7 infra) later than the date there prescribed: r 4(2) proviso (i). Where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the Secretary of State must give such notice of the variation as may appear to him to be reasonable in the circumstances: r 4(2) proviso (ii).

7 Ibid r 5(1). The statement must be served as soon as may be after receiving notification of the substance of the objections and in any event, except where the Secretary of State specifies a later date under r 4(2) proviso (i) (see note 6 supra), not later than 28 days before the date of the inquiry: r 5(1).

8 Ie including maps and plans: ibid r 5(3).

9 Ibid r 5(3). The applicant must afford every statutory objector and any other person interested a reasonable opportunity to inspect and, where practicable, take copies of the documents (r 5(3), (4)); and any other person interested must be afforded the like opportunity with respect to the statement (see r 5(4)).

10 Ibid r 5(2). As to representatives of government departments at the inquiry see PARA 989 post.

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989. Appearances at the inquiry.

The applicant¹, statutory objectors² and any persons on whom the Secretary of State has required notice to be served³ are entitled to appear at the inquiry⁴ and any other person may appear at the discretion of the appointed person⁵. Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested⁶.

Where a government department has expressed in writing to the applicant a view in support of the application and the applicant has set out such a view in its statement⁷, any statutory objector may apply in writing to the Secretary of State, not later than 14 days before the date of the inquiry, for a representative of that department to be made available at the inquiry⁸. Any such application must be transmitted to the government department concerned, who must make a representative available to attend the inquiry⁹. At the inquiry, the representative must state the reasons for the view expressed by his department and may give evidence and is subject to cross-examination to the same extent as other witnesses¹⁰. The appointed person must, however, disallow any questions which in his opinion are directed to the merits of government policy¹¹.

1 For the meaning of 'applicant' see PARA 988 note 2 ante.

2 For the meaning of 'statutory objector' see PARA 988 note 3 ante.

3 *Ie* under the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 4(3)(b): see PARA 988 note 5 ante.

4 *Ibid* r 6(1). For the meaning of 'inquiry' see PARA 988 note 5 ante.

5 *Ibid* r 6(2). 'Appointed person' means the person appointed by the Secretary of State to hold the inquiry: r 3(3). As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

6 *Ibid* r 6(4). A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person: r 6(3).

7 *Ie* the statement referred to in *ibid* r 5(1): see PARA 988 ante.

8 *Ibid* r 7(1).

9 See *ibid* r 7(2).

10 *Ibid* r 7(3).

11 *Ibid* r 7(3) proviso.

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990. Procedure at the inquiry; site inspections.

The procedure at the inquiry¹ is in general² such as the appointed person³ determines in his discretion⁴. Unless in any particular case the appointed person with the consent of the applicant⁵ otherwise determines, the applicant begins and has the right of final reply; and the other persons entitled or permitted to appear are heard in such order as the appointed person determines⁶.

The applicant and the statutory objectors⁷ are entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person⁸. The appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest⁹. He may allow the applicant to alter or add to the submissions contained in its statement¹⁰ or to any accompanying list of documents, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but must give every statutory objector an adequate opportunity of considering any fresh submission or document¹¹.

If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion¹². He is entitled to take into account any written representations or statement received by him before the inquiry from any person, subject to disclosure of them at the inquiry¹³. He may from time to time adjourn the inquiry¹⁴.

The appointed person may make unaccompanied inspections of the storage¹⁵ and protective areas¹⁶ before or during the inquiry without giving notice of his intention to the persons entitled to appear at the inquiry¹⁷ and he may, and if so requested by the applicant or any statutory objector before or during the inquiry must, inspect those areas or any part of them after the close of the inquiry after announcing during the inquiry the date and time at which he proposes to do so¹⁸. The applicant and the statutory objectors are entitled to accompany the appointed person on any inspection after the close of the inquiry; but the appointed person is not bound to defer his inspection if any person entitled to accompany him is not present at the time appointed¹⁹.

1 For the meaning of 'inquiry' see PARA 988 note 5 ante.

2 Ie except as otherwise provided by the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375: see the text and notes 3-19 infra; and PARAS 988-989 ante, PARA 991 post.

3 For the meaning of 'appointed person' see PARA 989 note 5 ante.

4 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 8(1).

5 For the meaning of 'applicant' see PARA 988 note 2 ante.

6 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 8(2).

7 For the meaning of 'statutory objector' see PARA 988 note 3 ante.

8 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 8(3).

9 Ibid r 8(4). Otherwise, and without prejudice to r 7(3) (see PARA 989 ante), any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies of them: r 8(4). As to persons entitled or permitted to appear see PARA 989 ante.

10 Ie under ibid r 5(1): see PARA 988 ante.

11 Ibid r 8(5). If necessary, this may be done by adjourning the inquiry; and the appointed person may make a recommendation in his report as to the payment of any additional cost occasioned by such an adjournment: r 8(5). As to the appointed person's report see PARA 991 post.

12 Ibid r 8(6).

13 Ibid r 8(7).

14 Ibid r 8(8). If the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice is required: r 8(8).

15 For the meaning of 'storage area' see PARA 983 note 11 ante.

16 For the meaning of 'protective area' see PARA 983 note 12 ante.

17 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 9(1).

18 See ibid r 9(2).

19 Ibid r 9(3).

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991. Procedure after the inquiry.

The appointed person¹ must after the close of the inquiry² make a report in writing to the Secretary of State³ including his findings of fact and his recommendations, if any, or his reason for not making any recommendations⁴. Where the Secretary of State differs from the appointed person on a finding of fact, or takes into consideration after the close of the inquiry any new evidence⁵ or any new issue of fact⁶ which was not raised at the inquiry, and by reason of it is disposed to disagree with a recommendation made by the appointed person, he must not come to a decision which is at variance with any such recommendation without first notifying the applicant and any statutory objector⁷ who appeared at the inquiry of his disagreement and the reasons for it and affording them an opportunity of making written representations or, if he has taken into consideration any new evidence or issue of fact, of asking for the reopening of the inquiry, in either case within 21 days⁸.

The Secretary of State may in any case cause the inquiry to be reopened if he thinks fit, and must reopen it if asked to do so in accordance with the above provisions⁹.

1 For the meaning of 'appointed person' see PARA 989 note 5 ante.

2 For the meaning of 'inquiry' see PARA 988 note 5 ante.

3 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

4 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 10(1).

5 I.e. including expert opinion on a matter of fact: *ibid* r 10(2)(b). For these purposes, 'new evidence' includes any fact, information or statement of opinion on a matter of fact which was taken into consideration by the Secretary of State for the purposes of his decision upon the proposals submitted to him by the applicant in accordance with the Gas Act 1965 s 4(8), Sch 2 para 3 (as amended) (see PARA 984 ante) and which was not disclosed at the inquiry in such a way as to give any person appearing at the inquiry an opportunity of dealing with it by way of cross-examination or otherwise: Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 10(4). For the meaning of 'applicant' see PARA 988 note 2 ante.

6 I.e. not being a matter of government policy: *ibid* r 10(2)(b).

7 For the meaning of 'statutory objector' see PARA 988 note 3 ante.

8 Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 10(2).

9 *Ibid* r 10(3). If the inquiry is reopened, r 4(2), (3) (see PARA 988 ante) applies as it applied to the original inquiry, with the substitution in r 4(2) of '28' for '42': r 10(3). As to notification of the Secretary of State's decision see PARA 992 note 4 post.

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(C) MAKING THE ORDER

992. Making of storage authorisation order.

After the period for making objections to an application for a storage authorisation order has expired¹, the Secretary of State² must consider the application together with the report of any public local inquiry or hearing of objections³ and must determine whether to refuse the application or to make an order⁴. He may make the order either in accordance with the terms of the application or with modifications, but he may not modify it so as to include in the storage area⁵ any land which was not included in it in the application⁶. Further, he may not modify it by including in the protective area⁷ any land which was not included in either the storage or protective area unless and until a statutory procedure similar to that following on the initial application has been carried out⁸.

If any authority or statutory water undertaker on which notice of the application for the order ought to have been served⁹ has objected to the order and the objection has not been withdrawn, the Secretary of State, having made the order, must serve on that authority or undertaker a notice that the order has been made, and the order must be so framed that it will not have effect earlier than 28 days after the service of that notice¹⁰. If the order includes in the protective area any land which was not included in the application for the order in either the storage or protective area and any authority or undertaker on which notice of the relevant modification of the application has been served¹¹ has made an objection to the modification which has not been withdrawn, the Secretary of State must serve on that authority or undertaker a notice that the order has been made, and the order must be so framed that it will not have effect earlier than 28 days after the service of that notice¹².

If any such authority or undertaker on which a notice of the making of the order has been served gives written notice to the Secretary of State objecting to the order, within 28 days after service of the notice, and the objection is not withdrawn, the order is subject to special parliamentary procedure¹³.

As soon as practicable after the order has been made, the applicant must publish in the London Gazette and in one or more local newspapers circulating in the locality of the storage area a notice stating that the order has been made and describing the land to which it relates¹⁴. The applicant must serve a similar notice on every person on whom it was required to serve notice of its application for the order¹⁵ and must deposit with every local authority within the area of which any part of the storage or protective area lies a copy of the order and its accompanying map, which must be preserved in an office of each authority and made available for inspection by the public at all reasonable times free of charge¹⁶.

So far as matters affecting its validity and the date on which it comes into operation are concerned, a storage order has effect, with the necessary modifications, as if it were a compulsory purchase order¹⁷.

The Secretary of State may include in the order approval of any or all the works for which his approval was asked in the application¹⁸, and may do so subject to any limits of deviation specified in the order¹⁹.

- 1 As to the period see PARA 986 the text to note 5 ante.
- 2 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.
- 3 As to inquiries and objections see PARA 987 et seq ante.
- 4 Gas Act 1965 s 4(8), Sch 2 para 10(1). He must notify his decision, and his reasons for it, in writing to the applicant, the statutory objectors and any person who appeared at the inquiry and has asked to be notified of the decision; and where a copy of the appointed person's report is not sent with the notification of the decision, the notification must be accompanied by a summary of that person's conclusion and recommendations: Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 11(1). If any person entitled to be notified of the decision has not received a copy of the appointed person's report, he must be supplied with a copy of it on written application made to the Secretary of State within 28 days from the date of his decision: r 11(2). For these purposes, 'report' does not include documents, photographs or plans appended to the report: r 11(3). For the meaning of 'applicant' see PARA 988 note 2 ante; for the meaning of 'statutory objector' see PARA 988 note 3 ante; for the meaning of 'inquiry' see PARA 988 note 5 ante; and for the meaning of 'appointed person' see PARA 989 note 5 ante. As to the procedure before making the order see PARA 986 et seq ante.
- 5 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 6 Gas Act 1965 Sch 2 para 10(3).
- 7 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 8 See the Gas Act 1965 Sch 2 paras 10(3), 12 (Sch 2 para 12 (as amended)). The procedure includes service of notices on local planning authorities, local authorities which are not local planning authorities, the Environment Agency and other highway authorities and water undertakers concerned in the additional land (see PARA 984 ante at (a)-(d) in the text), and on owners, lessees and occupiers (other than tenants for a month or less) of any part of the additional land: see Sch 2 para 12(1) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(6); and by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). The procedure also includes time for making objections and public local inquiries and hearings of objections: see the Gas Act 1965 Sch 2 para 12(2)-(5), (8) (Sch 2 para 12(8) amended by the Gas Act 1986 s 67(1), Sch 7 para 6(26)). The detailed procedure set out in the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375 (see PARAS 988-991 ante), applies to inquiries held under the Gas Act 1965 Sch 2 para 12 (as amended) with minor consequential modifications: see the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 13; the Interpretation Act 1978 s 17(2). As to service on the Church Commissioners as owners of certain land see PARA 986 note 9 ante. For the meanings of 'local planning authority' and 'local authority' see PARA 984 notes 14-15 ante; for the meaning of 'statutory water undertaker' see PARA 984 note 17 ante; for the meaning of 'owner' see PARA 986 note 9 ante; and as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to service of notices generally see PARA 980 ante.
- 9 Ie under the Gas Act 1965 Sch 2 para 7(3)(a), (b) (as amended) or Sch 2 para 7(3)(c) (see PARA 986 text to notes 7-8 ante): Sch 2 para 10(4).
- 10 Ibid Sch 2 para 10(4).
- 11 Ie under ibid Sch 2 para 7(3)(a), (b) (as amended), Sch 2 para 7(3)(bb) (as added) or Sch 2 para 7(3)(c): see PARA 986 the text and notes 7-8 ante.
- 12 Ibid Sch 2 para 12(6) (amended by the Water Act 1989 Sch 25 para 32(6)).
- 13 Gas Act 1965 Sch 2 paras 10(5), 12(7). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.
- 14 Gas Act 1965 s 28(1), Sch 2 para 10(6) (amended by the Gas Act 1986 Sch 7 para 6(26)).
- 15 Ie under the Gas Act 1965 Sch 2 para 7(3) (as amended: see PARA 986 ante): Sch 2 para 10(7).
- 16 Ibid Sch 2 para 10(7) (as amended: see note 14 supra).
- 17 See ibid Sch 2 para 11; the Interpretation Act 1978 s 17(2)(a); the Acquisition of Land Act 1981; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.
- 18 As to the power to make such a request see the Gas Act 1965 Sch 2 para 13(1); and PARA 985 ante.
- 19 Ibid Sch 2 para 13(2).

UPDATE

992 Making of storage authorisation order

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--Gas Act 1965 Sch 2 para 12(4) amended: SI 2009/1307.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(i) Storage Authorisation Orders/C. ORDERS NOT SUBJECT TO NORMAL STATUTORY PROCEDURE./993. Orders transferring functions between gas transporters.

C. ORDERS NOT SUBJECT TO NORMAL STATUTORY PROCEDURE.

993. Orders transferring functions between gas transporters.

The normal statutory procedure¹ does not apply to an order which varies a storage authorisation order² and the sole purpose of which is the transfer of the benefit of, or functions under, the storage authorisation order from one gas transporter³ to another, or to make any other change in the gas transporters having the benefit of, or exercising functions under, the order⁴.

The gas transporter in whose favour any such order is made must, within three weeks of the date when responsibility for the underground gas storage⁵ to which the order relates is transferred in pursuance of the order, serve notice of the transfer (1) on the Secretary of State⁶; (2) on every local planning authority⁷ and other local authority⁸ within whose area any part of the storage area⁹ or of the protective area¹⁰ lies; (3) on all relevant statutory water undertakers¹¹; and (4) on every owner¹², lessee and occupier of any land within the storage or protective areas, except tenants for a month or for any period less than a month¹³.

1 In the Gas Act 1965 s 4(8), Sch 2 Pt II (paras 3-13) (as amended): see PARA 984 et seq ante.

2 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

3 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

4 Gas Act 1965 Sch 2 para 14(1) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (26); and by virtue of the Utilities Act 2000 s 76(7)).

5 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

6 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

7 For the meaning of 'local planning authority' see PARA 984 note 14 ante.

8 For the meaning of 'local authority' see PARA 984 note 15 ante.

9 For the meaning of 'storage area' see PARA 983 note 11 ante.

10 For the meaning of 'protective area' see PARA 983 note 12 ante.

11 In all statutory water undertakers within whose area any part of the storage area or of the protective area lies, or who are the holders of a statutory licence to abstract water within either of those areas: Gas Act 1965 Sch 2 para 14(2)(c). Schedule 2 para 14(2)(c) refers to the 'limits of supply' of such undertakers rather than to their 'area' but it is apprehended that, by analogy with Sch 2 paras 4(2), 7(3), 12(1) and 16(2) (all amended by the Water Act 1989 s 190(1), Sch 25 para 32(6)) (see PARAS 984, 986, 992 ante, PARA 994 post), the reference should be to an 'area'. For the meanings of 'statutory water undertaker' and 'statutory licence to abstract water' see PARA 984 notes 17-18 ante.

12 For the meaning of 'owner', and as to service on the Church Commissioners as owners of certain land, see PARA 986 note 9 ante.

13 Gas Act 1965 Sch 2 para 14(2) (as amended: see note 4 supra). Schedule 2 para 14(2) (as so amended) also requires the service of notice on 'every river authority' but it is apprehended that, by analogy with Sch 2 paras 4(2), 7(3), 12(1) and 16(2) (all as amended) (see PARA 984 et seq ante, PARA 994 post), the reference should be to service on the Environment Agency. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to service of notices generally see PARA 980 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(i) Storage Authorisation Orders/C. ORDERS NOT SUBJECT TO NORMAL STATUTORY PROCEDURE./994. Variation of the nature of gas stored.

994. Variation of the nature of gas stored.

The normal statutory procedure¹ does not apply to an order which varies a storage authorisation order² and the sole purpose of which is to vary the provisions of the storage authorisation order as to the nature of the gas which may be stored in the gas storage area³. If any such order is an order the effect of which is to authorise the storage of gas of a nature which would not otherwise be authorised, the following procedure is prescribed for making the order⁴.

The gas transporter⁵ may apply to the Secretary of State⁶ to make the order after serving notice of its application on (1) every local planning authority⁷ and local authority⁸ which is not a local planning authority within whose area any part of the storage area or of the protective area⁹ lies; (2) all statutory water undertakers¹⁰ within whose area any part of the storage or protective area lies or who are holders of a statutory licence to abstract water¹¹ within either of those areas; (3) the Environment Agency¹²; and (4) every owner¹³, lessee and occupier of any land within either of those areas, except tenants for a month or any period less than a month¹⁴. The notice must state that those persons may make representations to the Secretary of State within 28 days of service of the notice¹⁵, and the applicant must inform the Secretary of State of the dates of service of such notices¹⁶.

The Secretary of State must consider the application and all representations made with respect to it within the specified period and if he thinks fit, and is satisfied that the proper notices have been served, he may make the order¹⁷. The gas transporter must then serve a copy of the order on every person on whom notice of the application is so required to be served¹⁸.

1 Ie the Gas Act 1965 s 4(8), Sch 2 Pt II (paras 3-13) (as amended): see PARA 984 et seq ante.

2 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

3 Gas Act 1965 Sch 2 para 15. For the meaning of 'storage area' see PARA 983 note 11 ante.

4 Ibid Sch 2 para 16(1).

5 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

6 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

7 For the meaning of 'local planning authority' see PARA 984 note 14 ante.

8 For the meaning of 'local authority' see PARA 984 note 15 ante.

9 For the meaning of 'protective area' see PARA 983 note 12 ante.

10 For the meaning of 'statutory water undertaker' see PARA 984 note 17 ante.

11 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.

12 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

13 For the meaning of 'owner', and as to service on the Church Commissioners as owners of certain land, see PARA 986 note 9 ante.

14 Gas Act 1965 Sch 2 para 16(2) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(6); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; and by virtue of the Utilities Act 2000 s 76(7))). As to service of notices generally see PARA 980 ante.

15 Gas Act 1965 Sch 2 para 16(2).

16 Ibid Sch 2 para 16(3) (amended by the Gas Act 1986 Sch 7 para 6(1), (26)). For the meaning of 'applicant' see PARA 988 note 2 ante.

17 Gas Act 1965 Sch 2 para 16(4).

18 Ibid Sch 2 para 16(5) (amended by virtue of the Utilities Act 2000 s 76(7)); and see the text and notes 7-13 supra.

UPDATE

994 Variation of the nature of gas stored

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(ii) Controlled Operations/995. Excavation and other operations.

(ii) Controlled Operations

995. Excavation and other operations.

No person other than the gas transporter¹ authorised to operate the underground gas storage² may carry out any controlled operations³ in a storage area⁴ or, if a storage authorisation order so provides as respects any area outside the storage area, that area ('the protective area'⁵), without the Secretary of State's consent⁶. This control does not, however, apply to operations which are neither begun nor continued after the coming into force of the storage authorisation order⁷; and at any time after the making of an order requiring an underground gas storage to be taken out of operation⁸, if he considers that it is safe to do so, the Secretary of State may direct that operations in the storage and protective areas are to cease to be controlled by him on and after the date specified in the direction⁹.

An application for the Secretary of State's consent to the carrying out of controlled operations must state (1) the name and address of the applicant; (2) the extent, purpose and nature of the proposed operations and the methods proposed to be employed; and (3) the location and depth of every proposed borehole, shaft, excavation, quarry or other working¹⁰.

The applicant must serve a copy of his application on the gas transporter to whom the storage authorisation order applies and must inform the Secretary of State of the date on which he has done so¹¹. If within 28 days of that date the gas transporter informs the Secretary of State that it objects to any of the applicant's proposals, the Secretary of State must afford to the applicant and to the gas transporter an opportunity of being heard before a person appointed by him and he must afford them a similar opportunity if he proposes to refuse his consent or to attach conditions to it¹².

The Secretary of State must consider the application and the report of any such hearing, and may either refuse the application or consent to it with or without any conditions¹³. Once he has given his consent, with or without conditions, he may at any time revoke it, or may impose conditions or further conditions, or vary or revoke any conditions previously imposed, but before doing any of those things he must afford to the gas transporter and any person then interested in the land¹⁴ an opportunity of being heard before a person appointed by him¹⁵. Additionally, at any time after the making of an order requiring an underground gas storage to be taken out of operation, and if he considers it safe to do so, the Secretary of State may direct that any conditions on the carrying out of operations for which his consent was required are to cease to have effect on the date specified in the direction¹⁶.

Any conditions attached to the Secretary of State's consent under these provisions and, save in so far as it revokes any conditions, any further decision taken by him¹⁷ are local land charges¹⁸.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 'Controlled operations' means any description of excavation, mining, quarrying or boring operations carried out wholly or partly below the depth prescribed by the storage authorisation order (which may be a different depth for different parts) and begun or continued after the order comes into force: Gas Act 1965 ss 5(1), 28(1). For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

4 For the meaning of 'storage area' see PARA 983 note 11 ante.

5 For the meaning of 'protective area' see further PARA 983 note 12 ante.

6 Gas Act 1965 s 5(1), (2) (s 5(2), (4), (5), (8), (9), (11), (12) amended by virtue of the Utilities Act 2000 s 76(7)). Failure to obtain the consent or comply with any conditions imposed on a consent being given constitutes an offence: see the Gas Act 1965 s 5(13) (as amended); and PARA 1028 post. In the case of land in which there is a Crown or Duchy interest and which has been included in a storage or protective area with the consent of the appropriate authority for that land (see PARA 983 note 17 ante), the appropriate authority may not carry out operations of the kind described without the Secretary of State's approval, and no government department may carry out any such operations in any land in a storage or protective area except with his approval (s 25(2)); but s 5 (as amended) does not bind the Crown (s 25(2)). As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

7 Ibid s 5(1).

8 Ie an order made under ibid s 18 (as amended): see PARA 1026 post.

9 Ibid s 18(7)(a). As to the meaning of 'safe' see PARA 983 note 6 ante.

10 Ibid s 5(3). Neither this procedure nor anything which follows from it applies to a person who requires the Secretary of State's approval to the carrying out of operations as opposed to his consent: see note 6 supra. The gas transporter must pay the applicant's expenses reasonably incurred in the preparation of plans and on similar matters in connection with the application, including reasonable costs incurred in employing an engineer, surveyor, land agent, solicitor (including a body corporate recognised by the council of the Law Society under the Administration of Justice Act 1985 s 9 (as amended)) or other person in an advisory capacity: Gas Act 1965 s 5(9) (as amended (see note 6 supra); modified by the Solicitors' Incorporated Practices Order 1991, SI 1991/2684, arts 2-5, Sch 1).

11 Gas Act 1965 s 5(4) (as amended: see note 6 supra).

12 Ibid s 5(5) (as amended: see note 6 supra).

13 Ibid s 5(6).

14 The Secretary of State's consent to controlled operations enures for the benefit of the land and of all persons from time to time interested in it: ibid s 5(7).

15 Ibid s 5(8) (as amended: see note 6 supra). If the applicant has applied for the Secretary of State's decision on any such matter, the gas transporter must pay his expenses reasonably incurred in connection with that application: see note 10 supra.

16 Ibid s 18(7)(b); and see note 6 supra.

17 Ie under ibid s 5(8) (as amended): see the text to note 15 supra.

18 Ibid s 5(10) (substituted by the Local Land Charges Act 1975 s 17(2), Sch 1). See further PARA 983 note 15 ante.

UPDATE

995 Excavation and other operations

NOTE 10--SI 1991/2684 renamed the Solicitors' Recognised Bodies Order 1991: SI 2009/500. Sch 1991/2684 art 3 amended: SI 2009/500.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(ii) Controlled Operations/996. Remedial works.

996. Remedial works.

If a gas transporter¹ applies to a magistrates' court² and satisfies the court (1) that any controlled operations³ have been carried out without the Secretary of State's consent⁴ or there has been a failure to comply with any conditions subject to which that consent was granted; and (2) that the remedial works specified in its application⁵ ought to be carried out in the interests of safety⁶, or to safeguard property, preserve water resources or prevent the suspension or continued suspension of the operations of an underground gas storage⁷, the court may make an order authorising the gas transporter to execute those works in such manner as the transporter thinks fit⁸.

Any person having an interest in the land in which the controlled operations have been carried out is entitled to appear and be heard on the gas transporter's application to the court, and the court may not entertain the application unless it is satisfied that that transporter has taken reasonable steps to give notice of it to all such persons who are known to the transporter⁹.

If an order is made, the gas transporter has conferred upon it by statute all such rights as are necessary to enable it to execute the order, as against all persons interested in the land in which the authorised works are to be carried out and against all persons interested in any other land to which entry is required for the purpose of obtaining access to the land in which those works are to be carried out¹⁰, but, except in a case of emergency, the gas transporter may not demand admission as of right to any such land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier¹¹. Where a gas transporter, in exercising the rights so conferred on it, causes any damage to land or chattels, it is liable to pay compensation in respect of that damage to any person interested in the land or chattels¹². Any expenses reasonably incurred by the gas transporter in executing the court's order authorising remedial works (excluding any such compensation paid by that transporter) may be recovered by the transporter from the person who carried out the controlled operations or failed to comply with any conditions subject to which the Secretary of State's consent was granted¹³.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 The application must be made by way of complaint: Gas Act 1965 s 6(7).

3 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

4 As to the requirement of consent see PARA 995 ante; and as to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

5 These may consist of the filling in of an excavation, well, borehole or shaft made or sunk without the necessary consent or in breach of a condition attached to such a consent, or the taking of any other steps to make good the default: Gas Act 1965 s 6(1).

6 As to the meaning of 'safety' see PARA 983 note 6 ante.

7 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

8 Gas Act 1965 s 6(1) (s 6(1)-(5) amended by virtue of the Utilities Act 2000 s 76(7); the Gas Act 1965 s 6(1) amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (6)).

9 Gas Act 1965 s 6(2) (as amended (see note 8 supra); also amended by the Gas Act 1986 Sch 7 para 6(1), (7)). As to service on the Church Commissioners as owners of certain land see PARA 986 note 9 ante.

10 Gas Act 1965 s 6(3) (as amended (see note 8 supra); also amended by the Gas Act 1986 Sch 7 para 6(1), (8)).

11 Gas Act 1965 s 6(4) (as amended (see note 8 supra); also amended by the Gas Act 1986 Sch 7 para 6(1), (9)). Any person wilfully obstructing a person acting under the authority of such an order is guilty of an offence: see the Gas Act 1965 s 6(6) (as amended); and PARA 1028 post.

12 Ibid s 6(4) (as amended: see notes 8, 11 supra). As to compensation see further PARA 1020 post.

13 Ibid s 6(5) (as amended: see note 8 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(iii) Acquisition of Land and Rights over Land/A. AGREEMENTS/997. Acquisition of land by agreement.

(iii) Acquisition of Land and Rights over Land

A. AGREEMENTS

997. Acquisition of land by agreement.

Where by any deed or instrument in which it is certified by a gas transporter¹ that the instrument is made in connection with the acquisition of rights to store gas in an underground gas storage², any person having an interest in land grants or agrees to grant to the gas transporter a right to store gas in an underground gas storage or any other right over the land, then, subject to the statutory requirements as to registration of land and land charges³, the grant or agreement is binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it is binding upon the grantor⁴. Any such right vested in a gas transporter is deemed, in the case of unregistered land, to be a charge affecting land⁵, and in the case of registered land, to be an equitable easement⁶.

A right to store gas in an underground gas storage so acquired does not include a right, as against any other person, to prevent the carrying out of any controlled operations⁷, or of any operations which would be controlled but for a direction⁸ of the Secretary of State⁹.

A gas transporter may not dispose of a right to store gas in any part of an underground gas storage which it has acquired, except to another gas transporter or the person who would have been entitled to grant that right if it had not been acquired by any gas transporter; but nothing in this provision prevents the grant to another person of a right¹⁰ to store gas in the underground gas storage¹¹.

The statutory restrictions¹² on the alienation of coal and coal mines do not prevent the acquisition by a gas transporter for purposes connected with the underground storage of gas of land which is the site of a well, borehole or shaft which forms part of a coal mine¹³ which is disused, or of any rights as respects such a well, borehole or shaft¹⁴.

1 As to gas transporters see PARAS 805, 983 note 2 ante.

2 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 I.e. the Land Charges Act 1972 and the Land Registration Act 2002: see notes 5-6 infra.

4 Gas Act 1965 s 12(3) (s 12(3), (4) amended by the Land Registration Act 2002 s 133, Sch 11 para 6; and by virtue of the Utilities Act 2000 s 76(7)). This is notwithstanding the fact that the grant or agreement would not have been so binding apart from these provisions: Gas Act 1965 s 12(3) (as so amended).

5 I.e. it is deemed to fall within the Land Charges Act 1972 s 2(5), Class D(iii): see LAND CHARGES vol 26 (2004 Reissue) PARA 636.

6 Gas Act 1986 s 12(4) (as amended: see note 4 supra); Interpretation Act 1978 s 17(2)(a); and see PARA 983 note 15 ante. As to the registration of easements under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 919.

7 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

8 The direction referred to is a direction under the Gas Act 1965 s 18(7)(a) (as amended): see PARA 995 ante, PARA 1025 post.

9 Gas Act 1965 s 10(1) (amended by the Gas Act 1986 Sch 7 para 6(1), (3); and by virtue of the Utilities Act 2000 s 76(7)). As to the Secretary of State see PARA 601 note 1 ante.

10 Ie whether in accordance with the Gas Act 1986 s 19B (as added and amended) (see PARA 827 ante) or otherwise.

11 Gas Act 1986 s 12(6) (amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(1), Sch 1 para 1(b); and by virtue of the Utilities Act 2000 s 76(7)). As to storage authorisation orders transferring functions between gas transporters see PARA 993 ante.

12 Ie the Coal Industry Act 1994 s 10(3): see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 71.

13 Ie a coal mine within the meaning of ibid s 65: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5 note 15.

14 Gas Act 1965 s 13(8) (amended by the Coal Industry Act 1994 s 67(1), Sch 9 para 9; and by virtue of the Utilities Act 2000 s 76(7)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(iii) Acquisition of Land and Rights over Land/B. COMPULSORY ACQUISITION/998. Compulsory acquisition of storage rights.

B. COMPULSORY ACQUISITION

998. Compulsory acquisition of storage rights.

A gas transporter¹ may be authorised² to purchase compulsorily a right to store gas in an underground gas storage³. The right thus acquired is an exclusive right to use that stratum of land for the purpose of the underground gas storage, and to prevent other persons from using it for that or any other purpose⁴, but it does not include a right, as against any other person, to prevent the carrying out of any controlled operations⁵, or of any operations which would be controlled but for a direction of the Secretary of State⁶. Nor does it prevent the acquisition by another person of a right⁷ to store gas in the underground gas storage⁸.

Any such right vested in a gas transporter is deemed, in the case of unregistered land, to be a charge affecting land⁹, and in the case of registered land, to be an equitable easement¹⁰.

A gas transporter may not dispose of a right to store gas in any part of an underground gas storage which it has purchased compulsorily, except to another gas transporter or the person who would have been entitled to grant that right if it had not been acquired by any gas transporter; but nothing in this provision prevents the grant to another person of a right¹¹ to store gas in the underground gas storage¹².

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 I.e. under the Gas Act 1986 s 9(3), Sch 3 (as amended): see PARA 841 ante.

3 Gas Act 1965 ss 12(1), 32(2) (amended by virtue of the Utilities Act 2000 s 76(7); the Gas Act 1986 s 12(1) also amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (3); the Acquisition of Land Act 1981 s 34(3), Sch 6 Pt I).

The provisions of the Gas Act 1965 s 13 (as amended) (see PARAS 999-1000 post) are without prejudice to the generality of the provisions of the Gas Act 1986 Sch 3 (as amended): Gas Act 1965 s 13(10) (amended by the Gas Act 1986 Sch 7 para 6(1), (3)). For the meaning of 'underground gas storage' see PARA 983 note 4 ante. In the case of ecclesiastical property (see PARA 986 note 9 ante) the notice to treat is to be served on the Church Commissioners: Gas Act 1965 s 26(1), (4). Where the fee simple in any ecclesiastical property is in abeyance it is to be treated as vested in the Church Commissioners for the purposes of any proceedings for the confirmation of a compulsory purchase order made under the Gas Act 1986 Sch 3 (as amended) for purposes connected with an underground gas storage, and for the purposes of the compulsory purchase in pursuance of the order: Gas Act 1965 s 26(4)(b) (amended by the Gas Act 1986 Sch 7 para 6(1), (3)).

4 Gas Act 1965 s 12(2).

5 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

6 Gas Act 1965 s 10(1) (amended by the Gas Act 1986 Sch 7 para 6(1), (3); and by virtue of the Utilities Act 2000 s 76(7)). The direction referred to is a direction under the Gas Act 1965 s 18(7)(a) (as amended): see PARA 995 ante, PARA 1025 post. As to the Secretary of State see PARA 601 note 1 ante.

7 I.e. whether in accordance with the Gas Act 1986 s 19B (as added and amended) (see PARA 827 ante) or otherwise.

8 Gas Act 1965 s 12(2) (amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(1), Sch 1 para 1(a)).

9 le it is deemed to fall within the Land Charges Act 1972 s 2(5), Class D(iii): see LAND CHARGES vol 26 (2004 Reissue) PARA 636.

10 Gas Act 1986 s 12(4) (amended by the Land Registration Act 2002 s 133, Sch 11 para 6; and by virtue of the Utilities Act 2000 s 76(7)); Interpretation Act 1978 s 17(2)(a); and see PARA 983 note 15 ante. As to the registration of easements under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 919.

11 See note 7 supra.

12 Gas Act 1986 s 12(6) (amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(1), Sch 1 para 1(b); and by virtue of the Utilities Act 2000 s 76(7)). As to storage authorisation orders transferring functions between gas transporters see PARA 993 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(iii) Acquisition of Land and Rights over Land/B. COMPULSORY ACQUISITION/999. Compulsory acquisition of wells, boreholes and shafts.

999. Compulsory acquisition of wells, boreholes and shafts.

The Secretary of State may authorise¹ a gas transporter² to purchase compulsorily any land which is in a storage area³ or protective area⁴ and which is the site of any well, borehole or shaft for the purpose:

1979 (1) of making use of the well, borehole or shaft, to the exclusion of its use by any other person, in connection with the development or use of the underground gas storage⁵; or

1980 (2) where the well, borehole or shaft extends below the depth prescribed by the storage authorisation order⁶, of stopping it up or preventing its use by any other person⁷.

Where head (2) above applies, the Secretary of State similarly may authorise the gas transporter to purchase compulsorily such rights as appear to him expedient to enable the gas transporter to ensure that the well, borehole or shaft is stopped up or prevented from being used by any other person⁸. Any right so acquired is deemed, in the case of unregistered land, to be a charge affecting land⁹, and in the case of registered land, to be an equitable easement¹⁰.

Where such compulsory acquisition has an adverse effect on water supplies, special statutory provisions apply with regard to compensation¹¹.

1 le under the Gas Act 1986 s 9(3), Sch 3 (as amended): see PARA 841 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante. See also the Gas Act 1965 s 13(10) (as amended), cited in PARA 998 note 3 ante.

2 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

3 For the meaning of 'storage area' see PARA 983 note 11 ante. For these purposes, references to a storage area are to be taken, in relation to a compulsory purchase order which is made after proposals for a storage authorisation order have been submitted to the Secretary of State under the Gas Act 1965 s 4(8), Sch 2 para 3 (as amended: see PARA 984 ante) but before the storage authorisation order takes effect, as references to that area as set out in the proposals, or in an application under Sch 2 para 6 (as amended: see PARA 985 ante); and any variation of the area in the storage authorisation order, as compared with those proposals or the application, does not invalidate the compulsory purchase order: s 13(9). For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

4 For the meaning of 'protective area' see PARA 983 note 12 ante. For these purposes, references to a protective area are to be taken, in relation to a compulsory purchase order which is made after proposals for a storage authorisation order have been submitted to the Secretary of State under the Gas Act 1965 Sch 2 para 3 (as amended) but before the storage authorisation order takes effect, as references to that area as set out in the proposals, or in an application under Sch 2 para 6 (as amended); and any variation of the area in the storage authorisation order, as compared with those proposals or the application, does not invalidate the compulsory purchase order: s 13(9).

5 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

6 For these purposes, references to the depth prescribed by a storage authorisation order are to be taken, in relation to a compulsory purchase order which is made after proposals for a storage authorisation order have been submitted to the Secretary of State under the Gas Act 1965 Sch 2 para 3 (as amended) but before the storage authorisation order takes effect, as references to the depth so prescribed as set out in the proposals, or

in an application under Sch 2 para 6 (as amended); and any variation of the depth in the storage authorisation order, as compared with those proposals or the application, does not invalidate the compulsory purchase order: s 13(9).

7 Ibid ss 13(1), 32(2) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (3); and by virtue of the Utilities Act 2000 s 76(7)).

8 Gas Act 1965 s 13(2) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (3); the Acquisition of Land Act 1981 s 34, Sch 6, Pt I; and by virtue of the Utilities Act 2000 s 76(7)).

9 ie it is deemed to fall within the Land Charges Act 1972 s 2(5), Class D(iii): see LAND CHARGES vol 26 (2004 Reissue) PARA 636.

10 Gas Act 1965 s 13(6) (amended by the Land Registration Act 2002, s 133, Sch 11 para 6(1), (3)); Interpretation Act 1978 s 17(2)(a); and see PARA 983 note 15 ante. As to the registration of easements under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 919.

The Gas Act 1965 13(8) (as amended) (acquisition of wells, boreholes or shafts forming part of a disused coalmine: see PARA 997 text and notes 12-14 ante) also applies to these provisions.

11 See ibid s 13(5), Sch 4 (as amended); and PARAS 1016-1019 post.

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1000. Compulsory acquisition of rights of way.

A gas transporter¹ may be authorised² to purchase compulsorily a right of way over any land, either for persons on foot or for both persons on foot and vehicles, for the purpose of enabling it to obtain access to land which is in a storage area³ or protective area⁴ and which is either:

- 1981 (1) the site of an existing well, borehole or shaft; or
- 1982 (2) land on which the gas transporter proposes to construct a well, borehole or shaft to be connected with, or used for any of the purposes of, the underground gas storage⁵.

Unless the compulsory purchase order otherwise provides, such a right of way implies:

- 1983 (a) the right to construct and maintain gates, stiles and bridges along the right of way together with all such rights as would be implied in the grant of an easement for a right of way comparable to that conferred by the compulsory purchase order⁶; and
- 1984 (b) where the right of way includes a right to pass over the land with vehicles, a right to transport materials, plant and apparatus in vehicles⁷.

The gas transporter is liable to pay compensation to any person who suffers loss by reason of damage to, or disturbance in the enjoyment of, any land⁸ or chattels in consequence of the exercise by the gas transporter of any such right of way⁹.

A right of way so acquired is deemed, in the case of unregistered land, to be a charge affecting land¹⁰, and in the case of registered land, to be an equitable easement¹¹.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 I.e. under the Gas Act 1986 s 9(3), Sch 3 (as amended): see PARA 841 ante. See also the Gas Act 1965 s 13(10) (as amended); cited in PARA 998 note 3 ante.

3 For the meaning of 'storage area' see PARA 983 note 11 ante. See also PARA 999 note 3 ante.

4 For the meaning of 'protective area' see PARA 983 note 12 ante. See also PARA 999 note 4 ante.

5 Gas Act 1965 ss 13(3), 32(2) (amended by virtue of the Utilities Act 2000 s 76(7)); the Gas Act 1965 s 13(3) also amended by the Acquisition of Land Act 1981 s 34(3), Sch 6 Pt I; the Gas Act 1986 s 67(1), Sch 7 para 6(1), (11)). For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

6 Gas Act 1965 s 13(3)(i).

7 Ibid s 13(3)(ii).

8 In the case of ecclesiastical property (see PARA 986 note 9 ante), where the damage or disturbance affects the fee simple interest in the land, the compensation must be paid to the Church Commissioners whether or not that interest is vested in them and whether or not it is in abeyance: *ibid* s 26(2), (4).

9 Ibid s 13(4) (amended by virtue of the Utilities Act 2000 s 76(7)). As to compensation see further PARA 1008 et seq post.

10 If it is deemed to fall within the Land Charges Act 1972 s 2(5), Class D(iii): see LAND CHARGES vol 26 (2004 Reissue) PARA 636.

11 Gas Act 1965 s 13(6) (amended by the Land Registration Act 2002, s 133, Sch 11 para 6(1), (3)); Interpretation Act 1978 s 17(2)(a); and see PARA 983 note 15 ante. As to the registration of easements under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 919.

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(iv) Land Survey

A. SEARCH FOR UNDERGROUND STORAGE SITES

1001. Directions designating land for survey.

A gas transporter¹ may apply to the Secretary of State² for a direction designating land for the purposes of certain powers of entry and survey³. The transporter must serve a notice of its application on the owners⁴ and occupiers of all the land to which the application relates, setting out the terms of the direction applied for and stating that representations concerning the application may be made to the Secretary of State within 28 days from service of the notice⁵.

The Secretary of State must take all such representations duly made into consideration⁶, and if it appears to him expedient that the land should be prospected for the purpose of finding or proving a site for an underground gas storage⁷, he may give the direction⁸, which may be subject to conditions⁹. The direction remains in force for such period as may be specified in it, not exceeding two years¹⁰.

If while the direction is in force, the applicant or any other gas transporter takes proceedings¹¹ for the making of a storage authorisation order¹² which would include in the storage area¹³ any of the land designated in the direction, the direction continues in force until either the Secretary of State refuses to allow the gas transporter to proceed with its proposals¹⁴ or until he refuses an application for the order¹⁵, or until the order comes into force¹⁶.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

3 See the Gas Act 1965 s 20, Sch 6 para 1(1) (Sch 6 para 1 amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (27); and by virtue of the Utilities Act 2000 s 76(7)).

4 For the meaning of 'owner', and as to service of notice on the Church Commissioners as owners of certain land, see PARA 986 note 9 ante. As to service of notices generally see PARA 980 ante.

5 Gas Act 1965 Sch 6 para 1(2) (as amended: see note 3 supra).

6 Ibid Sch 6 para 1(3).

7 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

8 Gas Act 1965 Sch 6 para 1(1) (as amended: see note 3 supra). The direction may be in the terms applied for or in more restrictive terms: Sch 6 para 1(3).

9 Ibid Sch 6 para 1(1) (as amended: see note 3 supra). The condition must be specified in the direction: Sch 6 para 1(1) (as so amended).

10 Ibid Sch 6 para 1(4) (as amended: see note 3 supra).

11 Ie under ibid s 4(8), Sch 2 (as amended): see PARA 984 et seq ante.

12 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

- 13 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 14 Ie under the Gas Act 1965 Sch 2 para 5(1) (as amended): see PARA 984 ante.
- 15 Ie under ibid Sch 2 para 10(1): see PARA 992 ante.
- 16 Ibid Sch 6 para 1(4) (as amended: see note 3 supra).

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1002. Powers of entry and search for storage sites.

While a direction remains in force designating land as land within which powers of entry and survey may be exercised for the purpose of finding or proving a site for an underground gas storage¹, and subject to compliance with any conditions specified in the direction², any person authorised in writing by the gas transporter³ may for those purposes, at any reasonable time⁴:

- 1985 (1) enter upon⁵ the land designated in the direction, or upon any other land to which entry is required for obtaining access to that land⁶;
- 1986 (2) survey it and carry out trial borings in it⁷; and
- 1987 (3) remove from it any specimens, whether solid or fluid, abstracted from boreholes in it⁸.

These powers do not, however, authorise any interference with a public right of way or any contravention of a statutory prohibition or restriction⁹, nor do they authorise entry into any building¹⁰.

If the land to be entered is occupied, a person duly authorised¹¹ may not demand admission to it as of right unless 28 days' notice of the intended entry has been given to the occupier and to the owner¹²; and where it is proposed to survey land which is occupied, or carry out trial borings or remove specimens abstracted from boreholes in such land, 28 days' notice must be given both of the intended entry and of the intention to carry out those operations¹³.

Any person obstructing a person exercising the powers described above commits an offence¹⁴.

1 Ie a direction under the Gas Act 1965 s 20, Sch 6 para 1(1) (as amended): see PARA 1001 ante.

2 As to the power to specify conditions see *ibid* Sch 6 para 1(1) (as amended); and PARA 1001 ante.

3 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

4 Gas Act 1965 Sch 6 para 2(1) (amended by virtue of the Utilities Act 2000 s 76(7)). If the land is occupied, or if certain operations are to be carried out, notice must be given: see the text to notes 12-13 *infra*.

5 The power of entry may be exercised by the person authorised either alone or with other persons, and may be exercised with any vehicles, apparatus or materials required for the purpose for which the power is exercised: Gas Act 1965 Sch 6 para 10. As to other provisions incidental to entry see PARAS 1003, 1015 post. As to criminal offences in relation to the disclosure of information by such persons see PARA 1028 post.

6 *Ibid* Sch 6 para 2(1)(a).

7 *Ibid* Sch 6 para 2(1)(b).

8 *Ibid* Sch 6 para 2(1)(c).

9 *Ibid* Sch 6 para 2(1) proviso. This proviso applies whether the prohibition or restriction is imposed by or under an enactment contained in a public general Act or in any other Act: Sch 6 para 2(1) proviso.

10 *Ibid* Sch 6 para 2(5).

11 Ie under *ibid* Sch 6 para 2(1) (as amended: see note 4 *supra*).

12 Ibid Sch 6 para 2(2). For the meaning of 'owner', and as to service of notice on the Church Commissioners as owners of certain land, see PARA 986 note 9 ante. As to service of notices generally see PARA 980 ante.

13 Ibid Sch 6 para 2(2).

14 See ibid Sch 6 para 8 (as amended); and PARA 1028 post.

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1003. Entry under warrant.

Unless the occupier of premises to which entry is sought for purposes connected with underground gas storage¹ consents to the entry, a justice's warrant must be obtained before entry is made². For these purposes a warrant may be granted to a gas transporter³, to an employee of the gas transporter or to a person acting under the Secretary of State's⁴ authority, and may be granted in respect of entry to any premises, whether or not a building or part of a building⁵.

1 le for the purposes described in PARA 1002 ante, PARA 1004 et seq post. For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

2 See the Rights of Entry (Gas and Electricity Boards) Act 1954 s 2 (as amended) (applied by the Gas Act 1965 s 20, Sch 6 para 5 (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (2); and by virtue of the Utilities Act 2000 s 76(7)); and PARA 774 ante.

3 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

4 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

5 See the Rights of Entry (Gas and Electricity Boards) Act 1954 ss 2(1), 3(1) (as amended) (applied by the Gas Act 1965 Sch 6 para 5 (as amended)); and PARA 774 ante.

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1004. Entry on land of statutory undertakers and certain authorities.

If notice of intention to survey land and to carry out trial borings and abstract specimens¹ is given as respects land which is held by statutory undertakers² or by an internal drainage board³ and those undertakers or that board object or objects to the operations proposed on the ground that their being carried out would be seriously detrimental to the carrying on of their undertaking or the performance of its functions, as the case may be, the operations must not be carried out except with the consent of the appropriate minister⁴.

A person authorised to exercise the same powers of entry⁵ is not entitled to enter or remain on land occupied by the Environment Agency or by statutory water undertakers⁶ unless he complies with any reasonable requirements imposed by them for the purpose of protecting water against pollution⁷. Any dispute as to whether such requirements are reasonable must be determined by the minister concerned with water resources⁸, whose decision is final⁹.

1 le notice under the Gas Act 1965 s 20, Sch 6 para 2(2): see PARA 1002 ante.

2 'Statutory undertakers' means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power: *ibid* s 28(1) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (24), Sch 9 Pt I; the Electricity Act 1989 s 112(4), Sch 18; and by the Water Act 1989 ss 190(3), 194(3)(g), Sch 27 Pt I). The following are also deemed to be statutory undertakers for these purposes: (1) the Civil Aviation Authority (see the Civil Aviation Act 1982 s 19, Sch 2 para 4); (2) the Environment Agency and every water undertaker and sewerage undertaker (see the Water Act 1989 s 190, Sch 25 para 1(1), (2)(xii) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4)); (3) the holder of a licence under the Electricity Act 1989 s 6(1) (as substituted and amended) (see PARA 1065 et seq post) (see s 112(1), Sch 16 para 1(1)(xv)). As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq; as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq.

3 As to internal drainage boards see WATER AND WATERWAYS vol 101 (2009) PARA 569 et seq.

4 Gas Act 1965 Sch 6 para 2(3) (substituted by the Water Act 1989 s 190(1), Sch 25 para 32(9)). For these purposes, the expression 'the appropriate minister' means (1) in relation to statutory undertakers as defined in the Gas Act 1965 s 28(1) (as amended: see note 2 supra), the appropriate minister for the purposes of the Town and Country Planning Act 1990 s 265(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1012); and (2) in relation to an internal drainage board, the Secretary of State for Environment, Food and Rural Affairs: Gas Act 1965 Sch 6 para 2(6) (amended by the Water Act 1989 s 190(1), (3), Sch 25 para 32(9), Sch 27 Pt I); Planning (Consequential Provisions) Act 1990 s 2(4); Interpretation Act 1978 s 17(2)(a); Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. In relation to holders of licences under the Electricity Act 1989 s 6(1) (as substituted and amended), the appropriate minister is the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry): see the Electricity Act 1989 Sch 16 para 3(1)(c) (amended by the Transfer of Functions (Energy) Order 1992, SI 1992/1314, art 3(3), Schedule para 1). In relation to the Environment Agency, water undertakers and sewerage undertakers, the appropriate minister is the Secretary of State for Environment, Food and Rural Affairs: see the Water Act 1989 Sch 25 para 1(9), (10)(iii) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4). Certain functions relating to water are transferred, in relation to Wales, to the National Assembly for Wales or the Welsh Ministers: see further WATER AND WATERWAYS vol 100 (2009) PARA 16.

5 le under the Gas Act 1965 Sch 6 para 2(1), (2) (as amended): see PARA 1002 ante.

6 For the meaning of 'statutory water undertakers' see PARA 984 note 17 ante.

7 Gas Act 1965 Sch 6 para 2(4) (amended by the Water Act 1989 Sch 25 para 32(9); and by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

8 le the Secretary of State: see the Gas Act 1965 s 28(1) (definition substituted by the Water Act 1989 Sch 25 para 32(5)(a), (b)). In practice, this is the Secretary of State for Environment, Food and Rural Affairs if the land in question is wholly in England and, for most purposes, the Welsh Ministers if it is wholly in Wales; and if the undertakers' area is partly in England and partly in Wales the dispute must be determined by the Secretary of State and the Welsh Ministers acting jointly or by one of them acting on behalf of both. See further WATER AND WATERWAYS vol 100 (2009) PARA 16.

9 Gas Act 1965 Sch 6 para 2(4) (as amended: see note 8 supra).

UPDATE

1004 Entry on land of statutory undertakers and certain authorities

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1005. Reinstatement of land entered for certain purposes.

Where a gas transporter¹ carries out its powers to survey land, carries out trial borings in it or removes specimens from boreholes for the purpose of finding or proving a site for underground gas storage², it must make good any damage to the surface of that land caused in the exercise of those powers³. Where the land is agricultural land the gas transporter must secure so far as practicable that any damaged land is so restored as to be fit for use for the purpose for which it was used immediately before the damage occurred⁴.

This duty must be discharged as soon as practicable, and in any case not later than one month from the time when the direction⁵ designating the land for the purposes of entry and survey ceases to be in force⁶, unless the direction terminates with the coming into force of a storage authorisation order⁷ and the land is purchased by the gas transporter for the purposes of the underground gas storage⁸.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 I.e. under the Gas Act 1965 s 20, Sch 6 para 2(1)(b), (c): see PARA 1002 ante. For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 Ibid Sch 6 para 7(1) (Sch 6 para 7 amended by virtue of the Utilities Act 2000 s 76(7); the Gas Act 1965 Sch 6 para 7(1), (2) also amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (27)).

4 Gas Act 1965 Sch 6 para 7(1) (as amended: see note 3 supra).

5 I.e. the Secretary of State's direction under ibid Sch 6 para 1 (as amended): see PARA 1001 ante.

6 Ibid Sch 6 para 7(2) (as amended: see note 3 supra).

7 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

8 Ibid Sch 6 para 7(3) (as amended: see note 3 supra). As to compensation for damage see PARA 1015 post.

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B. OTHER POWERS OF ENTRY

1006. Powers of entry and survey.

Any person authorised in writing by a gas transporter¹ may at any reasonable time enter upon² and survey any land for the purpose (1) of preparing any documents to be submitted to the Secretary of State³ at any stage of the proceedings for the making of a storage authorisation order⁴; or (2) estimating value⁵ or assessing loss⁶ in connection with any statutory claim for compensation⁷ arising out of the development or operation of an underground gas storage⁸.

In either case, if the land is occupied, an authorised person may not demand admission as of right to the land unless 28 days' notice of the intended entry has been given to the owner⁹ and to the occupier of the land¹⁰.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 As to provisions incidental to entry see PARA 1002 note 5 ante; and as to criminal offences in relation to obstructing persons exercising these powers and the disclosure of information by them see PARA 1028 post.

3 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

4 Gas Act 1965 s 20, Sch 6 para 3(1)(a) (Sch 6 para 3(1) amended by virtue of the Utilities Act 2000 s 76(7)). The documents must include the gas transporter's preliminary written proposals and its formal application for the order (see PARAS 984-985 ante); they may also include objections to the making of the order and other representations on the application (see PARA 987 ante) and the report of any public local inquiry or hearing of objections (see PARA 992 ante). For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

5 Compensation is assessed by reference to the value of land (1) when it is for depreciation in the value of an interest in land arising out of the making of an underground storage authorisation order and its statutory effects; and (2) when it is compensation for the compulsory acquisition of an interest in or right over land for the purposes of an underground gas storage: see PARA 1008 post. For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

6 Loss may be assessed for compensation purposes where it arises out of (1) injurious affection of land consequent upon the compulsory acquisition of an interest in or right over land for the purposes of an underground gas storage (see PARA 1008 post); (2) any work being rendered abortive by reason of a refusal of the Secretary of State to consent to controlled operations, or by reason of the imposition of a condition on that consent (see PARA 1009 post); (3) injurious affection of land consequent upon the compulsory acquisition of the site of any well, borehole or shaft or of the right to stop up a well, borehole or shaft (see PARA 1017 post); or (4) the pollution of water supplies prior to their being cleansed (see PARA 1019 post). For the meaning of 'controlled operations' see PARA 995 note 3 ante.

7 Ie under the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq ante, PARA 1007 et seq post. See also notes 5-6 supra.

8 Ibid Sch 6 para 3(1)(b).

9 For the meaning of 'owner' see PARA 986 note 9 ante.

10 Gas Act 1965 Sch 6 para 3(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(iv) Land Survey/B. OTHER POWERS OF ENTRY/1007. Powers of entry for purposes of controlled operations.

1007. Powers of entry for purposes of controlled operations.

Any person authorised in writing by a gas transporter¹ or by the Secretary of State² may at any reasonable time enter³ upon certain land for the purpose of:

- 1988 (1) supervising and inspecting any controlled operations⁴ carried out with the Secretary of State's consent; or
- 1989 (2) guarding against and detecting the carrying out of any controlled operations without that consent; or
- 1990 (3) guarding against and detecting the carrying out of anything else constituting an offence under the statutory provisions⁵ relating to controlled operations⁶.

The land which may be entered under these powers includes any land in the storage area⁷ or the protective area⁸, or any land to which entry is required for the purpose of obtaining access to that land⁹. If the person authorised has reason to believe that controlled operations are being carried out from the surface of any other land, he may also enter that other land¹⁰. He may not, however demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier¹¹.

A person exercising these powers may inspect any borehole, shaft, excavation, quarry or other works, and for that purpose may use for his entry, inspection and return any apparatus or machinery which is on the land and is for use in those works¹². He may also employ any means for discovering the depth of any part of any works below the surface of the ground and their location in relation to the controlled area¹³.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

3 As to provisions incidental to entry see PARA 1002 note 5 ante; and as to criminal offences in relation to obstructing persons exercising these powers and the disclosure of information by them see PARA 1028 post.

4 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

5 Ie an offence under the Gas Act 1965 s 5 (as amended): see PARA 995 ante.

6 Ibid s 20, Sch 6 para 4(1), (2) (Sch 6 para 4(2) amended by virtue of the Utilities Act 2000 s 76(7)).

7 For the meaning of 'storage area' see PARA 983 note 11 ante.

8 For the meaning of 'protective area' see PARA 983 note 12 ante.

9 Ibid Sch 6 para 4(2)(a), (b).

10 Ibid Sch 6 para 4(2)(c).

11 Ibid Sch 6 para 4(3).

12 Ibid Sch 6 para 4(4)(a).

13 Ibid Sch 6 para 4(4)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/A. COMPENSATION IN RESPECT OF STORAGE RIGHTS/1008. Compensation in respect of storage rights.

(v) Compensation

A. COMPENSATION IN RESPECT OF STORAGE RIGHTS

1008. Compensation in respect of storage rights.

If a person having, on the date when a storage authorisation order¹ comes into force, an interest in land which consists of, comprises or is held with, land in the storage area² proves that the value of his interest on that date is depreciated by the order being made and its effect under the statutory provisions governing the underground storage of gas by a gas transporter³, the gas transporter must pay him compensation equal to the amount of the depreciation so far as directly attributable to those causes⁴. A right to store gas in an underground gas storage⁵ acquired by a gas transporter by agreement or compulsorily does not include a right, as against any other person, to prevent the carrying out of any controlled operations⁶ or operations which would be controlled but for the existence of a direction to the contrary⁷, and compensation for the compulsory acquisition of such a right⁸ is to be assessed accordingly⁹.

In assessing such compensation, and in assessing compensation for the injurious affection of any land where any interest in or right over land has been compulsorily acquired for the purposes of an underground gas storage¹⁰, the Lands Tribunal must disregard the effect of the Secretary of State's control over certain excavation, mining, quarrying or boring operations¹¹. It must also make such adjustments as will in its opinion prevent compensation being paid more than once for the same cause on two or more claims for such compensation, or on one or more such claims when taken with the consideration paid by the gas transporter for the acquisition by agreement of any interest in land¹², and must make the like adjustments when assessing compensation for depreciation on any such compulsory acquisition¹³.

Where compensation is to be assessed in respect of the depreciation of the value of any interest in land which consists of, comprises or is held with land in a storage area, and that land is subject to a mortgage, special provisions apply¹⁴.

Where compensation is payable in respect of the title to the fee simple interest in any ecclesiastical property¹⁵ the compensation is to be paid to the Church Commissioners¹⁶, whether or not that interest is vested in them¹⁷ or is in abeyance¹⁸.

Compensation payable in respect of an interest in land in circumstances in which, on a purchase of that interest, a limited owner is statutorily entitled¹⁹ to give a good discharge for the purchase money, may be paid to that person²⁰.

1 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

2 For the meaning of 'storage area' see PARA 983 note 11 ante.

3 I.e. the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq ante, PARA 1009 et seq post. As to gas transporters see PARAS 805, 983 note 2 ante.

4 Ibid s 7 (amended by virtue of the Utilities Act 2000 s 76(7)).

5 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

- 6 For the meaning of 'controlled operations' see PARA 995 note 3 ante.
- 7 Ie but for the provisions of the Gas Act 1965 s 18(7)(a): see PARA 1025 post.
- 8 Ie under the Gas Act 1986 s 9(3), Sch 3 (as amended): see PARA 841 ante.
- 9 Gas Act 1965 s 10(1) (amended by the Gas Act 1986 Sch 7 para 6(1), (3); and by virtue of the Utilities Act 2000 s 76(7)).
- 10 See the Gas Act 1965 s 10(2)(b) (s 10(2), (3) amended by virtue of the Utilities Act 2000 s 76(7)).
- 11 Gas Act 1965 s 10(2) (as amended: see note 10 supra). The provisions whose effect must be disregarded are ss 5, 6 (as amended) (see PARAS 995-996 ante): s 10(2) (as so amended).
- 12 Ibid s 10(3) (as amended): see note 10 supra).
- 13 Ibid s 10(3)(b) (as amended: see note 10 supra).
- 14 See ibid s 24(1); and PARA 1021 post.
- 15 See PARA 986 note 9 ante.
- 16 Where the land is not consecrated the Church Commissioners must apply the compensation for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; where the land is consecrated, the commissioners must apply the compensation in such manner as they may determine: Gas Act 1965 s 26(3). As to the ownership of consecrated churches and churchyards see ECCLESIASTICAL LAW vol 14 paras 1079-1085; and as to the effect of consecration see also CREMATION AND BURIAL vol 10 (Reissue) PARA 1019 et seq.
- 17 Ibid s 26(2).
- 18 Ibid s 26(4).
- 19 Ie under the Settled Land Act 1925 (see SETTLEMENTS) or any other enactment: Gas Act 1965 s 24(2).
- 20 Ibid s 24(2).

UPDATE

1008 Compensation in respect of storage rights

TEXT AND NOTES 11-13--Reference to the Lands Tribunal is now to the Upper Tribunal:
Gas Act 1965 s 10(3) (amended by SI 2009/1307).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/(A) Right to Compensation/1009. Compensation for refusal of consent to controlled operations, or consent granted subject to conditions.

B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS

(A) RIGHT TO COMPENSATION

1009. Compensation for refusal of consent to controlled operations, or consent granted subject to conditions.

Where the Secretary of State¹ has either refused an application for consent to the carrying out of any controlled operations², or has granted his consent subject to conditions³, and it is shown that the applicant or any other person has incurred expenditure⁴ in carrying out work which is rendered abortive by the Secretary of State's decision or has otherwise sustained loss or damage which is directly attributable to that decision, the gas transporter⁵ must pay to the person who has incurred the expenditure or sustained the loss or damage compensation in respect of that expenditure, loss or damage⁶. In assessing the results of the Secretary of State's decision it is to be assumed that it will not at any future time be revoked or modified⁷.

In assessing compensation in respect of abortive expenditure no account is to be taken (1) of any expenditure incurred after the storage authorisation order⁸ came into force⁹; or (2) of any expenditure or of any loss or damage if the expenditure, or any act which gave rise to the loss or damage, was not reasonably necessary and was undertaken for the purpose of obtaining compensation or greater compensation¹⁰.

No liability to pay compensation arises in any such cases unless it is shown that any planning permission¹¹ or statutory licence to abstract water¹² which would be required for the carrying out of the controlled operations which are prevented by the Secretary of State's decision either has been granted or could¹³ reasonably have been expected to be granted but for that decision¹⁴. If any such planning permission or licence or any certificate¹⁵ relied on by the claimant shows that the carrying out of the controlled operations in accordance with the application would be, or could have been expected to be, subject to conditions, limitations or restrictions imposed by the local planning authority¹⁶ or by the Environment Agency¹⁷ it is to be assumed for this purpose that the application was for the carrying out of those operations subject to such conditions, limitations or restrictions¹⁸.

To show that any such planning application or statutory licence to abstract water could reasonably have been expected to be granted, the claimant must produce a statutory certificate to that effect from the local planning authority or the Environment Agency¹⁹.

The Lands Tribunal has a duty in assessing compensation in such cases to make such adjustments as will in its opinion prevent compensation being paid more than once in respect of the same cause, whether that cause gives rise to a claim for the depreciation of an interest in land²⁰ or for abortive expenditure²¹ or for any other loss or damage²².

Where in any such case compensation has been agreed between the parties or awarded by the tribunal, particulars of that compensation, together with particulars of the nature and location of the operations in respect of which it is payable, are to be a local land charge²³.

Where compensation is to be assessed for loss or damage attributable to the Secretary of State's decision concerning the carrying out of operations which require his consent in land forming part of a storage²⁴ or protective area²⁵, and that land is subject to a mortgage, special provisions apply²⁶.

- 1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.
- 2 As to applications for consent see the Gas Act 1965 s 5(3); and PARA 995 ante. For the meaning of 'controlled operations' see PARA 995 note 3 ante.
- 3 As to the Secretary of State's powers to impose conditions see *ibid* s 5(6); and PARA 995 ante.
- 4 Any expenditure incurred in the preparation of plans for the purposes of any work or upon any similar matters preparatory to the work is taken, for these purposes, to be included in the expenditure incurred in carrying out that work: *ibid* s 8(3).
- 5 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.
- 6 Gas Act 1965 s 8(1), (2) (s 8(2) amended by virtue of the Utilities Act 2000 s 76(7)).
- 7 Gas Act 1965 s 8(7).
- 8 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.
- 9 Gas Act 1965 s 8(4).
- 10 *Ibid* s 8(6).
- 11 For the meaning of 'planning permission' see PARA 985 note 14 ante.
- 12 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.
- 13 *Ie* according to a certificate issued under the provisions of the Gas Act 1965 s 8(5), Sch 3 (as amended) (see PARAS 1012-1014 post): s 8(5).
- 14 *Ibid* s 8(5).
- 15 *Ie* any certificate issued under *ibid* Sch 3 (as amended): see note 13 *supra*.
- 16 For the meaning of 'local planning authority' see PARA 984 note 14 ante.
- 17 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 18 Gas Act 1965 s 8(5) (amended for these purposes by the Water Act 1989 s 190(1), Sch 25 para 32(1); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).
- 19 See the Gas Act 1965 s 8(5); and the text to notes 11-14 *supra*.
- 20 *Ie* under *ibid* s 7 (as amended): see PARA 1008 ante.
- 21 *Ie* under *ibid* s 8 (as amended): see the text and notes 1-18 *supra*.
- 22 *Ibid* s 10(4).
- 23 *Ibid* s 11(3) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1). See also PARA 983 note 15 ante.
- 24 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 25 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 26 See the Gas Act 1965 s 24(1); and PARA 1021 post.

UPDATE

1009-1013 Compensation in Respect of Controlled Operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1009 Compensation for refusal of consent to controlled operations, or consent granted subject to conditions

TEXT AND NOTE 22--Reference to the Lands Tribunal is now to the Upper Tribunal: Gas Act 1965 s 10(4) (amended by SI 2009/1307).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/(A) Right to Compensation/1010. Compensation for withdrawal of consent for carrying out of controlled operations or variation of conditions.

1010. Compensation for withdrawal of consent for carrying out of controlled operations or variation of conditions.

Where the Secretary of State¹ after giving his consent to an application for the carrying out of any controlled operations² withdraws that consent or imposes conditions or further conditions on his consent³, or varies any condition previously imposed on his consent⁴, and it is shown that the applicant or any other person has incurred expenditure⁵ in carrying out work which is rendered abortive by the Secretary of State's decision or has otherwise sustained loss or damage which is directly attributable to that decision, the gas transporter⁶ must pay to the person who has incurred the expenditure or sustained the loss or damage compensation in respect of that expenditure, loss or damage⁷. In assessing the results of the Secretary of State's decision it is to be assumed that it will not at any future time be revoked or modified⁸.

In assessing compensation in respect of abortive expenditure no account is to be taken of any expenditure incurred in the period between the time when the storage authorisation order⁹ came into force and the time when that consent was given¹⁰.

No liability to pay compensation arises in any such cases unless it is shown that any planning permission¹¹ or statutory licence to abstract water¹² which would be required for the carrying out of the controlled operations which are prevented by the Secretary of State's decision either has been granted or could¹³ reasonably have been expected to be granted but for that decision¹⁴. If any such planning permission or licence or any certificate¹⁵ relied on by the claimant shows that the carrying out of the controlled operations in accordance with the application would be, or could have been expected to be, subject to conditions, limitations or restrictions imposed by the local planning authority¹⁶ or by the Environment Agency¹⁷ it is to be assumed for this purpose that the Secretary of State's consent was for the carrying out of those operations subject to such conditions, limitations or restrictions¹⁸.

To show that any such planning application or statutory licence to abstract water could reasonably have been expected to be granted, the claimant must produce a statutory certificate to that effect from the local planning authority or the Environment Agency¹⁹.

The Lands Tribunal has a duty in assessing compensation in such cases to make such adjustments as will in its opinion prevent compensation being paid more than once in respect of the same cause, whether that cause gives rise to a claim for the depreciation of an interest in land²⁰ or for abortive expenditure²¹ or for any other loss or damage²².

Where in any such case compensation has been agreed between the parties or awarded by the tribunal, particulars of that compensation, together with particulars of the nature and location of the operations in respect of which it is payable, are to be a local land charge²³.

Where compensation is to be assessed for loss or damage attributable to the Secretary of State's decision concerning the carrying out of operations which require his consent in land forming part of a storage²⁴ or protective area²⁵, and that land is subject to a mortgage, special provisions apply²⁶.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

- 2 As to applications for consent see the Gas Act 1965 s 5(3); and PARA 995 ante. For the meaning of 'controlled operations' see PARA 995 note 3 ante.
- 3 As to the Secretary of State's powers to impose conditions see *ibid* s 5(6); and PARA 995 ante.
- 4 As to the Secretary of State's powers in this respect see *ibid* s 5(8) (as amended); and PARA 995 ante.
- 5 Any expenditure incurred in the preparation of plans for the purposes of any work or upon any similar matters preparatory to the work is taken, for these purposes, to be included in the expenditure incurred in carrying out that work: *ibid* s 9(3).
- 6 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.
- 7 Gas Act 1965 s 9(1), (2) (s 9(2) amended by virtue of the Utilities Act 2000 s 76(7)).
- 8 Gas Act 1965 s 9(6).
- 9 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.
- 10 Gas Act 1965 s 9(4).
- 11 For the meaning of 'planning permission' see PARA 985 note 14 ante.
- 12 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.
- 13 *Ie* according to a certificate issued under the provisions of the Gas Act 1965 s 8(5), Sch 3 (as amended) (see PARAS 1012-1014 post): s 8(5).
- 14 *Ibid* s 9(5).
- 15 *Ie* any certificate issued under *ibid* Sch 3 (as amended): see note 13 *supra*.
- 16 For the meaning of 'local planning authority' see PARA 984 note 14 ante.
- 17 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 *et seq*.
- 18 Gas Act 1965 s 9(5) (amended for these purposes by the Water Act 1989 s 190(1), Sch 25 para 32(2); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).
- 19 See the Gas Act 1965 s 9(5); and the text to notes 11-14 *supra*.
- 20 *Ie* under *ibid* s 7 (as amended): see PARA 1008 ante.
- 21 *Ie* under *ibid* s 9 (as amended): see the text and notes 1-18 *supra*.
- 22 *Ibid* s 10(4).
- 23 *Ibid* s 11(3) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1). See also PARA 983 note 15 ante.
- 24 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 25 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 26 See the Gas Act 1965 s 24(1); and PARA 1021 post.

UPDATE

1009-1013 Compensation in Respect of Controlled Operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1010 Compensation for withdrawal of consent for carrying out of controlled operations or variation of conditions

TEXT AND NOTE 22--Reference to the Lands Tribunal is now to the Upper Tribunal: Gas Act 1965 s 10(4) (amended by SI 2009/1307).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/ (B) Certificates in respect of Planning Permission and Licences to abstract Water/1011. Application for a certificate.

(B) CERTIFICATES IN RESPECT OF PLANNING PERMISSION AND LICENCES TO ABSTRACT WATER

1011. Application for a certificate.

At any time after an application has been made for the Secretary of State's consent¹ to the carrying out of any controlled operations² for which planning permission³ or a statutory licence to abstract water⁴ is required but has not been granted, or has not been granted in the form required for the carrying out of the controlled operations⁵, any person concerned may apply to the local planning authority⁶ or the Environment Agency⁷, as the case may be, for an appropriate certificate as respects those controlled operations⁸. The manner in which such applications are to be made may be prescribed⁹ by regulations contained in a statutory instrument¹⁰.

The application must be in writing¹¹. Where it relates to planning permission, it must include a plan or map sufficient to identify the land to which it relates¹², and where it relates to a statutory licence to abstract water, it must include such particulars and be accompanied by such maps and other documents as would be required if it were an application for such a licence¹³. The applicant must serve a copy of his application on the gas transporter¹⁴.

In entertaining an application, the Environment Agency must apply the principles which would have applied if the application had been for a statutory licence¹⁵ to abstract water¹⁶.

The authority receiving an application must issue to the applicant an appropriate certificate, stating that planning permission or a statutory licence to abstract water could or could not reasonably have been expected to have been granted if the land had not been comprised in a storage¹⁷ or protective area¹⁸. The authority must in either case give its reasons in writing¹⁹. If the authority is of the opinion that permission or a licence might reasonably have been expected to be granted but would only have been granted subject to conditions²⁰ it must also specify them²¹ and give the reasons in writing²². The authority must include in the certificate particulars of the manner in which and the time within which appeals against the certificate may be made²³. The authority must serve a copy of the certificate on the gas transporter²⁴. A local planning authority must also serve a copy of the certificate on the council of every district in which any part of the relevant land is situated²⁵.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante; and as to operations for which consent is required see PARA 995 ante.

2 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

3 For the meaning of 'planning permission' see PARA 985 note 14 ante.

4 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.

5 See the Gas Act 1965 ss 8(5), 9(5), Sch 3 para 8.

6 For the meaning of 'local planning authority' see PARA 984 note 14 ante. Every application for a certificate with regard to planning permission for the carrying out of the operations must, outside Greater London, be

made to the district planning authority, but is to be dealt with by the local planning authority which would have dealt with an application for planning permission for the carrying out of those operations; and the district planning authority must, as soon as may be after it has received any application for such a certificate which falls to be dealt with by the county planning authority, send the application to the county planning authority: Local Government Act 1972 s 251(2), Sch 29 para 20(2). This does not, however, apply in Wales: Sch 29 para 20(3) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 66). As to local planning authorities in England and Wales see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28 et seq.

7 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

8 Gas Act 1965 Sch 3 paras 1(1), 4(1) (Sch 3 para 4 amended by the Water Act 1989 s 190(1), Sch 25 para 32(7); and by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

9 Ie by the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) and the Secretary of State for Communities and Local Government (or the Welsh Ministers concerned with planning) acting jointly: see the Gas Act 1965 Sch 3 para 7(1). In particular, the regulations may apply with or without modification any of the provisions of a development order (or, as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121(1), (2)(f), (g), a local development order) under the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 252 et seq) or of regulations made under the Water Resources Act 1991: Gas Act 1965 Sch 3 para 7(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 12(3); prospectively amended by the Planning and Compulsory Purchase Act 2004 s 118(2), Sch 7 para 1, as from a day to be so appointed); and see the Interpretation Act 1978 s 17(2)(a).

10 Gas Act 1965 Sch 3 para 7(1). In exercise of the power so conferred, the relevant ministers made the Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167: see the text and notes 11-25 infra.

11 Ibid regs 4(1), 7(1).

12 Ibid reg 4(1).

13 Ibid reg 7(1). Documents relating to the publication or service of notices need not accompany the application: reg 7(1).

14 Ibid regs 4(2), 7(2). Where the application relates to a statutory licence to abstract water, copies of maps or documents required to accompany the application must also be served on the gas transporter: reg 7(2).

15 Ie under the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq): Gas Act 1965 Sch 3 para 6; Interpretation Act 1978 s 17(2).

16 Gas Act 1965 Sch 3 para 6 (amended by the Water Act 1989 Sch 25 para 32(7); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

17 For the meaning of 'storage area' see PARA 983 note 11 ante.

18 Gas Act 1965 Sch 3 paras 1(2), 4(2) (Sch 3 para 4(2) as amended: see note 8 supra). A local planning authority must issue a certificate within two months of receipt of the application and the Environment Agency within three months: Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167, regs 4(3), 7(3). For the meaning of 'protective area' see PARA 983 note 12 ante.

19 Ibid regs 4(5), 7(4).

20 In the case of an application relating to a statutory licence to abstract water, there may be limitations or conditions: see the Gas Act 1965 Sch 3 para 4(3) (as amended: see note 8 supra).

21 Ibid Sch 3 paras 1(3), 4(3) (Sch 3 para 4(3) as amended: see note 8 supra).

22 Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167, regs 4(5), 7(4).

23 Ibid regs 4(5), 7(4). As to appeals see PARA 1012 post.

24 Gas Act 1965 Sch 3 paras 1(4), 4(4) (Sch 4 para 4(4) as amended (see note 8 supra); the Gas Act 1965 Sch 3 para 1(4) amended by virtue of the Utilities Act 2000 s 76(7)).

25 Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167, reg 4(6).

UPDATE

1009-1013 Compensation in Respect of Controlled Operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/ (B) Certificates in respect of Planning Permission and Licences to abstract Water/1012. Appeals in respect of certificates.

1012. Appeals in respect of certificates.

Where a local planning authority¹ or the Environment Agency² has issued a certificate stating either that planning permission³ for the operations to which the application relates, or a statutory licence to abstract water⁴ required for those operations⁵, could or could not reasonably have been expected to be granted if the land concerned had not been in a storage⁶ or protective area⁷, the applicant and the gas transporter⁸ may each appeal against the certificate⁹. Where an authority has failed to issue such a certificate within the proper period¹⁰, or within such extended period as may have been agreed¹¹ between the applicant and the authority, the authority is for this purpose deemed to have issued a certificate to the effect that planning permission or a statutory licence to abstract water, as the case may be, could not reasonably have been expected to be granted, and the gas transporter and the applicant may appeal accordingly¹². Such appeals must be brought within one month of the receipt of the certificate, if issued, or of the expiry of the proper or extended period¹³.

Notice of appeal¹⁴ must be given to the appropriate minister¹⁵, and whichever of the gas transporter and the applicant for the certificate is appellant must serve a copy of the notice on the other and on the authority concerned¹⁶. Within one month of giving notice of appeal, or such longer period as the appropriate minister may at any time in a particular case allow, the appellant must furnish that minister with a statement of the grounds of appeal, a copy of the application to the local planning authority or the Environment Agency, and a copy of the certificate, if any, issued by that authority¹⁷; and if he does not do so his appeal is treated as withdrawn¹⁸.

On the appeal the appropriate minister must consider the matters to which the certificate relates as if the application for the certificate had been made to him in the first place¹⁹, and where the application related to a statutory licence to abstract water, he must, in coming to a decision, apply the principles which would have applied if the appeal had been against the refusal of such a licence²⁰. If the applicant or the gas transporter so desires, the minister must, before determining the appeal, afford it and the authority concerned an opportunity of appearing before and being heard by a person appointed by him for that purpose²¹. On determining the appeal the minister must either confirm the certificate given or deemed to have been given, or vary it or cancel it and issue a different certificate in its place, as he may consider appropriate²².

1 For the meaning of 'local planning authority' see PARA 984 note 14 ante.

2 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

3 For the meaning of 'planning permission' see PARA 985 note 14 ante.

4 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.

5 As to the requirement for certificates see PARA 1009 ante; and as to the method of applying for them see PARA 1011 ante.

6 For the meaning of 'storage area' see PARA 983 note 11 ante.

- 7 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 8 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.
- 9 Gas Act 1965 ss 8(5), 9(5), Sch 3 paras 2(1), 5(1) (Sch 3 paras 2(1), (3), 5(1), (3) amended by virtue of the Utilities Act 2000 s 76(7); the Gas Act 1965 Sch 3 para 5(1), (3) also amended by the Water Act 1989 s 190(1), Sch 25 para 32(7); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).
- 10 As to the statutory periods see PARA 1011 note 18 ante.
- 11 Such an agreement must be in writing: Gas Act 1965 Sch 3 paras 2(4), 5(4).
- 12 Ibid Sch 3 paras 2(4), 5(4) (Sch 3 para 5(4) amended by the Water Act 1989 s 190(1), Sch 25 para 32(7); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).
- 13 Gas (Underground Storage) (Certificates) (England and Wales) Regulations, 1967 SI 1967/1167, regs 5(1), 8(1).
- 14 The notice must be in writing: ibid regs 5(2), 8(2).
- 15 Where the application related to planning permission or to land wholly in England, appeal lies to the Secretary of State; where the application related to planning permission or to land wholly in Wales, appeal lies to the Welsh Ministers; and where the application related to land partly in England and partly in Wales, appeal lies to the Secretary of State and to the Welsh Ministers, either acting jointly or on behalf of himself or themselves and of the other or others: see the Gas Act 1965 s 28(1), Sch 3 paras 2(1), 5(1); Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167, regs 2(1), 5(2), 8(2). In practice, the relevant Secretary of State with regard to planning is the Secretary of State for Communities and Local Government and the relevant Secretary of State with regard to water is the Secretary of State for Environment, Food and Rural Affairs.
- 16 Ibid regs 5(2), 8(2).
- 17 Ibid regs 5(3), 8(3).
- 18 Ibid regs 5(4), 8(4).
- 19 Gas Act 1965 Sch 3 paras 2(2), 5(2).
- 20 Ibid Sch 3 para 6 (amended by the Water Act 1989 Sch 25 para 32(7); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).
- 21 Gas Act 1965 Sch 3 paras 2(3), 5(3) (as amended: see note 12 supra).
- 22 Ibid Sch 3 paras 2(2), 5(2). As to where a certificate is deemed to have been given see the text to note 12 supra.

UPDATE

1009-1013 Compensation in Respect of Controlled Operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/ (B) Certificates in respect of Planning Permission and Licences to abstract Water/1013. Information as to certificates.

1013. Information as to certificates.

On the written request of any person appearing to a local planning authority¹ or the Environment Agency² to have an interest in land which is the subject of a certificate issued, or of an application for a certificate to be issued, by that authority³ relating to the question whether planning permission⁴ or a statutory licence to abstract water⁵, as the case may be, could or could not reasonably have been expected to be granted for or in respect of the controlled operations⁶ to which the application related, the authority must furnish to that person the applicant's name and address and the date of the application, and a copy of any certificate issued to the applicant⁷.

1 For the meaning of 'local planning authority' see PARA 984 note 14 ante.

2 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

3 As to applications for certificates see PARA 1011 ante.

4 For the meaning of 'planning permission' see PARA 985 note 14 ante.

5 For the meaning of 'statutory licence to abstract water' see PARA 984 note 18 ante.

6 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

7 Gas (Underground Storage) (Certificates) (England and Wales) Regulations 1967, SI 1967/1167, regs 6, 9 (amended by virtue of the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

UPDATE

1009-1013 Compensation in Respect of Controlled Operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/B. COMPENSATION IN RESPECT OF CONTROLLED OPERATIONS/(C) Repayment of Compensation/1014. Repayable compensation.

(C) REPAYMENT OF COMPENSATION

1014. Repayable compensation.

Where a gas transporter¹ has become liable to pay compensation² to any person by reason of the Secretary of State's decision³ following an application for his consent to the carrying out of controlled operations⁴, and the Secretary of State at any time afterwards takes a further decision with respect to the operations in respect of which the compensation was payable which is more favourable in all or any respects than the earlier decision, the whole or some part of that compensation may become repayable to the gas transporter⁵. Any person who carries out any operations which would have been unlawful if the Secretary of State had not taken that further decision is liable to pay to the gas transporter an amount equal to (1) so much, if any, of that compensation as is in respect of abortive expenditure⁶ which in consequence of the further decision of the Secretary of State is no longer abortive⁷; and (2) so much of that compensation as is for any loss or damage⁸ which is nullified by the further decision⁹.

Compensation may similarly become repayable if the Secretary of State makes a direction¹⁰ that operations in the storage¹¹ or protective areas¹² of an underground gas storage¹³ which he has ordered to be taken out of operation should no longer be controlled operations and that any conditions which may have been imposed on their carrying out should cease to have effect¹⁴.

The Secretary of State may, however, remit the whole or any part of any compensation so repayable if, on an application to him, it is shown to his satisfaction that, having regard to the probable value of any operations giving rise to a liability to repay compensation, those operations are not likely to be carried out unless he does so¹⁵.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 Ie under the Gas Act 1965 ss 8 or 9 (as amended): see PARAS 1009-1010 ante.

3 Ie under ibid s 5 (as amended): see PARA 995 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

4 For the meaning of 'controlled operations' see PARA 995 note 3 ante.

5 Gas Act 1965 s 11(1) (amended by virtue of the Utilities Act 2000 s 76(7)). Any question as to the amount recoverable must be determined by the Lands Tribunal: Gas Act 1965 s 23(1)(b) (as so amended). Repayment must be made with interest on the amount of the repayment from the date on which the operations made lawful by the Secretary of State's further decision were begun until the date of payment, and the rate of interest is to be that for the time being in force under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641): Gas Act 1965 s 11(1).

6 Ie paid under ibid s 8(2)(a) or s 9(2)(a).

7 Ibid s 11(1)(a).

8 Ie paid under ibid s 8(2)(b) or s 9(2)(b).

9 Ibid s 11(1)(b).

- 10 le under ibid s 18(7): see PARA 1025 post.
- 11 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 12 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 13 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.
- 14 Gas Act 1965 s 18(8)(a).
- 15 Ibid s 11(2).

UPDATE

1014 Repayable compensation

NOTE 5--Reference to the Lands Tribunal is now to the Upper Tribunal: Gas Act 1965 s 23(1) (amended by SI 2009/1307).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/C. COMPENSATION IN RESPECT OF LAND SURVEY/1015. Compensation for damage.

C. COMPENSATION IN RESPECT OF LAND SURVEY

1015. Compensation for damage.

Where in the exercise of any power of entry for purposes connected with underground gas storage¹ any damage is caused to land or to chattels, any person interested in the land or chattels is entitled to compensation from the gas transporter² concerned in respect of the damage³, and where in consequence of the exercise of those powers any person is disturbed in his enjoyment of any land or any chattels, he is similarly entitled to compensation in respect of the disturbance⁴.

Any question as to compensation payable in respect of damage caused to the surface of land in the exercise of powers to survey that land, carry out trial borings in it and abstract specimens from boreholes in it⁵ is to be assessed having regard to the steps which the gas transporter has taken or agreed to take to discharge its statutory duty⁶ to make good that damage⁷.

1 Ie any power of entry conferred by the Gas Act 1965 s 20, Sch 6 (as amended): see PARAS 1002-1007 ante. For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

2 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

3 Gas Act 1965 Sch 6 para 6 (amended by virtue of the Utilities Act 2000 s 76(7)).

4 Gas Act 1965 Sch 6 para 6 (as amended: see note 3 supra).

5 Ie under ibid Sch 6 para 2(1)(b), (c): see PARA 1002 ante.

6 Ie its duty under ibid Sch 6 para 7(1) (as amended): see PARA 1005 ante.

7 Ibid Sch 6 para 7(4) (amended by virtue of the Utilities Act 2000 s 76(7)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/D. COMPENSATION IN RESPECT OF WATER SUPPLIES/1016. Alternative supplies in lieu of lost water supplies.

D. COMPENSATION IN RESPECT OF WATER SUPPLIES

1016. Alternative supplies in lieu of lost water supplies.

Where the Secretary of State¹ has authorised a gas transporter² to purchase compulsorily any land in a storage³ or protective area⁴ which is the site of a well, borehole or shaft⁵, or to purchase compulsorily such rights as appear to him expedient to enable the gas transporter to ensure that a well, borehole or shaft in such land is stopped up or prevented from being used by any other person⁶, and that well, borehole or shaft was used for the purpose of providing a water supply obtained in the exercise of a right which was statutorily protected⁷, special provisions as to compensation apply⁸.

If the right was exercisable by statutory water undertakers⁹ or the Environment Agency¹⁰ and they provide an alternative water supply, the gas transporter must pay to them the costs reasonably incurred in doing so¹¹. If the persons entitled to exercise that right were neither statutory water undertakers nor the Environment Agency and those persons request an alternative water supply, the gas transporter must, if it is reasonably practicable and economical so to do¹², provide without charge an alternative supply of water equivalent in quantity and quality to the supply which was being or might have been obtained in exercise of the protected right¹³.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

3 For the meaning of 'storage area' see PARA 983 note 11 ante.

4 For the meaning of 'protective area' see PARA 983 note 12 ante.

5 Ie authorised under the Gas Act 1965 s 13(1) (as amended): see PARA 999 ante.

6 Ie authorised under ibid s 13(2) (as amended): see PARA 999 ante.

7 Ie which was a protected right as defined in the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq) or within the meaning of Pt II Ch II (as amended) so far as it applies in relation to any application for a licence which is a licence of right for the purposes of s 65, Sch 7 (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214).

8 Gas Act 1965 s 13(5), Sch 4 para 4 (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 14(3)(a)).

9 For the meaning of 'statutory water undertakers' see PARA 984 note 17 ante.

10 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

11 Gas Act 1965 Sch 4 para 5(1) (Sch 4 para 5(1), (2) amended by the Water Act 1989 s 190(1), Sch 25 para 32(8); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; and by virtue of the Utilities Act 2000 s 76(7)). These costs are not payable by the gas transporter if and so far as they are attributable to the supply so provided being superior in quantity or quality to the supply which was being or might have been obtained in exercise of the protected right: Gas Act 1965 Sch 4 para 5(1) proviso.

12 Any dispute as to whether it is reasonably practicable and economical to provide such an alternative water supply is to be referred to and determined by the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) and the Secretary of State for Environment, Food and Rural Affairs (or, in Wales, the Welsh Ministers) acting jointly: *ibid* Sch 4 para 7. Before determining such a dispute the Secretaries of State must give the parties an opportunity of being heard before a person appointed by them for the purpose, and in determining the dispute they must take the report of the hearing into consideration: Sch 4 para 7.

13 *Ibid* Sch 4 para 5(2) (as amended: see note 11 *supra*).

UPDATE

1016 Alternative supplies in lieu of lost water supplies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/D. COMPENSATION IN RESPECT OF WATER SUPPLIES/1017. Compensation in respect of lost water supplies.

1017. Compensation in respect of lost water supplies.

Where the site of a well, borehole or shaft has been compulsorily acquired, or rights to stop it up or prevent it being used have been so acquired¹, and compensation is assessed² for injurious affection of any interest in land held with the land compulsorily purchased, or with land in which the rights purchased are to be exercised, it must be reduced to take account of any mitigation of that injurious affection attributable to the provision of an alternative water supply which the gas transporter³ is required⁴ either to pay for or provide⁵. So far as the value of any interest in land is attributable to the use of that land for the construction and use of the well, borehole or shaft, the gas transporter's liability to pay for or provide an alternative water supply is to be in lieu of compensation for that value⁶.

Where compensation is payable⁷ for injurious affection sustained by persons entitled to a water supply, it is to include compensation for any loss or damage suffered by them in the period before effective action is taken to provide an alternative supply either by the gas transporter or at its expense as is appropriate⁸.

Where the gas transporter is not liable either to provide or pay for an alternative water supply, the compensation payable for injurious affection sustained by the person entitled to the water supply includes compensation for any expenditure in providing the well, borehole or shaft, or the apparatus used in connection with it, which is rendered abortive by the compulsory purchase⁹.

Where compensation is assessed in these cases, account must be taken of all enactments¹⁰ restricting rights or powers of abstracting water¹¹.

1 Ie under the Gas Act 1965 s 13(1), (2) (as amended): see PARA 999 ante.

2 Ie under the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq. As to the construction of references in enactments to the Lands Clauses Acts, mentioned in the Gas Act 1965 s 13(5), Sch 4 para 5(3), as references to the Compulsory Purchase Act 1965 Pt I (as amended) see s 39(2) (amended by the Acquisition of Land Act 1981 s 34(1), Sch 4).

3 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

4 Ie under the Gas Act 1965 Sch 4 para 5 (as amended): see PARA 1016 ante.

5 Ibid Sch 4 para 5(3).

6 Ibid Sch 4 para 5(3). As to the assessment of compensation generally see PARA 1020 et seq post.

7 Ie under the Compulsory Purchase Act 1965 ss 7, 10 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 718, 810. As to the construction of references in enactments to the Lands Clauses Consolidation Act 1845 ss 63, 68 (mentioned in the Gas Act 1965 Sch 4 para 5(4) (as amended)), as references to the Compulsory Purchase Act 1965 ss 7, 10 (as amended) see s 39(3), Sch 7 (as amended).

8 Gas Act 1965 Sch 4 para 5(4)(a). Further, if the amounts payable by virtue of the Water Resources Act 1991 s 123 (now repealed) in respect of the alternative supply of water exceeded those payable in respect of the protected right, the compensation was to include a lump sum by way of compensation for the additional burden imposed by those amounts on the persons entitled to the protected right: see the Gas Act 1965 Sch 4 para 5(4)(b) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(8)(c); the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 14(3)(b)). The same principle applied where charges

were so payable in respect of the alternative water supply and none were payable in respect of the protected right: see the Gas Act 1965 Sch 4 para 5(4)(b) (as so amended).

9 Ibid Sch 4 para 6; and see note 7 *supra*. This provision is expressed to be without prejudice to the generality of the principles applicable in assessing compensation payable under the Compulsory Purchase Act 1965 s 7 or s 10 (as amended), and the compensation is also to include compensation for any other loss or damage attributable to the compulsory purchase: Gas Act 1965 Sch 4 para 6.

10 Ie the provisions of the Water Resources Act 1991 and any other enactment: Gas Act 1965 Sch 4 para 8.

11 Ibid Sch 4 para 8; Interpretation Act 1978 s 17(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/D. COMPENSATION IN RESPECT OF WATER SUPPLIES/1018. Alternative supplies in lieu of polluted water supplies.

1018. Alternative supplies in lieu of polluted water supplies.

If the injection of gas into, or the presence of gas in, an underground gas storage¹, or the escape of gas from an underground gas storage or the boreholes connected with it, pollutes any water or interferes with the flow of any water, or displaces any water located in or percolating through an underground stratum, and as a result any person is prevented from effectively exercising or enjoying a statutorily protected right to abstract water² which was exercisable at the time when the storage authorisation order came into force³, it is the duty of the gas transporter⁴ concerned to pay such compensation or take such other steps as are specified in the following provisions⁵.

If the water obtainable in exercise of the protected right is polluted and it is reasonably practicable and economical⁶ to cleanse the amount of water which the users desire to obtain in exercise of that right (whether or not by means of apparatus permanently installed), and the users are statutory water undertakers or the Environment Agency, the gas transporter must pay to them the costs reasonably incurred by them in cleansing the supply of water so obtained⁷. If the users are persons other than statutory water undertakers or the Environment Agency, the gas transporter must cleanse the supply at its own cost⁸.

If it is not reasonably practicable or economical to cleanse the amount of water which the users desire to obtain in exercise of the protected right, and the users are statutory water undertakers or the Environment Agency who then provide an alternative supply of water, the gas transporter must pay to them the costs reasonably incurred by them in doing so⁹. If the users are persons other than statutory water undertakers or the Environment Agency and they request the gas transporter to provide an alternative water supply which is in quality and quantity equivalent to the supply which was being, or might have been, obtained in exercise of the protected right, the gas transporter must provide such a supply without charge if it is reasonably practicable and economical to do so¹⁰.

Where in any of these cases an alternative supply is provided, the gas transporter must pay to the persons entitled to that supply compensation for any loss or damage suffered by them in the period before effective action is taken¹¹.

1 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

2 I.e. a right which was a protected right as defined in the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq) or within the meaning of Pt II Ch II (as amended) so far as it applies in relation to any application for a licence which is a licence of right for the purposes of s 65, Sch 7 (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARA 238).

3 For these purposes, references to a protected right which was exercisable at the time when the storage authorisation order came into force include references to a protected right deriving from a licence issued in substitution for a licence which was in force at that time: Gas Act 1965 s 15(9). For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

4 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

5 Gas Act 1965 s 15(1) (amended by the Water Consolidation (Consequential Provisions) Act 1991, s 2(1), Sch 1 para 14(1)(a); and by virtue of the Utilities Act 2000 s 76(7)). Statutory water undertakers, the Environment Agency and other persons may nevertheless surrender any rights so conferred on them on such

terms as may be agreed with the gas transporter: Gas Act 1965 s 15(10) (amended by the Water Act 1989 s 190, Sch 25 para 32; and by virtue of the Utilities Act 2000 s 76(7); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). For the meaning of 'statutory water undertakers' see PARA 984 note 17 ante; and as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

6 Any dispute as to whether it is reasonably practicable and economical to cleanse the desired amount of water is to be referred to and determined by the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) and the Secretary of State for Environment, Food and Rural Affairs (or the Welsh Ministers) acting jointly: Gas Act 1965 s 15(8). Before determining such a dispute the Secretaries of State must give the parties an opportunity of being heard before a person appointed by them for the purpose, and in determining the dispute they must take the report of the hearing into consideration: s 15(8).

7 Ibid s 15(2)(a) (amended by the Water Act 1989 s 190(1), Sch 25 para 32(3); and by virtue of the Utilities Act 2000 s 76(7); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

8 Gas Act 1965 s 15(2)(b) (amended by the Gas Act 1986 Sch 7 para 6(1), (12); and by virtue of the Utilities Act 2000 s 76(7)).

9 Gas Act 1965 s 15(3) (amended by the Water Act 1989 Sch 25 para 32(3); and by virtue of the Utilities Act 2000 s 76(7); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). See also the text and note 12 *infra*. The gas transporter is not liable to pay those costs so far as they are attributable to the alternative supply being superior in quantity or quality to the supply which was being or might have been obtained in exercise of the protected right: s 15(3) proviso (amended by virtue of the Utilities Act 2000 s 76(7)).

10 Gas Act 1965 s 15(4) (amended by the Water Act 1989 Sch 25 para 32(3); and by virtue of the Utilities Act 2000 s 76(7); and the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). See also note 6 *supra*; and the text and note 11 *infra*.

11 Gas Act 1965 s 15(5)(a) (amended by virtue of the Utilities Act 2000 s 76(7)). The gas transporter must also pay to the persons entitled to such relief compensation by way of a lump sum payment in respect of any burden imposed on them by reason of the amounts payable under the Water Resources Act 1991 s 123 (now repealed) in respect of the alternative supply, having regard to those payable, if any, in respect of the supply replaced and to any difference in the quantities of water being abstracted: see the Gas Act 1965 s 15(5)(b) (as so amended); also amended by the Water Act 1989 Sch 25 para 32(3); and by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 14(1)(b)).

UPDATE

1018 Alternative supplies in lieu of polluted water supplies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/D. COMPENSATION IN RESPECT OF WATER SUPPLIES/1019. Compensation in lieu of polluted water supplies.

1019. Compensation in lieu of polluted water supplies.

Where a gas transporter¹ has incurred liability by reason of the pollution of water supplies from which any person wishes to obtain water in exercise of a statutorily protected right², the gas transporter must pay that person compensation for any loss or damage suffered by him in the period before effective action was taken to cleanse the supply or provide an alternative supply as the case might be³.

If it is not practicable or economical to cleanse the supply⁴ and the persons entitled to the protected right do not require or provide⁵ an alternative supply at the gas transporter's cost or charge⁶, the gas transporter must pay them compensation for the loss or damage suffered⁷.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 See the Gas Act 1965 s 15(1) (as amended); and PARA 1018 ante.

3 See *ibid* s 15(5)(a) (amended by virtue of the Utilities Act 2000 s 76(7)). See also PARA 1018 note 5 ante.

4 As to disputes over whether it is practicable or economical to cleanse the supply see *ibid* s 15(8) (as amended); and PARA 1018 note 6 ante.

5 Only statutory water undertakers and the Environment Agency are entitled to provide an alternative supply at the public transporter's charge: see PARA 1018 the text and notes 9-10 ante.

6 *Ie* where the Gas Act 1965 s 15(2)-(5) (as amended) (see PARA 1018 ante) does not apply.

7 *Ibid* s 15(6) (amended by virtue of the Utilities Act 2000 s 76(7)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/E. ASSESSMENT OF COMPENSATION/1020. Assessment by the Lands Tribunal.

E. ASSESSMENT OF COMPENSATION

1020. Assessment by the Lands Tribunal.

All questions of disputed compensation¹ or repayment of compensation² in connection with the establishment or operation of an underground gas storage³ must be referred to the Lands Tribunal⁴, and in certain cases special rules of assessment apply⁵. The statutory provisions governing the procedure of the tribunal⁶ and the award of costs by it⁷ apply to any such assessment subject to any necessary modifications⁸.

For the purposes of assessing compensation in any such case in respect of depreciation of an interest in land, the statutory rules applicable to compulsory purchases of land⁹, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purposes of assessing compensation for the compulsory acquisition of an interest in land¹⁰.

On the reference to the tribunal of any claim for compensation in respect of depreciation in the value of any interest in land which consists of, comprises or is held with land in a storage area¹¹, and on the reference to the tribunal of any question of disputed compensation on a compulsory acquisition by a gas transporter where a claim is made for injurious affection of any land arising out of the making of a storage authorisation order¹² and its statutory effect, the tribunal may admit evidence as to the effect which the introduction and use of underground gas storages in other parts of the United Kingdom¹³ or elsewhere have had on land values, so far as such evidence may tend to indicate whether any, and if so how much, depreciation occurred at any given date¹⁴.

Without prejudice to the generality of the principles on which compensation is to be assessed in all cases in connection with the establishment and operation of an underground gas storage, account must be taken in such assessments of all statutory provisions¹⁵ restricting rights or powers of abstracting water¹⁶.

1 Ie under the Gas Act 1965 Pt II (ss 4-28) (as amended) (see PARA 983 et seq ante), including any question as to the liability of a gas transporter to pay any sum under s 15 (as amended) (see PARAS 1018-1019 ante): s 23(1)(a) (s 23(1), (4) amended by virtue of the Utilities Act 2000 s 3(2)). For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 Ie any question as to the amount recoverable by a gas transporter under the Gas Act 1965 s 11 (as amended) (see PARA 1014 ante): Gas Act 1965 s 23(1)(b) (as amended: see note 1 supra).

3 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

4 Gas Act 1965 s 23(1) (as amended: see note 1 supra). The tribunal does not, however, determine any question which must be referred to ministers for decision (see eg para 1018 note 6 ante): s 23(1).

5 As to the rules of assessment see PARAS 1008-1019 ante.

6 Ie the Land Compensation Act 1961 s 2 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 735, 742-744.

7 Ie ibid s 4: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 716, 717.

8 Gas Act 1965 s 23(2).

9 le those contained in the Land Compensation Act 1961 s 5 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754 et seq.

10 Gas Act 1965 s 23(3).

11 le under ibid s 7 (as amended): see PARA 1008 ante. For the meaning of 'storage area' see PARA 983 note 11 ante.

12 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.

13 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

14 Gas Act 1965 s 23(4) (as amended: see note 1 supra). Such evidence must be admitted particularly where direct evidence of the value of the land in question is scarce or non-existent: s 23(4).

15 le the provisions of the Water Resources Act 1991 Ch II Pt II (ss 24-72) (see WATER AND WATERWAYS vol 100 (2009) PARA 214 et seq) and of any other enactment.

16 Gas Act 1965 s 23(5) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 14(2)).

UPDATE

1020 Assessment by the Lands Tribunal

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Gas Act 1965 s 23(1), (2), (4) amended: SI 2009/1307.

TEXT AND NOTE 8--Omit words 'the procedure of the tribunal and': Gas Act 1965 s 23(2) (as amended: see TEXT AND NOTES).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(v) Compensation/E. ASSESSMENT OF COMPENSATION/1021. Assessments in respect of mortgaged land.

1021. Assessments in respect of mortgaged land.

Where compensation is payable in respect of depreciation in the value of an interest in land which (1) consists of, comprises or is held with land in a storage area¹; (2) is affected by the Secretary of State's refusal to give his consent to the carrying out of controlled operations²; or (3) is affected by the withdrawal of that consent³ or by the imposition or variation of conditions on that consent⁴, and the interest in land is subject to a mortgage, then:

- 1991 (a) any such compensation must be assessed as if the interest were not subject to the mortgage⁵;
- 1992 (b) the claim may be made by the mortgagee, but without prejudice to the making of a claim by the person entitled to the interest⁶;
- 1993 (c) no such compensation is payable in respect of the mortgagee's interest as distinct from the interest which is subject to the mortgage⁷; and
- 1994 (d) the compensation which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee and applied by him as if it were proceeds of sale⁸.

1 le under the Gas Act 1965 s 7 (as amended): see PARA 1008 ante. For the meaning of 'storage area' see PARA 983 note 11 ante.

2 le under ibid s 8(1) (as amended): see PARA 1009 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante. For the meaning of 'controlled operations' see PARA 995 note 3 ante.

3 le under ibid s 9(1) (as amended): see PARA 1009 ante.

4 le under ibid ss 8(1) or 9(1) (as amended): see PARA 1009 ante.

5 Ibid s 24(1)(a).

6 Ibid s 24(1)(b).

7 Ibid s 24(1)(c).

8 Ibid s 24(1)(d). If there is more than one mortgagee the compensation must be paid to the first mortgagee and applied by him as if it were proceeds of sale: s 24(1)(d). Where a limited owner can give a good discharge for the purchase money on a purchase of an interest in land under the Settled Land Act 1925 or any other enactment, compensation payable under the Gas Act 1965 Pt II (ss 4-28) (as amended (see PARA 674 et seq ante, PARA 1022 et seq post) in respect of such an interest must be paid to that person: s 24(2).

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(vi) Safety Provisions

1022. Safety conditions.

The Secretary of State¹ may at any time, if he considers it necessary in the interests of safety² or to protect water resources, impose³ on a gas transporter⁴ conditions concerning the manner in which it develops or operates an underground gas storage⁵.

The conditions may in particular:

- 1995 (1) relate to the maximum pressures at which gas may be injected into the underground gas storage⁶;
- 1996 (2) relate to the maximum rates at which it may be injected into or withdrawn from the storage⁷;
- 1997 (3) relate to the provision of boreholes to be used for making observations and measurements⁸;
- 1998 (4) refer to the partial or total removal of any ingredient or substance from, or the addition of any ingredient or substance to, the gas before it is injected into the storage⁹;
- 1999 (5) secure that operations in connection with the storage of the gas are so conducted as to prevent the leakage of gas¹⁰; and
- 2000 (6) secure an efficient system for the testing of water supplies in and adjacent to the storage¹¹ and protective areas¹².

The Secretary of State may also at any time, if he considers it necessary to do so in the interests of safety or to protect water resources, require¹³ the gas transporter to:

- 2001 (a) cease injecting gas into an underground gas storage¹⁴;
- 2002 (b) reduce the quantity of gas in such a storage to such quantity as he may specify¹⁵; and
- 2003 (c) take such other measures as respects the storage or any activity or matter connected with it as appear to him expedient in those interests¹⁶.

These requirements may be imposed either for a definite or for an indefinite period¹⁷.

The gas transporter may make representations to the Secretary of State as to the date on which any conditions or requirements are to take effect, or as to the variation or revocation of them, and the Secretary of State must take such representations into account in deciding whether to exercise his powers to revoke or vary the conditions or requirements¹⁸.

Breach by the gas transporter of any condition or requirement imposed by the Secretary of State under these powers is an offence¹⁹.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 As to the meaning of 'safety' see PARA 983 note 6 ante.

3 le by notice served in accordance with the Gas Act 1986 s 46 (as amended): see PARA 980 ante. Such notices take effect as from the date specified in them by the Secretary of State and may at any time be varied or revoked by a subsequent notice: Gas Act 1965 s 16(3).

4 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

5 Gas Act 1965 s 16(1), (6) (s 16(1), (2), (4), (5) amended by virtue of the Utilities Act 2000 s 76(7); the Gas Act 1965 s 16(1) also amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (13)). For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

6 Gas Act 1965 s 16(1)(a).

7 Ibid s 16(1)(b).

8 Ibid s 16(1)(c).

9 Ibid s 16(1)(d).

10 Ibid s 16(1)(e).

11 For the meaning of 'storage area' see PARA 983 note 11 ante.

12 Gas Act 1965 s 16(1)(f). For the meaning of 'protective area' see PARA 983 note 12 ante.

13 le by notice (see note 3 supra) served on the gas transporter: ibid s 16(2) (as amended: see note 5 supra). The notice may require the gas transporter to do any or all of the things set out in the Gas Act 1965 s 16(2) (as amended) (see heads (a)-(c) in the text): s 16(2) (as so amended).

14 Ibid s 16(2)(a), (6).

15 Ibid s 16(2)(b).

16 Ibid s 16(2)(c).

17 Ibid s 16(2). A definite period may be varied by a subsequent notice: s 16(2).

18 Ibid s 16(4) (as amended: see note 5 supra).

19 See ibid s 16(5) (as amended (see note 5 supra); also amended by the Gas Act 1986 Sch 7 para 6(1), (13); and by virtue of the Magistrates' Courts Act 1980 s 32(2)); and PARA 1029 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(8) UNDERGROUND STORAGE OF GAS BY GAS TRANSPORTERS/(vi) Safety Provisions/1023. Notification of accidents.

1023. Notification of accidents.

If there is a leakage of gas from an underground gas storage¹ or from the boreholes connected with it, the gas transporter² concerned must forthwith give notice of that event to the Secretary of State³. The Secretary of State may specify⁴ other kinds of events of which similar notice is to be given⁵.

The Secretary of State may appoint one of his officers or some other competent person to investigate any such event and make a special report with respect to it, and may cause the report to be made public at such time and in such manner as he thinks fit⁶.

It is the duty of the gas transporter to make arrangements for:

- 2004 (1) the Environment Agency⁷ and for every police force, fire and rescue authority⁸, statutory water undertaker⁹ and sewerage undertaker¹⁰ on whom it appears to the gas transporter that duties will or may fall, or who will or may have to take precautionary or preventive action in the case of any gas leakage or other specified¹¹ event¹²; and
- 2005 (2) such other bodies as the Secretary of State may specify by notice given to the gas transporter, being bodies appearing to him to have duties to discharge in any such event,

to be notified immediately on the occurrence of any such event¹³. The gas transporter must provide all those authorities and bodies with such plans, maps and other information as they may reasonably require to enable them to carry out the duties which will or may fall on them, or which they have to discharge, in any such event¹⁴.

Failure by the gas transporter to make necessary arrangements for notification or to provide necessary documents or information is an offence¹⁵.

1 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

2 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

3 Gas Act 1965 s 17(1) (amended by virtue of the Utilities Act 2000 s 76(7)). The notice must be in such form and accompanied by such particulars as the Secretary of State may specify: Gas Act 1965 s 17(1). As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante. As to the service of notices see PARA 980 ante.

4 le by notice served on the gas transporter: *ibid* s 17(1)(b) (as amended): see note 3 supra).

5 *Ibid* s 17(1)(b) (as amended: see note 3 supra).

6 *Ibid* s 17(3). The Secretary of State may make such an appointment whether or not he proposes to hold a public inquiry into the event: s 17(3). As to such inquiries see PARA 1024 post.

7 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

8 'Fire and rescue authority' means a fire and rescue authority under the Fire and Rescue Services Act 2004: Gas Act 1965 s 28(1) (definition substituted by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 20(1), (3)). See further FIRE SERVICES.

9 For the meaning of 'statutory water undertakers' see PARA 984 note 17 ante.

10 As to sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

11 In any event within the Gas Act 1965 s 17(1)(a) or (b) (as amended): see the text and notes 1-5 supra.

12 Ibid s 17(5)(a) (amended by the Gas Act 1986 Sch 7 para 6(1), (15); the Water Act 1989 s 190(1), Sch 25 para 32(4); the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 20(1), (2); and by virtue of the Utilities Act 2000 s 76(7)).

13 Gas Act 1965 s 17(5)(b) (amended by virtue of the Utilities Act 2000 s 76(7)).

14 Gas Act 1965 s 17(5) (as amended: see notes 12-13 supra).

15 See ibid s 17(5), (6) (as amended); and PARA 1029 post.

UPDATE

1023 Notification of accidents

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1024. Accident inquiries.

Where he thinks it expedient to do so, the Secretary of State¹ may direct a public inquiry to be held into a gas leakage from an underground gas storage² or from the boreholes connected with it, or into any event which is of a kind which the Secretary of State has required a gas transporter³ to notify to him⁴ or any other event connected with an underground gas storage⁵.

Such an inquiry is to be held by a competent person appointed by the Secretary of State, either alone or with the assistance of one or more assessors similarly appointed, and referred to as 'the tribunal'⁶. The tribunal must hold the inquiry in such manner and under such conditions as it thinks most effectual for ascertaining the causes, circumstances and effects of the events inquired into, and for enabling it to report to the Secretary of State on those matters⁷. For the purposes of the inquiry it has power to enter and inspect any place or building⁸ and to require⁹ any person to attend and give evidence¹⁰ or produce any documents in his custody or under his control which the tribunal considers it necessary for the purposes of the inquiry to examine¹¹. The tribunal may adjourn the inquiry from time to time¹² and, subject to the above provisions governing that procedure¹³, may regulate its procedure¹⁴.

A person attending as a witness before the tribunal is entitled to be paid by the Secretary of State such expenses as would be allowed to a witness attending on subpoena before a court of record¹⁵. If any person, without reasonable excuse (proof of which lies on him) and after having the expenses, if any, to which he is entitled tendered to him, fails to comply with any summons or requisition of the tribunal, his offence may be certified to the High Court by instrument signed by the tribunal¹⁶. The tribunal may similarly certify the offence of any person who does any other thing which, if the tribunal had been a court of law having power to commit for contempt, would have been contempt of that court¹⁷. The High Court may inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence and after hearing any statement that may be offered in defence, may punish or take steps for the punishment of that person as if he had been guilty of contempt of the High Court¹⁸.

The tribunal must make a report to the Secretary of State, stating the causes, circumstances and effects of the event with respect to which the inquiry is held, adding any observations which it thinks it right to make, and the Secretary of State must cause copies of the report to be laid before Parliament¹⁹.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

4 Ie under the Gas Act 1965 s 17(1) (as amended): see PARA 1023 ante.

5 Ibid s 17(2). The provisions of the Gas Act 1972 s 46 (repealed by the Gas Act 1986 s 67(4), Sch 9 Pt I but saved for the purposes of the Gas Act 1965 by the Gas Act 1986 s 67(3), Sch 8 para 15: see PARA 987 note 1 ante) do not apply to inquiries under the Gas Act 1965 s 17(2), Sch 5 (as prospectively amended) (see the text and notes 6-19 infra): s 22(2) (amended by the Gas Act 1986 s 67(1), Sch 7 para 6(1), (22)).

6 Gas Act 1965 s 17(2), Sch 5 paras 1, 3. The Secretary of State may pay to the person appointed to hold the inquiry and to any assessor appointed to assist him such remuneration and allowances as the Secretary of State

may determine with the approval of the Treasury: Sch 5 para 2. Such sums are paid out of money provided by Parliament: Sch 5 para 8. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

7 Ibid Sch 5 para 3.

8 Ibid Sch 5 para 4(a). The power extends only to places or buildings the entry or inspection of which appears to the tribunal requisite for the purposes of the inquiry: Sch 5 para 4(a).

9 Any such requirement must be made by summons signed by the tribunal and specifying the time and place of attendance: ibid Sch 5 para 4(b).

10 The tribunal may take evidence on oath and for that purpose may administer oaths or require the person examined to make a declaration of the truth of the matter on which he is examined: ibid Sch 5 para 4(d).

11 Ibid Sch 5 para 4(b). The tribunal may require a person appearing at the inquiry to furnish to any other person so appearing copies of any documents offered or proposed to be offered in evidence by him and may direct that such copies be furnished on payment of such fee as it thinks fit: Sch 5 para 4(c).

12 Ibid Sch 5 para 4(e).

13 Ie ibid Sch 5 para 4(a)-(e): see the text and notes 8-12 supra.

14 Ibid Sch 5 para 4(f).

15 Ibid Sch 5 para 5. Any dispute as to the amount so allowed must be referred by the tribunal (1) at the date at which this title states the law, to a master of the Supreme Court; (2) as from a day to be appointed, to a master of the senior courts: Sch 5 para 5 (prospectively amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 2 para 4(1), (3), as from a day to be appointed under s 148(1); at the date at which this title states the law, no such day had been appointed). On request signed by the person appointed the master must ascertain and certify the proper amount of the expenses: Gas Act 1965 Sch 5 para 5. Sums paid as expenses are to be paid out of money provided by Parliament: Sch 5 para 8.

16 Ibid Sch 5 para 7(a).

17 Ibid Sch 5 para 7(b).

18 Ibid Sch 5 para 7.

19 Ibid Sch 5 para 6.

UPDATE

1024 Accident inquiries

NOTE 15--Appointed day is 1 October 2009: SI 2009/1604.

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1025. Discontinuance orders.

If at any time it appears to him necessary in the interests of safety (which includes the protection of water resources¹) that an underground gas storage² should be discontinued, the Secretary of State may serve notice³ on the gas transporter⁴ concerned stating that he proposes to make an order requiring the storage to be taken out of operation⁵. The gas transporter may within six weeks of the date of service of the notice make representations to the Secretary of State, and he must take them into account⁶. A gas transporter may at any time apply to the Secretary of State for an order requiring a storage to be taken out of operation⁷.

The Secretary of State must include in any such order such provisions as appear to him necessary or expedient for the purpose of ensuring that neither the gas in the storage nor the stratum in which it is stored becomes or remains a source of danger⁸; and in particular he may include a requirement that the gas transporter withdraws, so far as practicable, all gas from the storage⁹. Any such requirement takes effect as from such date as is specified in the order¹⁰, but the gas transporter may at any time make representations to the Secretary of State as to any such date or as to the variation or revocation of the requirement, and he must take them into account in deciding whether to exercise his powers of making an order varying or revoking any such requirement¹¹. The gas transporter must submit a report to the Secretary of State setting out the steps taken to comply with the order¹².

If he considers it safe to do so after making the order, the Secretary of State may direct (1) that operations in the storage area¹³ and the protective area¹⁴ carried out on or after the date specified in the direction are not to be controlled operations¹⁵; and (2) that any conditions which may have been imposed on the carrying out of controlled operations in those areas are to cease to have effect on that date¹⁶.

Failure by the gas transporter to comply with such an order of the Secretary of State is an offence¹⁷.

1 See the Gas Act 1965 s 18(10). As to the meaning of 'safety' generally see PARA 983 note 6 ante.

2 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 See under the Gas Act 1986 s 46 (as amended): see PARA 980 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

4 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

5 Gas Act 1965 s 18(1) (s 18(1)-(4), (6), (9) amended by virtue of the Utilities Act 2000 s 76(7)).

6 Gas Act 1965 s 18(1) (as amended: see note 5 supra). As to the right to make representations after the making of the order see the text and note 11 infra.

7 Ibid s 18(2) (as amended: see note 5 supra).

8 For the meaning of 'danger' see PARA 983 note 6 ante.

9 Gas Act 1965 s 18(3) (as amended: see note 5 supra).

10 Ibid s 18(5). Such a provision may be varied or revoked by a subsequent order: s 18(5).

- 11 Ibid s 18(6) (as amended: see note 5 supra).
- 12 Ibid s 18(4) (as amended: see note 5 supra).
- 13 For the meaning of 'storage area' see PARA 983 note 11 ante.
- 14 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 15 Gas Act 1965 s 18(7)(a). For the meaning of 'controlled operations' see PARA 995 note 3 ante.
- 16 Gas Act 1965 s 18(7)(b). As to the effect of such a direction where compensation has been paid by reason of the Secretary of State's decision as to the carrying out of operations requiring his consent see s 18(8)(a); and PARA 1014 ante; and as to the effect of such a direction on any damage within the meaning of s 14 (as amended) attributable to an event after the date when it comes into force see s 18(8)(b); and PARA 1027
- 17 See ibid s 18(9) (as amended); and PARA 1029 post.

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1026. Inspectors.

The Secretary of State¹ may appoint as inspectors to assist him in the execution of the statutory provisions relating to underground gas storage² as many persons as appear to him to be qualified for the purpose as he may from time to time consider necessary or expedient³.

An inspector has power, subject to production, if so requested, of written evidence of his authority, to do all or any of the following things:

- 2006 (1) at all reasonable times to carry out inspections and tests of any underground gas storage, and of the equipment and apparatus used for the storage, and to take samples of any gas, fluid or other matter⁴;
- 2007 (2) to require the production of, and to inspect, any documents which are in the possession or under the control of the gas transporter⁵ and which relate to the storage⁶; and
- 2008 (3) to require any officer or employee of the gas transporter having responsibilities as respects the storage to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that officer or employee extend as are necessary for the purpose of enabling the inspector to exercise the powers conferred on him by head (1) above⁷.

A person who fails to comply with a requirement properly imposed by an inspector or who obstructs an inspector in the exercise of his powers is guilty of an offence⁸.

The Secretary of State may pay to or in respect of inspectors such remuneration, allowances and other payments as he may determine with the approval of the Treasury⁹. Such payments are made out of money provided by Parliament¹⁰. Every gas transporter to whom a storage authorisation order¹¹ applies during any period must pay to the Secretary of State such proportion as he may determine of any sums so paid¹². To the extent, however, that the payments were in respect of pensions, the gas transporter's liability to repay them may, if the Secretary of State so determines, be satisfied by way of contributions calculated, at such rate as the Treasury may determine, by reference to remuneration¹³.

The gas transporter is similarly liable to repay (a) such part of any expenses incurred by the Secretary of State or any other government department in connection with his department¹⁴ as he may determine, with Treasury consent, to have been incurred in connection with his powers to appoint inspectors and to make payments to and in respect of them; and (b) such expenses as the Treasury may determine in respect of the use, for the purposes of the Secretary of State's department, of any premises belonging to the Crown which the Secretary of State determines to have been incurred in connection with the exercise of the same powers¹⁵.

Any sums received by the Secretary of State under these provisions must be paid into the Exchequer¹⁶.

1 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

2 I.e. the Gas Act 1965 Pt II (ss 4-28) (as amended): see PARA 983 et seq ante, PARAS 1027-1029 post. For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

- 3 Ibid s 19(1).
- 4 Ibid s 19(5)(a).
- 5 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.
- 6 Gas Act 1965 s 19(5)(b) (s 19(3)-(5) amended by virtue of the Utilities Act 2000 s 76(7)).
- 7 Gas Act 1965 s 19(5)(c) (as amended: see note 6 supra).
- 8 See ibid s 19(6) (as amended): and PARA 1028 post.
- 9 Ibid s 19(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.
- 10 Ibid s 19(2).
- 11 For the meaning of 'storage authorisation order' see PARA 983 note 4 ante.
- 12 Gas Act 1965 s 19(3) (as amended (see note 6 supra); also amended by the Gas Act 1986 Sch 7 para 6(1),(16)).
- 13 Gas Act 1965 s 19(4) (as amended (see note 6 supra); also amended by the Gas Act 1986 Sch 7 para 6(1)(17)).
- 14 ie the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry).
- 15 Gas Act 1965 s 19(3) (as amended: see note 12 supra).
- 16 See ibid s 19(3) (as amended: see note 12 supra).

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(vii) Civil and Criminal Liability of Gas Transporters and other Persons

A. CIVIL LIABILITY

1027. Liability for underground gas storage.

A gas transporter¹ is absolutely liable in civil proceedings in respect of loss of life, personal injury and damage to property caused by gas in an underground gas storage², or by gas in the boreholes connected with such a storage, or which is escaping from or has escaped from any such storage or boreholes³. For the purposes of the law of tort, liability must be regarded as arising from the gas transporter's duty to the person suffering the damage⁴.

The gas transporter is not, however, responsible for any damage suffered by a person which would otherwise give rise to this liability as the result of his own fault⁵, nor liable in respect of any damage attributable to an event after the coming into force of a direction by the Secretary of State⁶ to the effect that controlled operations⁷ in the storage area⁸ and the protective area⁹ cease to require his consent and that any conditions imposed on their carrying out cease to have effect¹⁰.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 For the meaning of 'underground gas storage' see PARA 983 note 4 ante.

3 Gas Act 1965 s 14(1), (4) (s 14(1)-(3) amended by virtue of the Utilities Act 2000 s 76(7)).

4 Gas Act 1965 s 14(2) (as amended: see note 3 supra). In the Fatal Accidents Act 1976 s 1(1) (as substituted) references to a wrongful act, neglect or default are to include references to any occurrence giving rise to such liability: Gas Act 1965 s 14(2) (as so amended); Fatal Accidents Act 1976 s 6(1), Sch 1 para 2. See further NEGLIGENCE vol 78 (2010) PARA 25.

5 Gas Act 1965 s 14(3) (as amended: see note 3 supra). For these purposes, 'his own fault' includes the fault of his employee or agent: see s 14(3). This principle is, however, subject to the application of the Law Reform (Contributory Negligence) Act 1945: Gas Act 1965 s 14(3). As to the effect of the Law Reform (Contributory Negligence) Act 1945 where damage is partly the result of the fault of the person suffering the damage and partly the fault of another person or persons see NEGLIGENCE vol 78 (2010) PARA 75.

6 I.e. a direction under the Gas Act 1965 s 18(7): see PARA 1025 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

7 For the meaning of 'controlled operations' and as to the requirement of consent see PARA 995 ante.

8 For the meaning of 'storage area' see PARA 983 note 11 ante.

9 For the meaning of 'protective area' see PARA 983 note 12 ante.

10 Gas Act 1965 s 18(8)(b).

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B. OFFENCES

1028. General offences relating to underground gas storage.

Any person, other than the duly authorised gas transporter¹, who without the Secretary of State's consent carries out in a storage² or protective area³ any controlled operations⁴, or who fails to comply with any condition attached to such a consent⁵, is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum, or to both⁶, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both⁷.

Any person who wilfully obstructs a person acting under the authority of a magistrates' court order authorising a gas transporter to execute works to remedy a default⁸ is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁹.

Any person who fails to comply with any requirement imposed by an inspector appointed by the Secretary of State to assist him in the execution of his functions with regard to underground gas storage, being a requirement which the inspector has power to impose, or who wilfully obstructs such an inspector in the exercise of his statutory powers¹⁰, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹.

Any person who wilfully obstructs a person acting in the exercise of statutory powers to enter upon land and either (1) to carry on there certain operations for the purpose of finding or proving a site for an underground gas storage¹²; or (2) to survey it for the purpose of preparing certain documents in connection with an application for an underground storage authorisation order¹³; or (3) to survey it for purposes connected with a claim for compensation related to an underground gas storage¹⁴; or (4) to supervise or inspect the carrying out pursuant to a consent given by the Secretary of State of controlled operations in a storage or protective area, or to guard against or detect the carrying out of such operations without that consent or in breach of a condition imposed on it¹⁵, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale¹⁶.

If any person who has exercised statutory powers to enter land for certain purposes connected with an underground gas storage¹⁷ discloses any information obtained by him in those premises, he is guilty of an offence unless the disclosure was made in the performance of his duty or for the purpose of any legal proceedings¹⁸ or of a report of any legal proceedings¹⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁰.

Any person who aids, abets, counsels or procures the commission of any of the offences described above is guilty of that offence and is liable to be proceeded against and punished accordingly²¹.

1 Ie under the Gas Act 1965 s 4 (as amended): see PARA 983 ante. For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 For the meaning of 'storage area' see PARA 983 note 11 ante.

- 3 For the meaning of 'protective area' see PARA 983 note 12 ante.
- 4 For the meaning of 'controlled operations' see PARA 995 note 3 ante. As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.
- 5 See the Gas Act 1965 s 5 (as amended); and PARA 995 ante.
- 6 Ibid s 5(13)(a) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante.
- 7 Gas Act 1965 s 5(13)(b).
- 8 Ie an order under ibid s 6(1) (as amended): see PARA 996 ante.
- 9 Ibid s 6(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 613 note 11 ante.
- 10 Ie the powers conferred by the Gas Act 1965 s 19 (as amended): see PARA 1026 ante.
- 11 Ibid s 19(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).
- 12 See the Gas Act 1965 s 20, Sch 6 para 2(1) (as amended); and PARA 1002 ante.
- 13 See ibid Sch 6 para 3(1)(a) (as amended); and PARA 1006 ante.
- 14 See ibid Sch 6 para 3(1)(b); and PARA 1006 ante.
- 15 See ibid Sch 6 para 4(1); and PARA 1007 ante.
- 16 Ibid Sch 6 para 8 (Sch 6 paras 8, 9 amended by virtue of the Criminal Justice Act 1982 ss 38, 46).
- 17 Ie the powers conferred by or by virtue of the Gas Act 1965 Sch 6 (as amended): see PARA 1001 et seq ante.
- 18 'Legal proceedings' includes arbitrations: ibid Sch 6 para 9.
- 19 Ibid Sch 6 para 9.
- 20 Ibid Sch 6 para 9 (as amended: see note 16 supra). At the date at which this title states the law, such a person may, alternatively, be sentenced to imprisonment for a term not exceeding three months, or may be sentenced to both such imprisonment and to the fine described in the text, but these alternatives are prospectively removed by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9, as from a day to be appointed under s 336(3). As to the position where the offence is committed by a body corporate see PARA 978 ante.
- 21 Gas Act 1965 s 21(4) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 54). This provision is without prejudice to the Accessories and Abettors Act 1861 s 8 (as substituted) and the Magistrates' Courts Act 1980 s 44: Gas Act 1965 s 21(4) (as so amended). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 49 et seq.

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1029. Offences by gas transporters relating to underground gas storage.

If a gas transporter¹ fails to comply with a condition or requirement imposed by the Secretary of State² in a notice served by him in the interests of safety concerning the manner in which a gas transporter operates or develops an underground gas storage³, it is guilty of an offence and is liable on summary conviction to a fine not exceeding the prescribed sum and on conviction on indictment to a fine of any amount⁴.

If a gas transporter fails to notify the Secretary of State, or to make arrangements for any necessary authority to be notified, of a leakage of gas from an underground gas storage or from boreholes connected with it, or of any other event of a kind which it has been required by the Secretary of State to notify to those authorities, or to provide any such authority with plans, maps and other information reasonably required by it⁵, the gas transporter is guilty of an offence⁶ and is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

If a gas transporter fails to comply with an order served on it by the Secretary of State requiring an underground gas storage to be taken out of operation⁸, it is guilty of an offence and is liable on summary conviction to a fine not exceeding the prescribed sum and on conviction on indictment to a fine of any amount⁹.

1 For the meaning of 'gas transporter' see PARAS 805, 983 note 2 ante.

2 As to the Secretary of State see PARAS 601 note 1, 983 note 1 ante.

3 I.e. a notice served under the Gas Act 1965 s 16(1), (2) (as amended): see PARA 1022 ante. For the meaning of 'underground gas storage' see PARA 983 note 4 ante. As to the meaning of 'safety' see PARA 983 note 6 ante.

4 Ibid s 16(5) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). If by reason of the special provisions relating to (1) the commission of offences by bodies corporate (see the Gas Act 1965 s 21(3) (as amended); and PARA 978 ante); and (2) the aiding, abetting, counselling or procuring of offences (see s 21(4) (as amended); and PARA 1028 ante), any individual is found guilty of such an offence or of aiding, abetting, counselling or procuring the commission of such an offence, or of an offence under s 18(9) (as amended: see the text and notes 8-9 infra), he is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum, or to both, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine of any amount, or to both: s 21(5) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante.

5 These duties are provided for under the Gas Act 1965 s 17 (as amended): see PARA 1023 ante.

6 Ibid s 17(1), (5) (amended for these purposes by virtue of the Utilities Act 2000 s 76(7)).

7 Gas Act 1965 s 17(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and of the Utilities Act 2000 s 76(7)). As to the standard scale see PARA 613 note 11 ante.

8 I.e. an order under the Gas Act 1965 s 18 (as amended): see PARA 1025 ante.

9 Ibid s 18(9) (amended by the Gas Act 1986 Sch 7 para 6(1), (14); and by virtue of the Magistrates' Courts Act 1980 s 32(2); and of the Utilities Act 2000 s 76(7)). As to the aiding, abetting, counselling or procuring the commission of such an offence, or the commission of such an offence by the director etc of a company, see note 4 supra.

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(9) OFFSHORE GAS STORAGE FACILITIES

1030. Acquisition of rights to store gas in certain offshore gas storage facilities.

The owner¹ of an offshore gas storage facility² to which the following provisions apply (a 'relevant facility')³:

- 2009 (1) must publish at least once in every year⁴ the main commercial conditions⁵ relating to the grant to another person⁶ of a right to have gas stored in the facility on that person's behalf; and
- 2010 (2) must publish any changes to the published conditions as soon as they become effective⁷,

and must ensure that the conditions which he is so required to publish do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility⁸.

Any person who seeks a right to have gas stored on his behalf in a relevant facility ('the applicant') must, before making an application to the Gas and Electricity Markets Authority ('GEMA')⁹, apply to the owner of the facility for the right¹⁰. Such an application must be made by giving notice¹¹ to the owner specifying what is being sought¹². The notice must, in particular, specify:

- 2011 (a) the period during which the gas is to be stored in the facility;
- 2012 (b) the kind of gas to be stored, which must be of, or similar to, the kind which the facility is designed to store; and
- 2013 (c) the quantities of gas to be stored¹³.

Where an applicant gives such a notice, he and the owner of the facility must negotiate in good faith and endeavour to reach agreement on the application¹⁴.

If the owner and the applicant do not reach any such agreement, the applicant may apply to the Authority for a notice¹⁵ securing to the applicant the right specified in the notice¹⁶ previously given¹⁷. The Authority must not entertain such an application unless it is satisfied that the parties have had a reasonable time in which to fulfil their duties¹⁸ to negotiate and endeavour to reach agreement¹⁹. Where a person so applies to the Authority and the Authority is satisfied as mentioned above, the Authority must:

- 2014 (i) give notice to the owner of the facility and the applicant that he proposes to consider the application; and
- 2015 (ii) after the expiry of 21 days beginning with the date on which notice under head (i) above was served, but before considering the application, give them an opportunity of being heard with respect to the application²⁰.

For the purpose of considering such an application, the Authority may by notice require the owner to provide the Authority with accounting information²¹ and details of the main commercial terms of any significant transactions with associated undertakings²².

Where the Authority is satisfied that, if it served a notice under these provisions, the relevant facility in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of storing, on behalf of its owner, the quantities of gas which the owner requires or may reasonably be expected to require, the Authority may serve such a notice on the owner and the applicant²³. Such a notice may contain such provisions as the Authority considers appropriate for any of the following purposes:

- 2016 (A) for securing to the applicant the right to have stored in the facility, for the period specified in the notice and in the quantities so specified or determined by or under the notice, gas which is of a kind so specified;
- 2017 (B) to secure that the exercise of the right is not prevented or impeded;
- 2018 (C) to regulate the charges which may be made for the storage of gas by virtue of that right; and
- 2019 (D) to secure to the applicant such ancillary or incidental rights as may be necessary or expedient, which may, in particular, include a right to have a pipeline of his connected to the facility by the owner²⁴.

The notice may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in head (A) or head (D) above of amounts specified in the notice or determined in accordance with the notice²⁵.

1 For these purposes, 'owner', in relation to an offshore gas storage facility, includes any person occupying or having control of the facility: Petroleum Act 1998 s 17C(7)(b) (ss 17C-17E added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4; the Petroleum Act 1998 s 17C(7) substituted by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 1(f)).

2 'Offshore gas storage facility' means a facility for the storage of gas in controlled waters other than the territorial sea of the United Kingdom adjacent to Northern Ireland: Petroleum Act 1998 s 28(1) (definition substituted by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 3(b)). 'Gas' means any substance which consists wholly or mainly of (1) methane, ethane, propane, butane, hydrogen or carbon monoxide; (2) a mixture of two or more of those gases; or (3) a combustible mixture of one or more of those gases and air: Petroleum Act 1998 s 28(1) (definition added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 4 para 9(c)). 'Controlled waters' means the territorial sea adjacent to the United Kingdom and the sea in any area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172); Petroleum Act 1998 ss 14(2), 28(1). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

3 As to the facilities to which these provisions apply see PARA 1031 post.

4 For these purposes, 'year' means any year ending with 9 August: Petroleum Act 1998 s 17D(2) (as added: see note 1 supra).

5 'Main commercial conditions' means (1) such information as would enable a potential applicant for a right to have gas stored in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right; (2) the other significant terms on which such a right would be granted; and (3) such other information as the Gas and Electricity Markets Authority ('GEMA') may from time to time specify by notice: *ibid* s 17E(5) (as added (see note 1 supra); amended by virtue of s 17C(7)(a) (as substituted: see note 1 supra) and of the Utilities Act 2000 s 76(7)). Any reference in the Petroleum Act 1998 s 17E (as added and amended) to a right to have gas or gas of any kind stored in a relevant facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind: s 17E(4) (as so added).

6 *Ibid* Pt III (ss 14-28) (as amended) (see the text and notes 1-5 supra, 7-25 infra; and PARAS 1031-1032, 1743 et seq post), so far as it applies to individuals, applies to them whether or not they are British citizens; and so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom: s 48(2).

7 Ibid s 17D(1) (as added: see note 1 supra). As to enforcement of this duty see PARA 1032 post.

8 Ibid s 17D(3) (as added: see note 1 supra). As to enforcement of this duty see PARA 1032 post.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Petroleum Act 1998 s 17D(4) (as added (see note 1 supra); amended by virtue of s 17C(7)(a) (as substituted: see note 1 supra) and of the Utilities Act 2000 s 76(7)).

11 'Notice' means notice in writing: Petroleum Act 1998 s 28(1). Any document required or authorised by Pt III (as amended) to be given to or served on any person may be given or served either by delivering it to that person, or by leaving it at his proper address, or by the recorded delivery service: Pipe-lines Act 1962 s 49(1) (applied with modifications by the Petroleum Act 1998 s 28(4)). Any such document required or authorised to be given to or served on an authority or body being a corporation is duly given or served if it is given to or served on the secretary or clerk of the authority or body: Pipe-lines Act 1962 s 49(2) (as so applied). For these purposes, and the purposes of the Interpretation Act 1978 s 7 (service by post) in its application for these purposes, the proper address of any person to or on whom any such document is to be given or served is, in the case of the secretary or clerk of a corporation, that of the registered or principal office of the corporation, and in any other case the last-known address of the person to be served; provided that, where the person to or on whom the document is to be given or served has, in accordance with arrangements agreed or in accordance with regulations under the Petroleum Act 1998 Pt III (as amended), furnished an address for the giving or service of the document, being an address in the United Kingdom, his proper address for those purposes is the address furnished: Pipe-lines Act 1962 s 49(3) (as so applied).

12 Petroleum Act 1998 s 17D(5) (as added: see note 1 supra).

13 Ibid s 17D(6) (as added: see note 1 supra).

14 Ibid s 17D(7) (as added: see note 1 supra). As to enforcement of this duty see PARA 1032 post.

15 Ie a notice under ibid s 17D(11) (as added and amended): see the text and note 23 infra.

16 Ie the notice given under ibid s 17D(5) (as added): see the text and notes 11-12 supra.

17 Ibid s 17D(8) (as added (see note 1 supra); s 17D(8)-(12) amended by virtue of s 17C(7)(a) (as substituted: see note 1 supra) and of the Utilities Act 2000 s 76(7)).

18 Ie their duties under the Petroleum Act 1998 s 17D(7) (as added): see the text and note 14 supra.

19 Ibid s 17D(9) (as added and amended: see notes 1, 17 supra).

20 Ibid s 17D(10) (as added and amended: see notes 1, 17 supra).

21 For these purposes, 'accounting information' means such accounting records as would be required by the Companies Act 1985 s 221 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by ss 386, 387, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) in respect of the storage activities undertaken by an owner of a relevant facility, if those activities were the only business undertaken by the owner and the owner were a person to whom that provision applied: Petroleum Act 1998 s 17E(6) (as added: see note 1 supra). Owners of relevant facilities must keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by such a notice: s 17E(2) (as so added). As to enforcement of this duty see PARA 1032 post.

22 Ibid s 17E(1) (as added (see note 1 supra); s 17E(1), (3), (6) amended by virtue of s 17C(7)(a) (as substituted: see note 1 supra) and of the Utilities Act 2000 s 76(7)). 'Significant transaction' means (1) any transaction which relates to rights to have gas stored in a relevant facility; or (2) any other transaction which is of a description specified by the Authority from time to time by notice: Petroleum Act 1998 s 17E(6) (as so added and amended). For these purposes, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and the Income and Corporation Taxes Act 1988 s 416(2)-(5) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299) applies with any necessary modifications for these purposes as it applies for the purposes of Pt XI (ss 414-422) (as amended) (close companies: see INCOME TAXATION vol 23(2) (Reissue) PARA 1296 et seq); Petroleum Act 1998 s 17E(7) (as so added).

The Authority must not disclose to any person information obtained under s 17E(1) (as added and amended) without the consent of the person by or on behalf of whom it was provided, unless the Authority is required to do so by virtue of any obligation imposed on it by or under any enactment: s 17E(3) (as so added and amended).

23 Ibid s 17D(11) (as added and amended: see notes 1, 17 supra). As to enforcement of the obligation to comply with such a notice see PARA 1032 post.

24 Ibid s 17D(12) (as added and amended: see notes 1, 17 supra).

25 Ibid s 17D(13) (as added: see note 1 supra).

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

1030 Acquisition of rights to store gas in certain offshore gas storage facilities

NOTE 2--Definition of 'gas' in Petroleum Act 1998 s 28(1) amended: Energy Act 2008 Sch 1 para 9 (partly in force: SI 2009/2809).

NOTE 21--Day now appointed for repeal of 1985 Act s 221 and replacement by Companies Act 2006 ss 386, 387: SI 2007/3495. Definition of 'accounting information' amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

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1031. Relevant facilities.

The provisions regarding the acquisition of rights to store gas in certain offshore gas facilities which are set out in the preceding paragraph¹ apply to an offshore gas storage facility² unless, or except to the extent that, its capacity is exempt under the following provisions³.

A person who is or expects to be an owner⁴ of an offshore gas storage facility may apply in writing to the Gas and Electricity Markets Authority ('GEMA')⁵ for an exemption with respect to the facility⁶.

The Authority must give an exemption with respect to a facility, other than a new facility⁷, where it is satisfied that use of the facility by other persons is not necessary for the operation of an economically efficient gas market⁸; and it must give an exemption with respect to a new facility where it is satisfied that either:

- 2020 (1) use of the facility by other persons is not necessary for the operation of an economically efficient gas market; or
- 2021 (2) the following requirements are met⁹, namely that:
- 167 250. (a) the facility or, as the case may be, the significant increase in its capacity will promote security of supply;
- 251. (b) the level of risk is such that the investment to construct the facility or, as the case may be, to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
- 252. (c) the facility is or is to be owned by a person other than the gas transporter¹⁰ who operates or will operate the pipeline system connected or to be connected to the facility;
- 253. (d) charges will be levied on users of the facility or, as the case may be, the increase in its capacity;
- 254. (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and
- 255. (f) the European Commission is or will be content with the exemption¹¹.
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In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of head (2) above may only be given in relation to that increase in its capacity¹². An exemption may not be given by virtue of head (2) above more than once in respect of the same facility¹³; but this does not prevent a further exemption being given by virtue of that head in respect of a facility if:

- 2022 (i) the facility is or is to be modified to provide for a significant increase in its capacity;
- 2023 (ii) the exemption has effect only in relation to that increase in its capacity; and
- 2024 (iii) no previous exemption has been given by virtue of head (2) above in relation to that increase in its capacity¹⁴.

An exemption must be given in writing and may be given:

- 2025 (A) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- 2026 (B) unconditionally or subject to such conditions as the Authority considers appropriate;
- 2027 (C) so as to have effect in the case of a facility other than a new facility, in relation to the whole of the capacity of the facility, or in the case of a new facility, in relation to the whole of the capacity of the facility or any significant increase in the capacity of the facility¹⁵.

The Authority must publish its decision to give or refuse to give an exemption together with the reasons for its decision in such manner as it considers appropriate¹⁶.

An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice¹⁷ of revocation to the owner of the facility concerned not less than four months before the coming into force of the revocation¹⁸.

1 le the Petroleum Act 1998 s 17D (as added and amended): see PARA 1030 ante.

2 For the meaning of 'offshore gas storage facility' see PARA 1030 note 2 ante.

3 Petroleum Act 1998 s 17C(1) (s 17C added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4; the Petroleum Act 1998 s 17C(1) amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 1(a)).

4 For the meaning of 'owner' see PARA 1030 note 1 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Petroleum Act 1998 s 17C(2) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 1(b), (c); and by virtue of the Utilities Act 2000 s 76(7); and the Petroleum Act 1998 s 17C(7)(a) (as substituted: see PARA 1030 note 1 ante)).

7 'New facility' means (1) an offshore gas storage facility the construction of which is or is to be completed after 3 August 2003; or (2) an offshore gas storage facility the modification of which to provide for a significant increase in capacity is or is to be completed after 3 August 2003: Petroleum Act 1998 s 28(1) (definition added by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 3(a)).

8 Petroleum Act 1998 s 17C(5) (s 17C(5) substituted, and s 17C(5A)-(5F) added, by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 1(e)).

9 Petroleum Act 1998 s 17C(5A) (as added: see note 8 supra).

10 For the meaning of 'gas transporter' see PARA 805 ante (definition applied by the Petroleum Act 1998 s 28(1) (amended for this purpose by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, Sch 4 para 9(e); and by virtue of the Utilities Act 2000 s 76(7)).

11 Petroleum Act 1998 s 17C(5C) (as added: see note 8 supra).

12 Ibid s 17C(5B) (as added: see note 8 supra).

13 Ibid s 17C(5D) (as added: see note 8 supra).

14 Ibid s 17C(5E) (as added: see note 8 supra).

15 Ibid s 17C(3) (as added (see note 3 supra); amended by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 1(d); and by virtue of the Utilities Act 2000 s 76(7); and the Petroleum Act 1998 s 17C(7)(a) (as substituted: see PARA 1030 note 1 ante)).

16 Petroleum Act 1998 s 17C(5F) (as added: see note 8 supra).

17 For the meaning of 'notice', and as to service of notices, see PARA 1030 note 11 ante.

18 Petroleum Act 1998 s 17C(4) (as added: see note 3 supra).

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

1031 Relevant facilities

TEXT AND NOTES 17, 18--An exemption may contain provision for its revocation: Petroleum Act 1998 s 17C(4) (substituted by SI 2009/1349).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(9) OFFSHORE GAS STORAGE FACILITIES/1032. Enforcement.

1032. Enforcement.

The statutory obligations:

- 2028 (1) to comply with any notice requiring the owner of a relevant offshore gas storage facility to allow an applicant to store gas in the facility¹; and
- 2029 (2) to comply with any duty to negotiate with the applicant and to endeavour to reach an agreement²,

are duties owed to any person who may be affected by a failure to comply with them³. Where a duty is owed by virtue of the above provision to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person⁴. In any proceedings brought against a person in pursuance of that provision, it is, however, a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty⁵.

Compliance with the duties:

- 2030 (a) to publish the main commercial conditions relating to the grant to another person of a right to store gas in the relevant facility, and to publish any changes to those conditions⁶;
- 2031 (b) to ensure that the published conditions are not discriminatory⁷; and
- 2032 (c) to keep internal accounts in the required manner⁸,

is enforceable by civil proceedings by the Secretary of State⁹ for an injunction or other appropriate relief or remedy¹⁰.

Except so far as so provided, nothing in the statutory provisions relating to offshore gas storage facilities¹¹:

- 2033 (i) confers a right of action in any civil proceedings (other than proceedings for recovery of a fine) in respect of any contravention of those provisions or an order or regulations made under them;
- 2034 (ii) affects any restriction imposed by or under any other enactment, whether public, local or private; or
- 2035 (iii) derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under those provisions¹².

1 Ie any notice under the Petroleum Act 1998 s 17D(11) (as added and amended): see PARA 1030 ante. As to relevant facilities see PARA 1031 ante.

2 Ie any duty under *ibid* s 17D(7) (as added): see PARA 1030 ante.

3 *Ibid* s 17H(1) (s 17H added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4; the Petroleum Act 1998 s 17H(1) amended for these purposes by the Gas (Third Party Access) Regulations 2004, SI 2004/2043, reg 2(3), Sch 3 para 2). As to the persons to whom these provisions apply see also the Petroleum Act 1998 s 48(2), cited in PARA 1030 note 6 ante.

4 Ibid s 17H(2) (as added: see note 3 supra).

5 Ibid s 17H(3) (as added: see note 3 supra).

6 Ie the duty under ibid s 17D(1) (as added): see PARA 1030 ante.

7 Ie the duty under ibid s 17D(3) (as added): see PARA 1030 ante.

8 Ie the duty under ibid s 17D(2) (as added): see PARA 1030 ante.

9 As to the Secretary of State see PARA 601 note 1 ante.

10 Petroleum Act 1998 s 17H(4) (as added: see note 3 supra).

11 Ie nothing in ibid ss 17C-17E, 17H (as added and amended): see the text and notes 1-10 supra; and PARAS 1030-1031 ante.

12 See ibid s 28(6). This is subject to the Interpretation Act 1978 s 18 (duplicated offences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272); Petroleum Act 1998 s 28(7).

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(9) OFFSHORE GAS STORAGE FACILITIES/1032A. Exploitation of areas outside the territorial sea for gas importation and storage.

1032A. Exploitation of areas outside the territorial sea for gas importation and storage.

The rights to which the Energy Act 2008 s 1 applies have effect, by virtue of s 1, as rights belonging to Her Majesty: Energy Act 2008 s 1(1). Section 1 applies to the rights under Part V of the Convention that are exercisable by the United Kingdom in areas outside the territorial sea (1) with respect to any of the matters mentioned in s 1(3), or (2) for any other purposes connected with any of those matters: s 1(2). 'The Convention' means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of the Energy Act 2008 (ie 26 November 2008) that have entered into force in relation to the United Kingdom: s 1(6). The matters are (a) the exploitation of those areas for the unloading of gas to installations or pipelines; (b) the exploitation of those areas for the storing of gas (whether or not with a view to its being recovered), or the recovery of gas so stored; (c) the exploration of those areas with a view to their exploitation as mentioned in head (a) or (b): s 1(3). 'Gas' means any substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb): s 1(6). For the purposes of s 1(3), references to gas include any substance which consists wholly or mainly of gas: s 1(4). 'Installation' includes any floating structure or device maintained on a station by whatever means: s 1(6). Her Majesty may by Order in Council designate an area as an area within which the rights to which s 1 applies are exercisable (a 'Gas Importation and Storage Zone'): s 1(5). See the Gas Importation and Storage Zone (Designation of Area) Order 2009, SI 2009/223 (made under the Energy Act 2008 s 1(5)). As from a day to be appointed Energy Act 2008 s 1(5) substituted: see Marine and Coastal Access Act 2009 Sch 4 para 5(2).

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(9) OFFSHORE GAS STORAGE FACILITIES/1032B. Importation and storage of combustible gas.

1032B. Importation and storage of combustible gas.

The following provisions are partly in force: SI 2009/2809.

1. Activities requiring a licence

No person may carry on an activity within the Energy Act 2008 s 2(3) except in accordance with a licence: Energy Act 2008 s 2(1). 'Licence', except where the context otherwise requires, means a licence under the Energy Act 2008 s 4 (see PARA 1032B.2), and 'licence holder' is to be construed accordingly: Energy Act 2008 s 16. But s 2(1) is subject to the Energy Act 2008 s 3: s 2(2). The activities are (1) the use of a controlled place for the unloading of gas to an installation or pipeline; (2) the use of a controlled place for the storage of gas; (3) the conversion of any natural feature in a controlled place for the purpose of storing gas; (4) the recovery of gas stored in a controlled place; (5) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within heads (1)-(4); (6) the establishment or maintenance in a controlled place of an installation for the purposes of activities within s 2(3): s 2(3). In s 2 'controlled place' means a place in, under or over (a) the territorial sea, or (b) waters in a Gas Importation and Storage Zone (within the meaning of the Energy Act 2008 s 1(5) (see PARA 1032A); 'gas' means any combustible substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb) and which consists wholly or mainly of (i) methane, (ii) ethane, (iii) propane, (iv) butane, (v) a substance designated for the purposes of s 2 by an order made by the Secretary of State, or (vi) a mixture of two or more of the substances mentioned in heads (i)-(v): s 2(4). 'Installation' includes any floating structure or device maintained on a station by whatever means: Energy Act 2008 s 16.

The Energy Act 2008 Pt 1 Ch 2 (ss 2-16) does not apply in relation to (A) the use of a controlled place for the unloading of gas to an installation which is connected with land by a permanent structure providing access at all times and for all purposes; (B) the conversion of a natural feature of which part is in a controlled place and part under land, if the operations necessary for the conversion take place wholly or mainly on, over or under land; (C) the use of a place for the storage of gas, or the recovery of gas so stored, where (aa) the gas was, or is to be, introduced into the store by means of a well on land, and (bb) part of the place is a controlled place and part is under land; (D) the establishment or maintenance of an installation for the purposes of activities falling within head (A): Energy Act 2008 s 3(1). In s 3 'land' means land in England and land in Wales; and 'well' includes a borehole: s 3(2).

2. Licensing

The Secretary of State may grant a person a licence in respect of one or more activities within the Energy Act 2008 s 2(3) (see PARA 1032B.1): Energy Act 2008 s 4(1). The controlled place (see PARA 1032B.1) in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted: s 4(2). For this purpose 'Crown lease' means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of the Energy Act 2008 s 1 (see PARA 1032A) or otherwise): s 4(3). For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Energy Act 2008 s 4, see

Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS. See also Petroleum Act 1998 s 45A (added by Energy Act 2008 s 75) (information about decommissioning of wells).

The Secretary of State may by regulations (1) prescribe the persons, or classes of persons, by whom an application for a licence may be made; (2) prescribe requirements which must be met by, or in relation to, a person who makes an application; (3) prescribe the manner in which an application must be made; (4) prescribe the information which an application must contain and any documents which must accompany it; (5) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations: Energy Act 2008 s 5. In exercise of this power the Secretary of State has made the Offshore Gas Storage and Unloading (Licensing) Regulations 2009, SI 2009/2813.

A licence may be granted on such terms and subject to such conditions as the Secretary of State considers appropriate: see Energy Act 2008 s 6.

The Secretary of State may make regulations prescribing model clauses for licences: see Energy Act 2008 s 7. For the prescribed model clauses see the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814; SI 2009/2813; and PARA 1670A.

3. Enforcement

It is an offence for a person to carry on an activity within the Energy Act 2008 s 2(3) (see PARA 1032B.1) at a controlled place (see PARA 1032B.1) unless, at the time the activity is carried on, that person (1) has a licence (see PARA 1032B.1) for the carrying on of that activity at that place, or (2) is carrying on the activity on behalf of a person who has such a licence: Energy Act 2008 s 8(1). It is an offence for a person to cause or permit another person to commit an offence under s 8(1): s 8(2). But s 8(1) and (2) is subject to the Energy Act 2008 s 3 (see PARA 1032B.1): s 8(3). A person guilty of an offence under s 8 is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine: s 8(4). As to the statutory maximum see PARA 689.

An offence is committed by a licence holder if (a) a thing is done for which the licence specifies that the prior consent of the Secretary of State or any other person is required, without that consent first having been obtained; (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied; (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence; (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the Secretary of State: Energy Act 2008 s 9(1). In proceedings against a person for an offence under s 9(1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence: s 9(2). It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain (i) a licence, or (ii) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of the Energy Act 2008 s 6(4) (see PARA 1032B.2): s 9(3). It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for (A) a licence, or (B) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of s 6(4): s 9(4). A person guilty of an offence under s 9 is liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine: s 9(5).

If a licence holder fails to comply with any provision of the licence, the Secretary of State may direct the licence holder to take steps which the Secretary of State considers necessary or appropriate to comply with the provision within a period specified in the direction: see Energy Act 2008 s 10. It is an offence for a person to fail to comply with a direction under s 10, unless

the person proves that due diligence was exercised in order to avoid the failure: see Energy Act 2008 s 11.

Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of the Energy Act 2008 s 2(1) (see PARA 1032B.1), the Secretary of State may apply to the court for an injunction: see Energy Act 2008 s 12.

The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under the Energy Act 2008 Pt 1 Ch 2 (ss 2-16): see Energy Act 2008 s 13.

Provision is made with respect to criminal proceedings: see Energy Act 2008 s 14.

4. Interaction with the petroleum licensing requirements

Where there is a licence (see PARA 1032B.1) for the recovery of gas (see PARA 1032B.1) stored in a controlled place (see PARA 1032B.1), the Secretary of State may give a direction in respect of the place or any part of it ('the relevant stratum'): Energy Act 2008 s 15(1), (2). The effect of the direction is that any operations under the licence to recover gas from the relevant stratum are not to be regarded as resulting in the boring for or getting of petroleum for the purposes of the Petroleum Act 1998 Pt 1: Energy Act 2008 s 15(3). 'Petroleum' means petroleum to which the Petroleum Act 1998 s 3 (see PARA 1639) applies: Energy Act 2008 s 15(8). A direction may be given only if the Secretary of State is satisfied that the amount of petroleum which exists in its natural condition in the relevant stratum is so small that it ought to be disregarded for the purposes of the Petroleum Act 1998 Pt 1: Energy Act 2008 s 15(4). Where a direction has effect, if the Secretary of State ceases to be satisfied as mentioned in s 15(4), the Secretary of State must give the licence holder a notice revoking the direction and specifying a time for the purposes of s 15(6): s 15(5). Where a notice is given under s 15(5), the revocation of the direction takes effect (1) if an application for a petroleum licence in respect of the relevant stratum is made by the licence holder before the specified time, immediately before the time the application is determined or withdrawn, and (2) in any other case, at the specified time: s 15(6). 'Petroleum licence' means a licence under the Petroleum Act 1998 s 3 authorising a person to bore for and get petroleum: Energy Act 2008 s 15(8). Before giving or revoking a direction, the Secretary of State must consult the licence holder: s 15(7).

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/3. PARTICULAR PROVISIONS RELATING TO GAS/(9) OFFSHORE GAS STORAGE FACILITIES/1032C. Storage of carbon dioxide.

1032C. Storage of carbon dioxide.

1. Activities requiring a licence

No person may carry on an activity within the Energy Act 2008 s 17(2) except in accordance with a licence: Energy Act 2008 s 17(1). 'Licence' means a licence granted under the Energy Act 2008 s 18(1) (see PARA 1032C.2), and 'licence holder' is to be construed accordingly: Energy Act 2008 s 35(1). The activities are (1) the use of a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); (2) the conversion of any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); (3) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within head (1) or (2); (4) the establishment or maintenance in a controlled place of an installation for the purposes of activities within s 17(2): s 17(2). In s 17, 'controlled place' means a place in, under or over (a) the territorial sea, or (b) waters in a Gas Importation and Storage Zone (see PARA 1032A): s 17(3). 'Installation' includes any floating structure or device maintained on a station by whatever means: Energy Act 2008 s 35(1).

2. Licensing

The licensing authority may grant a licence to a person in respect of one or more activities within the Energy Act 2008 s 17(2) (see PARA 1032C.1): Energy Act 2008 s 18(1). The licensing authority is (1) in the case of a licence in respect of activities within s 17(2)(a)-(c) and a controlled place (see PARA 1032C.1) which is not in, under or over the territorial sea adjacent to Scotland, the Secretary of State, (2) in the case of a licence in respect of such activities and a controlled place which is in, under or over that territorial sea, the Scottish Ministers, (3) in the case of a licence in respect of such activities and a controlled place only part of which is in, under or over that territorial sea, either the Secretary of State or the Scottish Ministers, and (4) in the case of a licence in respect of activities within s 17(2)(d), whichever of the Secretary of State or the Scottish Ministers licenses the activities for the purposes of which the installation (see PARA 1032C.1) is established or maintained; and in the Energy Act 2008 Pt 1 Ch 3 (ss 17-35) references to the licensing authority in relation to a licence falling within head (3) are references to the person who grants the licence or, if the licence has not yet been granted, to whom the application for the licence was made: s 18(2). The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted: s 18(3). For this purpose a 'Crown lease' means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of the Energy Act 2008 s 1 (see PARA 1032A) or otherwise): s 18(4). For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Energy Act 2008 s 18, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Each licensing authority may by regulations make provision about the circumstances in which it may grant licences, including (a) provision about the requirements to be met by or in relation to an applicant, and (b) provision about any other requirements which must be met for a licence to be granted: Energy Act 2008 s 19(1). Regulations under head (a) may, in particular

(i) prescribe the persons, or classes of persons, by whom an application for a licence may be made; (ii) prescribe the manner in which an application must be made; (iii) prescribe the information which an application must contain and any documents which must accompany it; (iv) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations; (v) require an applicant, before a licence is granted, to make arrangements (whether by way of trust or otherwise) to provide financial security in respect of the applicant's future obligations relating to the activities under the licence (whether those obligations will or may arise under the licence or otherwise): s 19(2).

A licence may be granted on such terms and subject to such conditions as the licensing authority considers appropriate, subject to regulations under the Energy Act 2008 s 21: see Energy Act 2008 s 20.

Each licensing authority may make regulations about the terms and conditions of licences granted by it: see Energy Act 2008 s 21.

3. Enforcement

It is an offence for a person to carry on an activity within the Energy Act 2008 s 17(2) (see PARA 1032C.1) at a controlled place (see PARA 1032C.1) unless, at the time the activity is carried on, that person (1) has a licence (see PARA 1032C.2) for the carrying on of the activity at that place, or (2) is carrying on the activity on behalf of a person who has such a licence: Energy Act 2008 s 22(1). It is an offence for a person to cause or permit another person to commit the offence in s 22(1): s 22(2). A person guilty of an offence under s 22 is liable on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both: s 22(3). If the activity constituting the offence falls within s 17(2)(c), or relates to the establishment or maintenance of an installation (see PARA 1032C.1) for the purposes of an activity mentioned in that provision, s 22(3) has effect as if (a) the reference to £50,000 were a reference to the statutory maximum, and (b) the reference to imprisonment were omitted: s 22(4). As to the statutory maximum see PARA 689.

An offence is committed by a licence holder if (i) a thing is done for which the licence specifies that the prior consent of the licensing authority (see PARA 1032C.2) or any other person is required, without that consent first having been obtained; (ii) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied; (iii) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence; (iv) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the licensing authority: Energy Act 2008 s 23(1). In proceedings against a person for an offence under s 23(1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence: s 23(2). A person guilty of an offence under s 23(1) is liable on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both: s 23(3). If an offence under s 23(1) relates to an activity within s 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, s 23(3) has effect as if (A) the reference to £50,000 were a reference to the statutory maximum, and (B) the reference to imprisonment were omitted: s 23(4). It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain a licence, or the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of the Energy Act 2008 s 20(6) (see PARA 1032C.2): s 23(5). It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for a licence, or the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of s 20(6): s 23(6). A person guilty of an offence under s 23(5) or (6) is liable on summary

conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine: s 23(7).

If a licence holder fails to comply with any provision of the licence, the licensing authority may direct the licence holder to take steps which the licensing authority considers necessary or appropriate to comply with the provision within a period specified in the direction: see Energy Act 2008 s 24. It is an offence for a person to fail to comply with a direction under s 24, unless the person proves that due diligence was exercised in order to avoid the failure: see Energy Act 2008 s 25.

Where the Secretary of State considers it necessary or expedient to restrain any other actual or apprehended breach of the Energy Act 2008 s 17(1) (see PARA 1032C.1), the Secretary of State may apply to the High Court for an injunction: see Energy Act 2008 s 26.

The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under the Energy Act 2008 Pt 1 Ch 3 (ss 17-35): see Energy Act 2008 s 27.

Provision is made with respect to criminal proceedings: see Energy Act 2008 s 28.

4. Requirement for public register

The Secretary of State must maintain a register containing prescribed information relating to licences (see PARA 1032C.2); information is not to be included in the register if (1) the Secretary of State thinks that disclosure of the information would be contrary to the interests of national security, or (2) the licensing authority (see PARA 1032C.2) thinks that disclosure of the information would prejudice to an unreasonable degree a person's commercial interests: see Energy Act 2008 s 29.

5. Abandonment of offshore installations

The Petroleum Act 1998 Pt 4 applies in relation to a carbon storage installation as it applies in relation to an offshore installation within the meaning given by the Petroleum Act 1998 s 44 (see PARA 1729), subject to the Energy Act 2008 s 30(4): Energy Act 2008 s 30(1). In s 30, 'carbon storage installation' means an installation established or maintained for the purposes of an activity mentioned in the Energy Act 2008 s 17(2)(a), (b) or (c) (see PARA 1032C.1): s 30(5). In relation to any other carbon storage installation, the Secretary of State may make regulations providing that the Petroleum Act 1998 Pt 4 applies in relation to such an installation with such modifications as may be specified in the regulations: Energy Act 2008 s 30(4).

6. Termination of the licence

The licensing authority (see PARA 1032C.2) may by regulations make provision (1) about the circumstances in which a licence (see PARA 1032C.2) may be terminated; (2) imposing obligations on the licensing authority in respect of a carbon storage facility on or after the termination of a licence relating to the facility: Energy Act 2008 s 31(1). 'Carbon storage facility' means a controlled place (see PARA 1032C.1), or part of a controlled place, in which carbon dioxide has been stored pursuant to a licence: Energy Act 2008 s 20(8). Regulations under s 31 may, in particular, make provision about financial arrangements to be made in relation to a closed carbon storage facility on or after the termination of a licence relating to the facility: s 31(2). A licence has effect subject to any regulations under s 31: s 31(3).

7. Miscellaneous

The Petroleum Act 1987 ss 21, 23 and 24 (safety zones: see PARA 1680) apply in relation to a carbon storage installation (see PARA 1032C.5) as they apply in relation to an installation within the Petroleum Act 1987 s 21(1): Energy Act 2008 s 32.

The use of carbon dioxide, in a controlled place (see PARA 1032C.1), for a purpose ancillary to getting petroleum is to be regarded as (1) an activity within the Energy Act 2008 s 17(2) (see PARA 1032C.1), or (2) the storage of gas for the purposes of the Energy Act 2008 s 1(3)(b) (see PARA 1032A), only in the circumstances specified by the Secretary of State by order: Energy Act 2008 s 33(1). In s 33 'petroleum' has the meaning given by the Petroleum Act 1998 s 1 (see PARA 1626): Energy Act 2008 s 33(5). Section 33(1) and orders made under it are without prejudice to the Petroleum Act 1998 Pt 1: Energy Act 2008 s 33(2). An order under s 33(1) may provide that the use of carbon dioxide, in a designated place, for a purpose ancillary to getting petroleum is to be regarded, for the purposes of the Energy Act 2008 Pt 1 Ch 3 (ss 17-35), as the use of carbon dioxide in a controlled place for such a purpose: s 33(3). A designated place means a place designated by the order which is a place in, under or over waters in an area designated under the Continental Shelf Act 1964 s 1(7) (see PARA 1636), other than waters in a Gas Importation and Storage Zone (see PARA 1032A): Energy Act 2008 s 33(4).

The Secretary of State may by order transfer to a public body any function conferred on the Secretary of State by or under the Energy Act 2008 Pt 1 Ch 3, other than a power to make regulations or an order: see Energy Act 2008 s 34.

UPDATE

1030-1032 Offshore Gas Storage Facilities

As to the exploitation of areas outside the territorial sea for gas importation and storage see PARA 1032A.

As to the importation and storage of combustible gas see PARA 1032B.

As to the storage of carbon dioxide see PARA 1032C.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(1) ELECTRICITY LEGISLATION/1033. Historical background; the electricity supply industry before privatisation.

4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY

(1) ELECTRICITY LEGISLATION

1033. Historical background; the electricity supply industry before privatisation.

The first public measure to deal with electricity supply in England and Wales was the Electric Lighting Act 1882¹. Among many other provisions², the Act made provision for small-scale private companies and municipal undertakings to supply electricity under licences³ granted by the Board of Trade⁴, subject to the consent of the local authority⁵ or under provisional orders which had to be confirmed by Parliament⁶. In the ten years following the Electric Lighting Act 1888, development was rapid and a number of power bills were promoted by private companies for the generation of electricity on a large scale and its transmission over wider areas. The special Acts subsequently passed established private companies with rights in perpetuity to supply electricity in bulk to authorised undertakers⁷, direct to industry and to other customers in areas not already covered by distribution rights.

The Electric Lighting (Clauses) Act 1899⁸ set out in the Schedule provisions which, save in so far as expressly varied or excepted, were to be incorporated in all future orders and Acts. The Schedule, along with the Appendix thereto, contained a wide spectrum of provisions for the regulation of the supply of electricity⁹.

The next public measure was the Electricity (Supply) Act 1909 which introduced a number of provisions relating to electricity supply¹⁰. This was followed by the Electricity (Supply) Act 1919 which established Electricity Commissioners¹¹. The commissioners were appointed to exercise the powers of the Board of Trade and to advise the Minister of Transport¹² on the exercise of functions conferred or transferred to him by that Act. The commissioners were responsible for rationalising the industry by grouping undertakings on a regional basis¹³ through the creation of Joint Electricity Authorities¹⁴.

The limited success of the Joint Electricity Authorities in co-ordinating the control of generating stations in the ownership of private companies and local authorities was one of the factors which led to the reorganisation of the industry which, by then, comprised some 600 separate supply undertakings obtaining power from over 400 generating stations. The Electricity (Supply) Act 1926 created the Central Electricity Board¹⁵ whose primary function was to concentrate the generation of electricity in a limited number of large, efficient power stations and to interconnect them through main transmission lines (known as 'the national grid') and to direct the operation of such stations¹⁶.

The last of the Electricity (Supply) Acts was the Electricity Supply (Meters) Act 1936 which provided for the appointment by the Electricity Commissioners of a number of meter examiners, and for meter testing and certification¹⁷.

In 1947, the electricity supply industry was brought into public ownership. The Electricity Act 1947 transferred the distribution and supply activities of, by then, some 560 separate undertakings in England and Wales to 12 regional area boards¹⁸ and transferred the functions of the Electricity Commissioners to the British Electricity Authority (renamed the Central Electricity Authority)¹⁹, in which were vested the generating assets and liabilities of existing undertakings²⁰. The Central Electricity Authority was to be responsible for the generation and transmission of electricity together with the central co-ordination and policy direction of the industry²¹, whilst the area boards were placed under a duty to acquire and distribute bulk supplies of electricity²². A Consultative Council was established for each of the area boards²³.

In general, those provisions of the earlier Acts which related to the authorisation of electricity supply by company undertakers or local authorities, to the creation of joint electricity authorities or to the Electricity Commissioners or the Central Electricity Authority were repealed; whilst those provisions which related to the execution of works and to the supply of electricity to customers were adapted so as to apply to the new statutory corporations²⁴.

The Electricity Act 1957 established two new statutory bodies, the Central Electricity Generating Board which assumed certain functions in relation to electricity generation²⁵, and the Electricity Council²⁶ which was given a co-ordinating role.

The Energy Act 1983²⁷ removed the constraints imposed by the Electricity (Supply) Acts of 1909 and 1919 on entry to the generation of electricity²⁸ and gave private generators rights to require electricity boards to purchase their electricity, to provide standby supplies to their customers and to allow the use of their transmission and distribution networks for the purpose of giving a supply to any premises²⁹. It also required area boards to publish tariffs at which they would buy supplies from private generators³⁰.

Other provisions related to the approval and certification of meters³¹, the making of regulations as to supply and safety³², charges for the availability of supplies of electricity³³ and combined heat and power schemes³⁴. The Electricity Consumers' Council, which had been established on 31 October 1977, was made a statutory body³⁵.

Controls over the production of electricity from certain fuels derive from the Energy Act 1976³⁶.

1 The Electric Lighting Act 1882 s 12 incorporated the Gas Works Clauses Act 1847 ss 6-12 (street works) and the Gas Works Clauses Act 1871 ss 38-42 (meters) and ss 45-46 (procedure). The repeal of these Acts by the Gas Act 1948 did not affect those provisions as incorporated in the 1882 Act or as subsequently incorporated in the Electric Lighting (Clauses) Act 1899: see *R v Stock* (1838) 8 Ad & El 405; *R v Merionethshire Inhabitants* (1844) 6 QB 343; *R v Smith* (1873) LR 8 QB 146, 42 LJMC 46.

2 Undertakers were empowered to execute works in streets and alter the position of pipes and wires but they could not break up private streets, railways or tramways without the consent of the owner or the Board of Trade or place electric lines above ground without the consent of the local authority: see the Electric Lighting Act 1882 ss 13-15 (repealed). They were under a duty to supply electricity and were subject to limitations on the charges they could make for supplies. Provision was made for the recovery of charges, disconnection, penalties for interference with electric lines, stealing electricity and rights of entry: see ss 19-24 (all repealed). As to the Board of Trade see TRADE AND INDUSTRY vol 97 (2010) PARA 802.

3 See *ibid* s 2 (repealed). Licences and provisional orders were granted subject to the compliance of the undertakers with the conditions contained therein: see s 6 (repealed).

4 See *ibid* s 3 (repealed).

5 See *ibid* s 3(1) (repealed). The Electric Lighting Act 1888 re-enacted the requirement but gave the Board of Trade power to dispense with that requirement, and provision was also made for the control by the Board of Trade of the placing of electric lines: see ss 1, 4 (repealed).

6 *Ibid* s 4(2).

7 As to the meaning of undertakers see note 24 *infra*.

8 The Electric Lighting (Clauses) Act 1899 was not one of the Electricity (Supply) Acts 1882-1936 and the Schedule itself was of no effect until it was incorporated with another Act.

9 The Electric Lighting (Clauses) Act 1899 Schedule included powers to execute works and place apparatus and lay mains in streets (ss 11-26) and provisions as to the supply of and charges for electricity (ss 27-34), the appointment of electric inspectors (ss 35-38), the testing and inspection of mains, apparatus and works (ss 39-48) and the testing and certification of meters (ss 49-59).

10 These provisions related, *inter alia*, to the compulsory acquisition of land (Electricity (Supply) Act 1909 s 1), a requirement for the consent of the Board of Trade to the construction of a generating station (s 2), the breaking up of streets (s 3), the certification of meters (s 11), requirements as to the notice to be given by consumers prior to quitting premises (s 17) and powers to refuse to supply in certain cases (s 18) (all repealed).

11 The Electricity Commissioners, appointed under the Electricity (Supply) Act 1919 s 39(2), were dissolved by the Electricity Commissioners (Dissolution) Order 1948, SI 1948/1769, and their property and functions under the Electricity Acts 1882-1919 were transferred by that order to the Minister of Fuel and Power: see note 12 *infra*.

12 The functions conferred by the Electric Lighting Acts 1882-1909 were first exercised by the Board of Trade. The Electricity (Supply) Act 1919 s 39 transferred those functions (except that of appointing the Electricity Commissioners) to the Minister of Transport: see the Ministry of Transport (Electricity Supply) Order 1920, SR & O 1920/58 (spent). They were transferred back to the Board of Trade by the Defence (Functions of Ministers) Regulations 1941, SR & O 1941/2057; and then to the Minister of Fuel and Power by the Ministers of the Crown (Minister of Fuel and Power) Order 1942, SI 1942/1132. For subsequent changes in title see PARA 601 *ante*.

13 For the better control of the supply system, the Electricity Commissioners' consent was required for the construction or extension of a generating station, other than a private generating station: see the Electricity (Supply) Act 1919 s 11 (repealed). They could also require the alteration of the characteristics of existing supplies for the purpose of standardisation: see *A-G v Ealing Corp'n* [1924] 2 Ch 545.

14 See the Electricity (Supply) Act 1919 s 1 (repealed). Joint Electricity Authorities had powers to acquire other undertakings (ss 5-8) to put up main transmission lines (s 21) and to acquire compulsory wayleaves (s 22) (all repealed).

15 See the Electricity (Supply) Act 1926 s 1 (repealed).

16 Other provisions related to powers to fell or lop trees (see *ibid* s 34); the amendment of provisions under the Electric Lighting (Clauses) Act 1899 Schedule (and other Acts incorporating it) (see the Electricity (Supply)

Act 1926 s 43); the acquisition of compulsory wayleaves (s 21); and powers to charge for the reconnection of supplies, previously disconnected (s 45) (all repealed).

17 See the Electricity Supply (Meters) Act 1936 ss 1-2 (repealed); and for the transfer of certain duties of electric inspectors under the Electric Lighting (Clauses) Act 1899 Schedule ss 50-51, 57 to meter examiners see the Electricity Supply (Meters) Act 1936 s 1(4) (repealed). See also *Joseph v East Ham Corp* [1936] 1 KB 367, CA.

18 See the Electricity Act 1947 Pt I (ss 1-12) (repealed).

19 See the Electricity Reorganisation (Scotland) Act 1954 s 15(1), Sch 1 Pt II (repealed). For the constitution of the Central Electricity Authority see the Electricity Act 1947 Pt I (repealed).

20 See *ibid* ss 13-19, Sch 2 (repealed). The existing undertakings consisted of the Central Electricity Authority, company and municipal undertakings, joint electricity authorities, and the electricity supply parts of composite companies supplying both gas and electricity.

21 See *ibid* ss 1, 2, 6 (repealed).

22 See *ibid* s 1(4) (repealed).

23 For the establishment, constitution and duties of the Consultative Councils see *ibid* s 7 (repealed).

24 The Electricity Act 1947 repealed a number of provisions in the previous legislation relating to electricity supply that had become obsolete by reason of the new system; it modified and adapted the provisions of the Electricity (Supply) Acts 1882-1936 (see the Electricity Act 1947 s 57(1), Sch 4 Pt I (repealed)); it incorporated the Electric Lighting (Clauses) Act 1899 Schedule (including the meaning of references to 'undertakers') subject to specified adaptations (see the Electricity Act 1947 s 57(2), Sch 4 Pt III (repealed)) and it applied to the new electricity boards (ie the Central Authority and the area boards (see s 1(3) (repealed)) the provisions of local enactments that had applied to previous authorised undertakers (see s 57(3) (repealed)).

25 For the establishment, constitution and functions of the Central Electricity Generating Board see the Electricity Act 1957 s 2 (repealed). The powers of the Generating Board were extended by the Electricity (Amendment) Act 1961 (repealed).

26 For the establishment, constitution and functions of the Electricity Council see the Electricity Act 1957 s 3 (repealed).

27 The provisions of the Energy Act 1983 still subsisting are ss 27-35 (amendments and modifications to the Nuclear Installations Act 1965 (see PARAS 1496, 1501, 1507 et seq post) and the Energy Act 1983 ss 36-38 and Sch 4 (commencement etc and repeals).

28 See *ibid* Pt I (repealed).

29 See *ibid* ss 5, 8 (repealed). 'Electricity Boards' means the former Central Electricity Generating Board and the area boards: see *ibid* s 26 (repealed).

30 See *ibid* ss 7, 10 (repealed).

31 See *ibid* ss 12, 15, Sch 1 (repealed).

32 See *ibid* s 16 (repealed).

33 See *ibid* s 17 (repealed).

34 See *ibid* s 19 (repealed).

35 See *ibid* s 21, Sch 2 (repealed).

36 See PARA 603 et seq ante, PARAS 1216-1218 post.

UPDATE

1033 Historical background; the electricity supply industry before privatisation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1034. The Electricity Act 1989 and subsequent legislation.

On 27 July 1989, the Royal Assent was given to the Electricity Act 1989, the principal purposes of which were first, to establish a new system for the regulation of the generation, transmission and supply of electricity; second, to remove the electricity supply industry from public ownership and place it in the hands of privately owned companies¹; third, to promote competition in the generation and supply of electricity; and finally, to replace, modify or update the law relating to electricity supply. The new system came into effect on 31 March 1990². All property, rights and liabilities of the Electricity Council, the Central Electricity Generating Board and the area boards were transferred to successor companies³. The former statutory obligation on the Central Electricity Generating Board to provide bulk supplies of electricity⁴ no longer applied to the successor generating companies. Under the new structure PowerGen plc, National Power plc and other generating companies competed with each other in the generation of electricity. Provision was made for an initial government holding in the successor companies⁵ but they were subsequently privatised under the provisions with respect to flotation contained in the 1989 Act⁶. The area boards, the Electricity Council and the Central Electricity Generating Council continued in existence for a transitional period after the transfer of their rights and liabilities, until dissolved by order made by the Secretary of State⁷; the area boards were dissolved on 10 December 1993⁸ and the Council and the Central Electricity Generating Board were finally dissolved on 9 November 2001⁹. Compensation was payable to the former members and employees of those bodies¹⁰. The Electricity Consumers' Council was abolished with effect from 31 March 1990¹¹.

The Electricity Act 1989 also provided for the appointment by the Secretary of State of the Director General of Electricity Supply ('the director') for the purpose of carrying out the functions assigned or transferred to him by that Act¹². The director was required to establish a consumers' committee for the authorised area of each public electricity supplier or, if the Secretary of State so determined, for the authorised areas of two or more such suppliers¹³. There was also established a committee known as the National Consumers' Consultative Committee of which the director was chairman and the ordinary members were those persons who for the time being held office as chairmen of consumers' committees¹⁴.

The director's powers were enhanced by the Competition and Service (Utilities) Act 1992¹⁵.

Extensive changes, particularly to the regulatory regime, were made by the Utilities Act 2000 which abolished the office of the director¹⁶ and also abolished the consumers' committees¹⁷, replacing the former by the Gas and Electricity Markets Authority ('GEMA')¹⁸ and the latter by the Gas and Electricity Consumer Council¹⁹. The Authority and the Secretary of State now have a new principal objective, in carrying out their functions in both the gas and electricity sectors, to protect the interests of consumers, wherever appropriate by promoting effective competition²⁰. In carrying out their functions in relation to electricity the regulatory authorities may now have regard to the interests of consumers in relation to other utilities²¹ and must, as a result of amendments made by the Energy Act 2004, carry out those functions in the manner best calculated, among other things, to contribute to the achievement of sustainable development²².

The Utilities Act 2000 also introduced a new Electricity Code²³ and made substantial changes to the licensing regime, introducing separate licences for electricity suppliers and electricity distributors which replaced the former public electricity suppliers' licences, and introducing an

element of competition into transmission licences²⁴ The Energy Act 2004 has now introduced interconnector licences²⁵.

The Energy Act 2004 has made further amendments to the Electricity Act 1989 and has introduced new trading and transmission arrangements for electricity²⁶. It has also introduced a special administration regime for electricity licence holders facing actual or threatened insolvency²⁷ and established a mechanism allowing energy market participants to appeal against GEMA's decisions on modifications to the codes that govern activities in the gas and electricity markets²⁸.

1 The new structure comprised: (1) PowerGen plc, a generating company formed from about 30% of the Central Electricity Generating Board's capacity (see the Electricity Act 1989 (Nominated Companies) (England and Wales) Order 1990, SI 1990/224, art 4(1), (2), Sch 2 Pt I); (2) National Power plc, a generating company formed from the rest of the Central Electricity Generating Board, excluding the nuclear power stations (see art 4(1), (2), Sch 2 Pt I); (3) 12 public electricity supply companies, which were the regional electricity companies formed from the former area boards with, initially, the same geographical areas (see art 3, Sch 1); (4) the National Grid Company plc, the transmission company formed from the transmission control division of the Central Electricity Generating Board, the pumped storage power stations and the Board's interests in the interconnectors with Scotland and France (see art 4(1), (2), Sch 2 Pt I); (5) Nuclear Electric plc comprising all the nuclear power stations, which remained, initially, in public ownership (see art 4(1), Sch 2 Pt I; and as to nuclear energy generally see PARA 1340 et seq post); (6) private electricity suppliers, ie power producers: the existing and new entry generators producing for own use and/or supplying regional electricity companies and other customers under contractual arrangements; (7) Electricity Association Services Ltd which inherited the operating assets and a number of the functions of the former Electricity Council (see art 4(2), Sch 2 Pt II); (8) Electra Brands Limited which owned, managed and maintained the Electra trade marks previously vested in the Electricity Council in respect of electrical appliances and related equipment for domestic use manufactured for the 12 regional electricity companies (see art 4(2), Sch 2 Pt II); (9) Consumers' Committees, one for each of the 12 regional electricity companies (see the Electricity Act 1989 s 2, Sch 2 (repealed)); and (10) the National Consumers' Consultative Committee (see s 53 (repealed)).

2 See the Electricity Act 1989 (Transfer Date) (England and Wales) Order 1990, SI 1990/225, art 2. On that date, all the rights and liabilities to which the Electricity Council was entitled or subject immediately before that date under the terms of issue of British Electricity stock (ie any stock created and issued under the Electricity Act 1957 s 16(1) (repealed) or under the Electricity Act 1947 s 40 (repealed)) became the rights and liabilities of the Treasury: see the Electricity Act 1989 s 91(1), (4).

3 See the Electricity Act 1989 ss 65-66; the Electricity Act 1989 (Nominated Companies) (England and Wales) Order 1990, SI 1990/224; and note 1 supra. As to transfer schemes see further the Electricity Act 1989 ss 68-70, Sch 10; and as to taxation see s 90, Sch 11. In general, the transfer schemes made under s 66(1) (transfer of property etc of the Central Electricity Board and the Electricity Council) made provision for those properties, rights and liabilities of the Central Electricity Generating Board which were capable of being transferred in their entirety to be vested in the relevant successor company, and where continued sharing was necessary after vesting the scheme provided for them to be allocated amongst two or more successor companies and/or for commercial agreements to be entered into between the successor companies. Many of these agreements contained arrangements for the occupation of, or access to, sites of one successor company by another company; eg, leases of substation sites to The National Grid Company plc and the area boards were granted for a term of 999 years at a nominal rent. Other agreements provided for rights of access to plant and equipment and to intellectual property.

A transfer scheme did not take effect unless it was approved by the Secretary of State and he had power to modify such a scheme before giving his approval to it: see s 69(1). In certain circumstances he had power to make the scheme himself: see s 69(2). He was not, however, to exercise any power conferred on him under s 69 without (1) first consulting the transferor and, in the case of a transfer scheme in relation to the Central Electricity Generating Board, the area boards (see s 69(4)); (2) the consent of the Treasury (see s 69(5)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

The machinery established for the settlement by negotiation of terms and conditions of employment of persons employed in successor companies was maintained under the Electricity Act 1989 but without prejudice to the freedom of either party on giving 12 months' notice in writing to withdraw from any agreement made under that machinery: see Sch 17 paras 26-28. As to pension rights see Sch 14 (as amended).

The Secretary of State may by order made by statutory instrument repeal to any extent any of the provisions of the Electricity Act 1989 Pt 2 (ss 65-95) (as amended) (reorganisation of the electricity industry) which have not already been repealed: see the Electricity (Miscellaneous Provisions) Act 2003 s 2(2). Such an order may make consequential, transitional or saving provision (including provision modifying the Electricity Act 1989 or any other Act) (Electricity (Miscellaneous Provisions) Act 2003 s 2(3)) but may not be made unless a draft of it has

been laid before, and approved by a resolution of, each House of Parliament (s 2(4)). As to the Secretary of State see PARA 601 note 1 ante. At the date at which this title states the law, no such order had been made.

4 le under the Electricity Act 1957 s 3(4) (repealed).

5 See the Electricity Act 1989 ss 71, 73. As to the finances of successor companies see further ss 75-81. As to the power to repeal these provisions by statutory instrument see note 3 supra.

6 See *ibid* ss 82, 83. As to the power to repeal these provisions by statutory instrument see note 3 supra.

7 le by order made under *ibid* s 84 (now repealed).

8 See the Area Boards (Dissolution) Order 1993, SI 1993/2825.

9 See the Electricity Council (Dissolution) Order 2001, SI 2001/3420; the Central Electricity Generating Board (Dissolution) Order 2001, SI 2001/3421.

10 See the Electricity Act 1989 s 85 (repealed).

11 See *ibid* s 54 (now repealed). As to compensation for the chairman and officers of the Council see s 55 (repealed).

12 See *ibid* s 1, Sch 1 (repealed). As to the general functions of the director see s 3 (repealed).

13 See *ibid* s 2, Sch 2 (repealed).

14 See *ibid* s 53 (repealed).

15 See the Competition and Service (Utilities) Act 1992 ss 20-24 (ss 20, 22 now repealed). Section 21 added the Electricity Act 1989 s 42A (now amended) (see PARA 1136 post); the Competition and Service (Utilities) Act 1992 s 23 added the Electricity Act 1989 s 44A (now amended) (see PARA 1144 post); and the Competition and Service (Utilities) Act 1992 s 24 added the Electricity Act 1989 s 40(3) (see PARA 1134 post).

16 See the Utilities Act 2000 s 1(3).

17 See *ibid* s 2(3).

18 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante.

19 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

20 See, in relation to electricity, the Utilities Act 2000 s 13 (adding the Electricity Act 1989 s 3A(1) (now amended)); and PARA 1041 post.

21 See the Electricity Act 1989 s 3A(4) (as added and amended); and PARA 1041 post.

22 See *ibid* s 3A(5) (as added and amended); and PARA 1041 post.

23 See the Utilities Act 2000 s 51(2), Sch 4 (substituting the Electricity Act 1989 Sch 6). As to the Electricity Code see PARA 1101 et seq post.

24 As to the licensing regime see PARA 1050 et seq post. For transitional arrangements see the Utilities Act 2000 s 108, Sch 7 Pt I (paras 1-12) (separation of electricity supply and distribution); Sch 7 Pt II (paras 13-22) (Secretary of State's licensing schemes); and Sch 7 Pt III (para 23) (former tariff customers). For other transitional provisions and savings see Sch 7 Pt IV (paras 24-32).

25 As to interconnector licences see PARA 1065 et seq post.

26 See the Energy Act 2004 Pt 3 Ch 1 (ss 133-134, Schs 17-19); and PARA 1071 et seq post.

27 See *ibid* Pt 3 Ch 3 (ss 154-171); and PARA 743 et seq ante.

28 See *ibid* ss 173-176; and PARA 733 et seq ante.

UPDATE

1034 The Electricity Act 1989 and subsequent legislation

NOTE 5--1989 Act s 80 amended: SI 2008/948.

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1035. Consequential modifications of other primary and subordinate legislation.

The Secretary of State¹ may by order² make such consequential modifications³ of any provisions contained in any Act passed, whether public general or local, or subordinate legislation made, before the relevant date⁴ as appears to him necessary or expedient in respect of any reference therein to (1) any of the Electricity Boards⁵ or the Electricity Council⁶; (2) a person carrying on an electricity undertaking or to such an undertaking⁷; or (3) any enactment repealed by the Electricity Act 1989⁸. He has the like power in the case of a provision contained in a local Act or subordinate legislation in respect of any other inconsistency between that Act or subordinate legislation and the 1989 Act⁹.

Notwithstanding the powers so conferred, every provision contained in a local Act or in subordinate legislation which was in force immediately before the transfer date¹⁰ and then applicable to an Electricity Board or the Electricity Council has effect as if (a) for references to the board or council there were substituted references to the appropriate successor company¹¹; and (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part thereof, of the board or council, there were substituted a reference to the undertaking or business, or part of it, of the appropriate successor company¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of orders generally see the Electricity Act 1989 s 106; and PARA 1306 post.

3 'Modifications' includes additions, alterations and omissions and cognate expressions are to be construed accordingly: *ibid* s 111(1).

4 The 'relevant date' in relation to any modifications, means the date of the coming into force of the provisions of the Electricity Act 1989 on which they are consequential: s 112(2).

5 As to the Electricity Boards and their dissolution see PARAS 1033-1034 ante.

6 Electricity Act 1989 s 112(2)(a). As to the Electricity Council and its dissolution see PARAS 1033-1034 ante.

7 *Ibid* s 112(2)(b).

8 *Ibid* s 112(2)(c).

9 *Ibid* s 112(2)(d). In exercise of the powers conferred by s 112(2), the Secretary of State has made the Electricity Act 1989 (Consequential Modifications of Subordinate Legislation) Order 1990, SI 1990/526 (revoked for certain purposes by SI 1999/1892); and the Electricity Act 1989 (Consequential Modifications of Enactments) Order 1990, SI 1990/577.

10 As to the transfer date, ie 31 March 1990, see PARA 1034 ante.

11 As to the transfer to successor companies see PARA 1034 note 3 ante.

12 Electricity Act 1989 s 112(3), Sch 17 para 34. Although a great many provisions of local enactments have become redundant, there are, nevertheless, provisions still subsisting that may be of importance. A local enactment may have conferred powers to carry out specific works or may confer additional powers in relation to consumers or to the placing or using of apparatus within a particular area. An important feature of local enactments is the schedule of streets not repairable by the inhabitants at large which the previous undertakers were authorised to break up without the consent of the body or person by whom the street is repairable. Some of these streets listed have still not been adopted as highways maintainable at the public expense. By virtue of heads (a) and (b) in the text, all such subsisting provisions enure for the benefit of the successor companies.

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(2) COGNATE LEGISLATION

1036. Health and safety at workplaces.

The principal statutory provisions governing the health and safety of persons engaged in activities relating to the generation, transmission and supply of electricity and of those who are employed in factories and other workplaces where the use of electrical energy is potentially a source of danger are the Mines and Quarries Act 1954¹, the Factories Act 1961 and the Health and Safety at Work etc Act 1974² and the regulations made under those Acts³.

The use of electricity in mines and quarries is controlled by regulations made by the Secretary of State under the Health and Safety at Work etc Act 1974⁴. These regulations specify various requirements, prohibitions and restrictions as to the installation, construction and use of electrical apparatus (being part of the equipment of a mine) at various mines⁵.

The provision and maintenance of adequate lighting in mines and quarries is the duty of the mine manager or the quarry owner as the case may be⁶. In the case of mines, the Secretary of State has made regulations requiring the provision of prescribed lights at prescribed places⁷.

The provisions of the Factories Act 1961 and the regulations made thereunder⁸ apply to premises in which persons are regularly employed in or in connection with the processes or operations of generating, transforming or converting, or of switching, controlling or otherwise regulating electrical energy for supply by way of trade, or for supply for the purposes of any transport undertaking or other industrial or commercial undertaking or of any public building or public institution or for supply to streets or other public places as if the premises were a factory and the employer of any person employed in the premises were the occupier of a factory⁹.

The health and safety of persons at work is regulated by Part I of the Health and Safety at Work etc Act 1974¹⁰ which includes a statement as to the general duties of employers, employees, self-employed persons and persons in control of non-domestic premises. The Act provides for the making of health and safety regulations and various codes of practice operating in conjunction with Part I of the Act and designed to improve standards of health, safety and welfare¹¹. Regulations specifically concerned with electricity in work activities impose obligations on employers, self-employed persons and managers of mines and quarries to take precautions against the risk of death or injury from electricity at workplaces¹².

1 See generally MINES, MINERALS AND QUARRIES.

2 See generally HEALTH AND SAFETY AT WORK.

3 Regulations made under the Mines and Quarries Act 1954 have been superseded by the Electricity at Work Regulations 1989, SI 1989/635 (as amended); and by the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended): see the text and notes 4-6 infra.

4 See the Electricity at Work Regulations 1989, SI 1989/635 (as amended); and note 5 infra.

5 The Electricity at Work Regulations 1989, SI 1989/635 (as amended) impose duties, subject to certain exceptions, on employers, self-employed persons and employees regarding health and safety requirements with respect to electricity at work. Additional requirements are imposed on managers of, and employees at, mines (regs 17-28) (as amended)) and quarries (reg 3 (as amended)). See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 605 et seq.

As to the implementation of EC legislation relating to electricity in potentially explosive atmospheres see the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 569.

6 See note 5 *supra*. See also the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq.

7 See the Coal and Other Mines (Safety-Lamps and Lighting) Order 1956, SI 1956/1765 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 798 et seq.

8 Although a number of the regulations made under the Factories Act 1961 have been replaced by regulations made under the Health and Safety at Work etc Act 1974, many of the decisions on particular points under them remain good law: see *Heard v Brymbo Steel Co Ltd* [1947] KB 692, CA; *Gatehouse v John Summers & Sons Ltd* [1953] 2 All ER 117, [1953] 1 WLR 742, CA; *Hartley v Mayoh and Co* [1954] 1 QB 383, [1954] 1 All ER 375, CA (where an area board was held liable on the ground that failure to test the circuits when installing a new meter constituted negligence in the circumstances of that case); cf *Sellars v Best* [1954] 2 All ER 389, [1954] 1 WLR 913 (where it was held that an electricity board was not under a liability to test the earthing arrangements of a consumer's installation before commencing to give a supply of electricity). The ground of distinction appears to have been that in the former case the board had itself antecedently done something wrong, whereas in the latter case it had not. See also *Miller v South of Scotland Electricity Board* 1958 SC (HL) 20, where a boy trespassing in a derelict house was injured by a live cable, the local authority (which owned the house) having asked earlier for removal of the service line and the board having said that it had been removed. It was held that negligence by the board was one of the causes of the accident and was not defeated by the fact that the negligence of another person might also have been one of the causes of the accident or by reason of the fact that the precise accident that happened was not foreseeable; see further *Robb v Salamis (M & I) Ltd* [2006] UKHL 56, [2007] 2 All ER 97, 2007 SLT 158. See also *Larner v British Steel plc* [1993] 4 All ER 102, [1993] ICR 551, CA (in considering under the Factories Act 1961 s 29(1) (now repealed) whether a workplace was safe, the test was a strict one and there was no obligation in a claim for breach of statutory duty under that section for the claimant to establish that the question of reasonable foreseeability arose in consideration of the question); followed in *Mains v Uniroyal Englebert Tyres Ltd* [1995] IRLR 544, 1995 SLT 115, Ct of Sess; and considered in *Alderson v Piggott & Whitfield Ltd* [1996] CLY 3003.

9 See the Factories Act 1961 s 123(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 309.

10 See the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq.

11 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq.

12 See the Electricity at Work Regulations 1989, SI 1989/635 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 605 et seq; the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 428 et seq; the Provision and Use of Work Equipment Regulations 1998, SI 1998/2306 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 482 et seq; the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 456 et seq; and the Personal Protective Equipment Regulations 2002, SI 2002/1144 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 567 et seq. As to the reporting of accidents leading to death or injury or of dangerous occurrences see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq. See also the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 31; and PARA 1156 post.

UPDATE

1036 Health and safety at workplaces

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(2) COGNATE LEGISLATION/1037. Safety in cinemas.

1037. Safety in cinemas.

The lighting of cinemas and the use of electrical installations and equipment so as to secure safety in connection with the giving of cinematograph performances are controlled by regulations made by the relevant Secretary of State¹.

¹ See the Cinematograph (Safety) Regulations 1955, SI 1955/1129; and LICENSING AND GAMBLING vol 67 (2008) PARA 255.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(2) COGNATE LEGISLATION/1038. Street works.

1038. Street works.

Powers conferred on licence holders¹ to break up streets and execute works in them derive from the Electricity Act 1989². In the case of works to be executed in streets and bridges, however, the procedures governing the relationships between undertakers³ executing the works and the street authority⁴ or other body⁵ are to be found in the New Roads and Street Works Act 1991, which together with the regulations and various codes of practice made under it governs the conduct of street works in England and Wales⁶.

1 For the meaning of 'licence holder' see PARA 1041 note 12 post. Any licence holder within the meaning of the Electricity Act 1989 is a statutory undertaker for the purposes of the Coal Mining Subsidence Act 1991: see s 52(1) (as amended); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 217 note 8.

2 For the powers of licence holders to break up streets and execute works see the Electricity Act 1989 s 10, Sch 4 (as amended); and PARAS 1286-1290 post.

3 For the meaning of 'undertakers' for this purpose see the New Roads and Street Works Act 1991 s 48(5); and PARA 1290 note 1 post.

4 As to the meaning of 'street authority' see *ibid* s 49(1), (2); para 1287 note 12 post; and HIGHWAYS, STREETS AND BRIDGES.

5 I.e. a bridge authority (see *ibid* s 88(1)(b)); a sewer authority (see s 89(1)(b)); and a transport authority (see s 91(1)(a), (b)). See further HIGHWAYS, STREETS AND BRIDGES.

6 See *ibid* Pt III (ss 48-106), Schs 3-6 (as amended); and HIGHWAYS, STREETS AND BRIDGES. See also the Traffic Management Act 2004 Pt 4 (ss 40-59); and HIGHWAYS, STREETS AND BRIDGES.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(2) COGNATE LEGISLATION/1039. Street lighting.

1039. Street lighting.

The Secretary of State or the Welsh Ministers¹ and every local highway authority may provide lighting for the purposes of any highway or proposed highway² for which they are or will be the highway authority and may, for that purpose, contract with any persons for the supply of electricity and construct and maintain such lamps, posts and other works as they consider necessary³. These powers may be delegated, by agreement, to a lighting authority⁴. Likewise, a lighting authority may, with the consent of the highway authority⁵, exercise its own similar powers⁶.

1 le the Secretary of State for Transport in England and the Welsh Ministers in Wales: see the Highways Act 1980 s 329(1); the Transfer of Functions (Transport) Order 1981, SI 1981/238; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Welsh Ministers see PARA 601 note 1 ante. As to street lighting generally see HIGHWAYS, STREETS AND BRIDGES.

2 For the meanings of 'highway', 'local highway authority' and 'proposed highway' see the Highways Act 1980 ss 328, 329(1) (as amended); and HIGHWAYS, STREETS AND BRIDGES.

3 Ibid s 97(1).

4 See ibid s 98. 'Lighting authority' means a council or other body authorised to provide lighting under the Public Health Act 1875 s 161 (as amended) or the Parish Councils Act 1957 s 3 (as amended) or any corresponding local enactment: Highways Act 1980 ss 301(3), 329(1).

5 See ibid s 301(1).

6 See the Public Health Act 1875 s 161 (as amended); the Parish Councils Act 1957 s 3 (as amended); and HIGHWAYS, STREETS AND BRIDGES.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(2) COGNATE LEGISLATION/1040. Building regulations.

1040. Building regulations.

Nothing in the statutory provisions relating to building regulations¹ and nothing in such regulations applies in relation to a building belonging to electricity licence holders² or other statutory undertakers and held or used by them for the purposes of their undertaking, unless it is a house or a building used as offices or showrooms³. Such regulations may apply to various aspects of building construction including the ventilation of buildings, and also to installations using electricity to the extent that such regulations are required for health and safety purposes and fuel and water conservation⁴. They may also impose continuing requirements in relation to fuel, power and emissions⁵.

1 le the Building Act 1984 Pt I (ss 1-46) (as amended); see BUILDING vol 4(2) (2002 Reissue) PARA 306 et seq.

2 The holder of a licence under the Electricity Act 1989 s 6(1) (as substituted and amended) is deemed to be a statutory undertaker, and his undertaking a statutory undertaking, for the purposes of the Building Act 1984: Electricity Act 1989 s 112(1), Sch 16 para 1(1)(xxxix).

3 Building Act 1984 s 4(1)(b) (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I; prospectively repealed by the Sustainable and Secure Buildings Act 2004 ss 5(a), 11(2), Schedule, as from a day to be appointed under s 11(3); at the date at which this title states the law, no such day had been appointed). Local authorities may also dispense with or relax any requirement of the building regulations in relation to any particular type of building matter: see the Building Regulations 2000, 2000/2531, reg 11(1) (as amended); and BUILDING.

4 See the Building Act 1984 s 1, Sch 1 (as amended); the Building Regulations 2000, SI 2000/2531 (as amended); and BUILDING.

5 See the Building Act 1984 s 2A (added by the Sustainable and Secure Buildings Act 2004 s 4(1)); and BUILDING. As to requirements for the energy performance of buildings generally see also PARAS 655-657 ante; and as to energy efficiency and conservation in relation to residential accommodation see PARA 658 ante.

UPDATE

1040 Building regulations

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1041. The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA').

(3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY

1041. The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA').

The principal objective of the Secretary of State¹ and the Gas and Electricity Markets Authority ('GEMA')² in carrying out their respective functions under Part I of the Electricity Act 1989³ is to protect the interests of consumers⁴ in relation to electricity conveyed by distribution systems⁵ or transmission systems⁶, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation⁷, transmission⁸, distribution⁹ or supply¹⁰ of electricity or the provision or use of electricity interconnectors¹¹. The Secretary of State and the Authority must carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to:

- 2036 (1) the need to secure that all reasonable demands for electricity are met; and
- 2037 (2) the need to secure that licence holders¹² are able to finance the activities which are the subject of obligations imposed by or under that Part of the 1989 Act or by or under the Utilities Act 2000 or Part 2 or Part 3¹³ of the Energy Act 2004¹⁴.

In performing that duty, the Secretary of State or the Authority must have regard to the interests of:

- 2038 (a) individuals who are disabled or chronically sick;
- 2039 (b) individuals of pensionable age¹⁵;
- 2040 (c) individuals with low incomes; and
- 2041 (d) individuals residing in rural areas;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer¹⁶.

The Secretary of State and the Authority may, in carrying out any function under Part I of the Electricity Act 1989¹⁷, have regard to:

- 2042 (i) the interests of consumers in relation to gas conveyed through pipes within the meaning of the Gas Act 1986¹⁸; and
- 2043 (ii) any interests of consumers in relation to communications services and electronic communications apparatus or water services or sewerage services within the meaning of the Water Industry Act 1991¹⁹,

which are affected by the carrying out of that function²⁰; and the Secretary of State and the Authority must²¹ carry out their respective functions under Part I of the 1989 Act²² in the manner which he or it considers is best calculated:

- 2044 (A) to promote efficiency and economy on the part of persons authorised by licences or exemptions to distribute, supply or participate in the transmission of electricity²³ or to participate in the operation of electricity interconnectors and the efficient use of electricity conveyed by distribution systems or transmission systems;
- 2045 (B) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity;
- 2046 (C) to contribute to the achievement of sustainable development; and
- 2047 (D) to secure a diverse and viable long-term energy supply,

and, so far as not otherwise required to do so by heads (A) to (D) above, must, in carrying out those functions, have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity²⁴.

In carrying out their respective functions under Part I of the Electricity Act 1989²⁵ in accordance with the above provisions the Secretary of State and the Authority must each have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed²⁶ and to any other principles appearing to him or, as the case may be, to it to represent the best regulatory practice²⁷.

The above provisions do not apply in relation to the issuing²⁸ by the Secretary of State of guidance on social and environmental matters²⁹ or in relation to his functions³⁰ regarding the giving of certain consents³¹. Nor do they apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading³², of certain functions³³ with respect to competition³⁴. Furthermore, the duties imposed by the above provisions do not affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Electricity Act 1989 or another enactment, by virtue of any Community obligation or otherwise³⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the Gas and Electricity Markets Authority see PARA 708 ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 Ie under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see the text and notes 4-35 infra; and PARA 1042 et seq post. For these purposes, and the purposes of ss 3B, 3C (as added) (see PARAS 1042-1043 post), references to functions of the Secretary of State or the Authority under Pt I (as amended) include a reference to functions under the Utilities Act 2000 which relate to electricity conveyed by distribution systems or transmission systems: Electricity Act 1989 s 3A(7) (s 3A added by the Utilities Act 2000 s 13; the Electricity Act 1989 s 3A(7) amended, so as to add the reference in the text to transmission systems, by the Energy Act 2004 s 179(2), (3)(a)). Section 179 does not, however, come into force until 1 April 2010: (1) for the purposes of the Electricity Act 1989 ss 32-32C (as amended) (see PARA 1219 et seq post), in respect of any electricity which (without being conveyed to the premises wholly or partly by means of a distribution system) is supplied to premises occupied by a high electricity user from a substation to which it has been conveyed by means of a transmission system; and (2) in respect of any electricity which, being stand-by electricity, is supplied (without being conveyed to the premises wholly or partly by means of a distribution system) to premises occupied by a body corporate from a substation to which it has been conveyed by means of a transmission system: Energy Act 2004 (Commencement No 6) Order 2005, SI 2005/2965, art 3(2). 'High electricity user' means a body corporate which, for each year since the commencement of a long term, fixed-price contract under which electricity is supplied to it, has spent in excess of 20% of its applicable turnover on electricity, and which receives under that contract at least 90% of all the electricity which it receives; 'long term, fixed-price contract' means a contract entered into before 1 April 2002 which was still in force on 17 October 2005, and which provides for an electricity generator (or a person who is a connected person or an affiliate in relation to an electricity generator) to provide a specified amount (or a specified maximum amount) of electricity to a specified consumer at a price which is specified either numerically or by reference to an adjustment formula; and 'stand-by electricity' means electricity conveyed temporarily, periodically or intermittently to make good any unplanned shortfall in the availability of electricity to the recipient for its own consumption from a generating station owned or operated by the recipient or by a person who is a connected person or an affiliate

in relation to the recipient, where such shortfall arises from that generating station being wholly or partly out of commission for a temporary period: art 1(2). 'Adjustment formula' means a formula under which the price of electricity is adjusted having regard to the current market price of some other commodity; 'affiliate', in relation to a body corporate that is the owner or operator of a generating station, means a subsidiary or holding company of that body corporate and any subsidiary or holding company of such holding company (and, for the purposes of this definition, 'subsidiary' and 'holding company' have the meanings ascribed to them in the Companies Act 1985 s 736 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed)); 'applicable turnover' means the amounts, ascertained in conformity with normal accounting practice in Great Britain, which are (a) derived by a high electricity user from the provision of goods and services within that person's ordinary activities; and (b) computed on an accruals basis so that the amounts referred to in head (a) supra relating to the period for which applicable turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment, after deduction of value added tax and any other taxes based on such amounts; and 'connected person', in relation to an owner or operator of a generating station, means a person connected to him within the meaning of the Income and Corporation Taxes Act 1988 s 839 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Energy Act 2004 (Commencement No 6) Order 2005, SI 2005/2965, art 1(2).

References in the Electricity Act 1989 ss 3A-3C (as added and amended) to functions of the Authority under Pt I (as amended) also include references to any functions of the Authority under the Utilities Act 2000 s 5A (as added) (duty of Authority to carry out impact assessment: see PARA 714 ante) that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under the Electricity Act 1989 Pt I (as amended): Utilities Act 2000 s 5A(12) (added by the Sustainable Energy Act 2003 s 6).

4 For these purposes, 'consumers' includes both existing and future consumers: Electricity Act 1989 s 3A(6) (as added: see note 3 supra).

5 'Distribute', in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system, and cognate expressions are to be construed accordingly: *ibid* ss 4(4), 64(1) (definitions added by the Utilities Act 2000 s 28(1), (3)(a), s 108, Sch 6 Pt II paras 24, 38(1), (2)). 'Line' means any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity; and 'electrical plant' means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission, distribution or supply of electricity, other than (1) an electric line; (2) a meter used for ascertaining the quantity of electricity supplied to any premises; or (3) an electrical appliance under the control of a consumer; and 'premises' includes any land, building or structure: Electricity Act 1989 s 64(1) (definition of 'electrical plant' amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (3)). 'Electric line' means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires: (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended; (b) any apparatus connected to any such line for the purpose of carrying electricity; and (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line: Electricity Act 1989 s 64(1). For the meaning of 'low voltage line' see note 6 *infra*. As from a day to be appointed, 'system' means a system the whole or a part of which is at a relevant place: s 4(5) (definition prospectively added by the Energy Act 2004 s 89(2), as from a day to be appointed under s 198(2); at the date at which this title states the law, no such day had been appointed). 'Relevant place' means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a renewable energy zone: Electricity Act 1989 s 4(5) (as so added; at the date at which this title states the law, that definition was in force for the purposes of s 36(1) (as amended) (see PARA 1249 post) only: see the Energy Act 2004 (Commencement No 4) Order 2005, SI 2005/442, art 2(1), Sch 1).

6 'Transmission', in relation to electricity, means transmission by means of a transmission system; and 'transmission system' means a system which (1) consists (wholly or mainly) of high voltage lines and electrical plant; and (2) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another: *ibid* ss 4(4), 64(1) (definitions added by the Energy Act 2004 ss 135(1), (4), 143(1), Sch 19 paras 3, 15(1), (2)). At the date at which this title states the law, 'high voltage line' means (a) in relation to England and Wales, an electric line of a nominal voltage exceeding 132 kilovolts; (b) in relation to Scotland, an electric line of a nominal voltage not less than 132 kilovolts; and 'low voltage line' is to be construed accordingly: Electricity Act 1989 s 64(1). As from a day to be appointed, however, 'high voltage line' means an electric line which (i) if it is in Scotland or is a relevant offshore line (as defined in s 64(1A) (as prospectively added)), is of a nominal voltage of 132 kilovolts or more; and (ii) in any other case, is of a nominal voltage of more than 132 kilovolts, and 'low voltage line' is to be construed accordingly: s 64(1) (definition prospectively substituted by the Energy Act 2004 s 180(1), as from a day to be appointed under s 198(2); at the date at which this title states the law, no such day had been appointed). Also as from such a day, an electric line is a relevant offshore line for the purposes of that definition of 'high voltage line' if (A) it is in an area of the territorial sea adjacent to the United Kingdom or an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61

(2010) PARA 172); and (B) it is used to convey electricity to a place in Scotland or to convey, to any other place, electricity generated by a generating station that is situated in an area mentioned in head (A) supra: Electricity Act 1989 s 64(1A) (prospectively added by the Energy Act 2004 s 180(2)).

'Generating station', in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station: Electricity Act 1989 s 64(1).

7 As from a day to be appointed, 'generate', in relation to electricity, means generate at a relevant place, and cognate expressions are to be construed accordingly: *ibid* ss 4(4), 64(1) (definitions prospectively added by the Energy Act 2004 s 89(1), (4), as from a day to be appointed under s 198(2); at the date at which this title states the law, no such day had been appointed).

8 See note 6 supra.

9 See note 5 supra.

10 'Supply', in relation to electricity, has the meaning given by the Electricity Act 1989 s 4(4) (as amended), and cognate expressions are to be construed accordingly: s 64(1). For most purposes, 'supply', in relation to electricity, means its supply to premises in cases where (1) it is conveyed to the premises wholly or partly by means of a distribution system; or (2) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system, but does not include its supply to premises occupied by a licence holder (see note 12 *infra*) for the purpose of carrying on activities which he is authorised by his licence to carry on: s 4(4) (definition substituted by the Energy Act 2004 s 179(1)). However, for the purposes for which s 179 does not come into force until 1 April 2010 (see note 3 heads (1)-(2) supra), 'supply', in relation to electricity, means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on: Electricity Act 1989 s 4(4) (definition substituted by the Utilities Act 2000 s 28(1), (3)(a)).

11 Electricity Act 1989 s 3A(1) (as added (see note 3 supra); amended by the Energy Act 2004 ss 147(1), (2) (a), s 179(2), (3)(a)). Section 179(2), (3)(a) (which adds the words 'or transmission systems' in the text) does not come into force for certain purposes until 1 April 2010: see note 3 heads (1)-(2) supra.

'Electricity interconnector' means so much of an electric line or other electrical plant as (1) is situated at a place within the jurisdiction of Great Britain; and (2) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory: Electricity Act 1989 ss 4(3E), 64(1) (definitions added by the Energy Act 2004 s 145(1), (3), 147(1), (7)). For these purposes, a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under the Continental Shelf Act 1964 s 1(7) (as amended); and a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction: Electricity Act 1989 s 4(3F) (added by the Energy Act 2004 s 145(1), (3)).

12 For the purposes of the Electricity Act 1989 Pt I (as amended), unless the context otherwise requires, 'licence' means a licence under s 6 (as substituted and amended) (see PARA 1065 post); and 'licence holder' is to be construed accordingly: s 3A(8) (as added: see note 3 supra); s 64(1).

13 *Ie* under the Energy Act 2004 Pt 2 (ss 82-132) or Pt 3 (ss 133-185).

14 Electricity Act 1989 s 3A(2) (as added (see note 3 supra); amended by the Energy Act 2004 s 190(3)).

15 'Pensionable age' is not defined for these purposes; but cf the Gas Act 1986 s 48(2B) (as added); and PARA 789 note 11 ante.

16 Electricity Act 1989 s 3A(3) (as added: see note 3 supra).

17 See note 3 supra.

18 For the meaning of references to the conveyance of gas through pipes to premises for those purposes see PARA 803 note 4 ante.

19 For these purposes, 'sewerage services' includes the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions: Water Industry Act 1991 s 219(1) (definition applied by the Electricity Act 1989 s 3A(4) (as added and amended: see note 3 supra, note 20 *infra*)). As to water undertakers and the services provided by them see WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq; and as to sewerage undertakers and the services provided by them see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

20 Electricity Act 1989 s 3A(4) (as added (see note 3 supra); amended by the Communications Act 2003 s 406(1), Sch 17 para 98).

21 Ie subject to the Electricity Act 1989 s 3A(2) (as added and amended): see the text and notes 12-14 supra.

22 See note 3 supra.

23 For the purposes of the Electricity Act 1989 Pt I (as amended), references to participation, in relation to the transmission of electricity, are to be construed in accordance with s 4(3A), (3B) (as added) (see PARA 1050 post): s 64(1).

24 Ibid s 3A(5) (as added (see note 3 supra); amended by the Energy Act 2004 ss 83(a), (b), 143(1), s 147(1), (2)(b), 179(2), (3)(a), Sch 19 paras 3, 4). Section 179(2), (3)(a) (which adds the words 'or transmission systems' to head (A) in the text), does not come into force for certain purposes until 1 April 2010: see note 3 heads (1)-(2) supra.

25 See note 3 supra.

26 Electricity Act 1989 s 3A(5A)(a) (s 3A(5A) added by the Energy Act 2004 s 178).

27 Electricity Act 1989 s 3A(5A)(b) (as added: see note 26 supra).

28 Ie under ibid s 3B (as added): see PARA 1042 post.

29 Ibid s 3D(1) (s 3D added by the Utilities Act 2000 s 16).

30 Ie his functions under the Electricity Act 1989 ss 36-37 (as amended): see PARAS 1249-1252 post. See, however, note 31 infra.

31 See ibid s 3D(2) (as added (see note 29 supra); amended by the Energy Act 2004 s 99(3)), which also disapplies the Electricity Act 1989 ss 3B, 3C (as added) (see PARAS 1042-1043 post) in the circumstances set out in the text. At the date at which this title states the law, the amendment made by s 99(3) (which substitutes for a reference to 'functions under the Electricity Act 1989 s 36 or 37' a reference to 'functions under ss 36-37') had not been brought into force so far as it relates to the Secretary of State's obligation arising under s 36B(3), (4) (as added) (see PARA 1251 post) to have regard to how powers under the Energy Act 2004 ss 95, 96, 100, Pt 2 Ch 3 have been or will be exercised: see the Energy Act 2004 (Commencement No 4) Order 2005, SI 2005/442, art 2(1), Sch 1.

32 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

33 Ie functions under the Electricity Act 1989 s 43(3) (as substituted): see PARA 1141 post.

34 See ibid s 3D(3) (as added: see note 29 supra), which also disapplies the Electricity Act 1989 ss 3B, 3C (as added) (see PARAS 1042-1043 post) in the circumstances set out in the text. The Authority may nevertheless, when exercising any function under s 43(3) (as substituted), have regard to any matter in respect of which a duty is imposed by ss 3A-3C (as added and amended) ('a general matter'), if it is a matter to which the Office of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in relation to functions mentioned in s 3D(2) (as added and amended) (see the text and notes 30-31 supra), regard may not be had to any general matter: s 3D(4) (as added (see note 29 supra); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (2)).

35 Electricity Act 1989 s 3D(5) (as added: see note 29 supra).

As to the application of ss 3A, 3D (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante; and as to their application to the exercise of certain functions of the Secretary of State or GEMA under the Climate Change and Sustainable Energy Act 2006 see s 8(6), cited in PARA 1077 post.

UPDATE

1041 The principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority ('GEMA')

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

TEXT AND NOTES 4, 11, 14, 24--Electricity Act 1989 s 3A(1), (2) further amended, s 3A(5), (6) amended: Energy Act 2008 ss 83(2), 102(6), Sch 6.

NOTE 6--Energy Act 2004 s 180(2) prospectively repealed: Energy Act 2008 Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1042. Guidance on social and environmental matters.

1042. Guidance on social and environmental matters.

The Secretary of State¹ must from time to time issue guidance about the making by the Gas and Electricity Markets Authority ('GEMA')² of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance³; and the Authority must, in carrying out its functions under Part I of the Electricity Act 1989⁴, have regard to any guidance so issued⁵. Before issuing such guidance the Secretary of State must consult:

- 2048 (1) the Authority;
- 2049 (2) the Gas and Electricity Consumer Council⁶;
- 2050 (3) licence holders⁷; and
- 2051 (4) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance⁸.

A draft of any guidance proposed to be issued under these provisions must be laid before each House of Parliament⁹; and guidance must not be issued under them until after the period of 40 days¹⁰ beginning with:

- 2052 (a) the day on which the draft is laid before each House of Parliament; or
- 2053 (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days¹¹.

If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it¹².

The Secretary of State must arrange for any guidance so issued to be published in such manner as he considers appropriate¹³.

The duties imposed by the above provisions do not affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Electricity Act 1989 or another enactment, by virtue of any Community obligation or otherwise¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 Electricity Act 1989 s 3B(1) (s 3B added by the Utilities Act 2000 s 14).

4 Ie under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 ante, PARA 1043 et seq post.

5 Ibid s 3B(2) (as added: see note 2 supra). Section 3B (as so added) does not, however, apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading, of functions under s 43(3) (as substituted) (functions with respect to competition: see PARA 1141 post): see s 3D(3) (added by the Utilities Act 2000 s 16). See further the Electricity Act 1989 s 3D(4) (as added and amended), cited in PARA 1041 note 34 ante.

6 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

7 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

8 Electricity Act 1989 s 3B(3) (as added (see note 3 supra); prospectively amended by the Consumers, Estate Agents and Redress Act 2007 s 63(1), Sch 7 paras 7, 8, as from a day to be appointed under s 66(2), so as to refer in head (2) in the text to the National Consumer Council instead of to the Gas and Electricity Consumer Council; at the date at which this title states the law, that amendment was not in force).

9 Electricity Act 1989 s 3B(4) (as added: see note 3 supra).

10 In reckoning any period of 40 days for the purposes of *ibid* s 3B(5) or (6) (as added), no account is to be taken of any time during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days: *ibid* s 3B(7) (as added: see note 3 supra).

11 *Ibid* s 3B(5) (as added: see note 3 supra).

12 *Ibid* s 3B(6) (as added: see note 3 supra).

13 *Ibid* s 3B(8) (as added: see note 3 supra).

14 *Ibid* s 3D(5) (added by the Utilities Act 2000 s 16). Nor does s 3B (as added) apply in relation to functions of the Secretary of State under ss 36-37 (as amended) (giving of certain consents: see PARAS 1249-1252 post): see s 3D(2) (as added and amended), cited in PARA 1041 the text and notes 30-31 ante.

As to the application of ss 3B, 3D (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante; and as to their application to the exercise of certain functions of the Secretary of State or GEMA under the Climate Change and Sustainable Energy Act 2006 see s 8(6), cited in PARA 1077 post.

UPDATE

1042 Guidance on social and environmental matters

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

NOTE 8--Day appointed is 1 October 2008: SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1043. Health and safety.

1043. Health and safety.

The Secretary of State¹ and the Gas and Electricity Markets Authority ('GEMA')² must consult the Health and Safety Commission³ about all electricity safety issues⁴ which may be relevant to the carrying out of any of their respective functions under Part I⁵ of the Electricity Act 1989⁶; and the Secretary of State and the Authority must, in carrying out their respective functions under Part I of that Act, take into account any advice given by the Health and Safety Commission about any electricity safety issue, whether or not in response to such consultation⁷.

The Secretary of State may require the Authority also to consult him about electricity safety issues of particular descriptions⁸; and the Authority must, in carrying out its functions under Part I of the Electricity Act 1989, take into account any advice given by the Secretary of State about any electricity safety issue, whether or not in response to such consultation⁹.

The above provisions do not, however, apply in relation to anything done by the Authority in the exercise of functions relating to the determination of disputes or in the exercise, concurrently with the Office of Fair Trading¹⁰, of certain functions¹¹ with respect to competition¹². Nor do the duties imposed by the above provisions affect the obligations of the Authority or the Secretary of State to perform or comply with any other duty or requirement, whether arising under the Electricity Act 1989 or another enactment, by virtue of any Community obligation or otherwise¹³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 For these purposes, an electricity safety issue is anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of (1) members of the public; or (2) persons employed in connection with any of those activities: Electricity Act 1989 s 3C(5) (s 3C added by the Utilities Act 2000 s 15). For the meanings of 'generation', 'transmission', 'distribution' and 'supply' of electricity see PARA 1041 notes 5-7, 10 ante.

5 I.e. under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARAS 1041-1042 ante, PARA 1044 et seq post.

6 Ibid s 3C(1) (as added: see note 4 supra).

7 Ibid s 3C(3) (as added: see note 4 supra).

8 Ibid s 3C(2) (as added: see note 4 supra).

9 Ibid s 3C(4) (as added: see note 4 supra).

10 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

11 I.e. functions under the Electricity Act 1989 s 43(3) (as substituted): see PARA 1141 post.

12 See ibid s 3D(3) (added by the Utilities Act 2000 s 16). See further the Electricity Act 1989 s 3D(4) (as added and amended), cited in PARA 1041 note 34 ante.

13 Ibid s 3D(5) (as added: see note 12 supra). Nor does s 3C (as added) apply in relation to functions of the Secretary of State under ss 36-37 (as amended) (giving of certain consents: see PARAS 1249-1252 post): see s 3D(2) (as added and amended), cited in PARA 1041 the text and notes 30-31 ante.

As to the application of ss 3C, 3D (as added and amended) to the exercise of certain functions of the Secretary of State or GEMA under the Energy Act 2004 see s 190, cited in PARA 706 the text and notes 16-23 ante; and as to their application to the exercise of certain functions of the Secretary of State or GEMA under the Climate Change and Sustainable Energy Act 2006 see s 8(6), cited in PARA 1077 post.

UPDATE

1043 Health and safety

TEXT AND NOTES--As to the application of general duties to functions relating to licences see Energy Act 2008 s 102.

NOTES 6, 7--1989 Act s 3(1), (3) amended: SI 2008/960.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1044. General functions of the Gas and Electricity Markets Authority with regard to electricity.

1044. General functions of the Gas and Electricity Markets Authority with regard to electricity.

It is the duty of the Gas and Electricity Markets Authority ('GEMA')¹, so far as it appears to it practicable from time to time to do so:

- 2054 (1) to keep under review the carrying on both in Great Britain² and elsewhere of any activities connected with the generation³, transmission⁴ and supply⁵ of electricity, including, in particular:
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- 256. (a) activities connected with the supply to any premises⁶ of heat produced in association with electricity and steam produced from air and water heated by such heat⁷;
- 257. (b) activities connected with the generation of electricity by microgeneration⁸ or with the transmission and supply of electricity so generated⁹;
- 170
- 2055 (2) to collect information¹⁰ with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of the Authority's functions under Part I¹¹ of the Electricity Act 1989¹².

The Secretary of State¹³ may give general directions¹⁴ indicating considerations to which the Authority should have particular regard:

- 2056 (i) in determining the order of priority in which matters are to be brought under review in performing its duty under head (1) or head (2) above; and
- 2057 (ii) in cases where it appears to the Authority that any of its statutory functions¹⁵ are exercisable, in determining whether to exercise those functions¹⁶.

It is the duty of the Authority, where either it considers it expedient or it is requested by the Secretary of State or the Office of Fair Trading¹⁷ to do so, to give information, advice and assistance to the Secretary of State or the Office of Fair Trading with respect to any matter in respect of which any function of the Authority under Part I of the 1989 Act is exercisable¹⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 For the meaning of 'generation' see PARA 1041 note 7 ante.

4 For the meaning of 'transmission' see PARA 1041 note 6 ante.

5 For the meaning of 'supply' see PARA 1041 note 10 ante.

6 For the meaning of 'premises' see PARA 1041 note 5 ante.

- 7 Electricity Act 1989 s 47(1)(a) (s 47(1)-(3) amended by virtue of the Utilities Act 2000 s 3(2)).
- 8 For these purposes, 'microgeneration' has the same meaning as it has in the Climate Change and Sustainable Energy Act 2006 (see PARA 619 note 2 ante): Electricity Act 1989 s 47(1B) (s 47(1A), (1B) added by the Climate Change and Sustainable Energy Act 2006 s 9).
- 9 Electricity Act 1989 s 47(1A) (as added: see note 8 supra).
- 10 Unless the context otherwise requires, 'information' includes accounts, estimates and returns: *ibid* s 64(1).
- 11 *Ie* under *ibid* Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq* ante, PARA 1045 *et seq* post.
- 12 *Ibid* s 47(1)(b) (as amended: see note 7 supra).
- 13 As to the Secretary of State see PARA 601 note 1 ante.
- 14 As to directions under the Electricity Act 1989 see generally s 107; and PARA 1306 post.
- 15 *Ie* any of its functions under *ibid* Pt I (as amended).
- 16 *Ibid* s 47(2) (as amended: see note 7 supra).
- 17 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.
- 18 Electricity Act 1989 s 47(3) (as amended (see note 7 supra); also amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (9)(b)).

UPDATE

1044 General functions of the Gas and Electricity Markets Authority with regard to electricity

TEXT AND NOTES 8, 9--Electricity Act 1989 s 47(1A) amended, s 47(1B) substituted: Energy Act 2008 Sch 5 para 4.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1045. Publication of information and advice.

1045. Publication of information and advice.

If it appears to the Gas and Electricity Markets Authority ('GEMA')¹ that the publication of any advice and information² would promote the interests of consumers³ in relation to electricity conveyed by distribution systems⁴ or transmission systems⁵, the Authority may publish that advice or information in such manner as it thinks fit⁶.

In so publishing advice or information, the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body⁷. Before deciding to publish under these provisions any advice or information relating to a particular individual or body of persons the Authority must consult that individual or body⁸. However, nothing in the general statutory restrictions on disclosure of information set out in the Utilities Act 2000⁹ is to be construed either as limiting the matters which may be published under the above provisions or as applying to information which has been so published¹⁰.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'information' see PARA 1044 note 10 ante.

3 For these purposes, 'consumers' includes both existing and future consumers: Electricity Act 1989 s 48(4) (added by the Utilities Act 2000 s 6(3)).

4 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

5 For the meaning of 'transmission system' see PARA 1041 note 6 ante.

6 Electricity Act 1989 s 48(1) (s 48(1), (2) substituted, and s 48(2A) added, by the Utilities Act 2000 s 6(2); the Electricity Act 1989 also amended by the Energy Act 2004 s 179(2), (3)(c)). For certain purposes, however, s 179(2), (3)(c) (which inserts the words 'or transmission systems' in the text) does not come into force until 1 April 2010: see PARA 1041 note 3 ante. Where the Authority is required by any provision of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1046 et seq post) to publish a notice or other document, the Authority must send a copy of the document to the Gas and Electricity Consumer Council: s 56G (added by the Utilities Act 2000 s 18(6)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

The Office of Fair Trading must consult the Authority before publishing under the Enterprise Act 2002 s 6 any information or advice which may be published by the Authority under the Electricity Act 1989 s 48 (as amended): s 48(3) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (10); and by virtue of the Utilities Act 2000 s 3(2)). As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

7 Electricity Act 1989 s 48(2) (as substituted: see note 6 supra).

8 Ibid s 48(2A) (as added: see note 6 supra).

9 Ie the Utilities Act 2000 s 105 (as amended): see PARA 767 ante.

10 See ibid s 105(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1046. Keeping of register.

1046. Keeping of register.

The Gas and Electricity Markets Authority ('GEMA')¹ must maintain a register² at such premises³ and in such form as it may determine⁴. The Authority must⁵ cause to be entered in the register the provisions of:

- 2058 (1) every licence⁶ and every exemption⁷ granted to a particular person⁸;
- 2059 (2) every modification⁹ or revocation of a licence¹⁰;
- 2060 (3) every direction¹¹ or consent given or determination made under a licence¹²;
- 2061 (4) every final or provisional order¹³, every revocation of such an order¹⁴ and every notice¹⁵ that the Authority is satisfied that it is inappropriate to make or confirm such an order¹⁶; and
- 2062 (5) every penalty imposed¹⁷ and every notice¹⁸ stating that it has imposed a penalty¹⁹.

The Authority may, however, enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of:

- 2063 (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- 2064 (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body²⁰.

Furthermore, if it appears to the Secretary of State²¹ that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct²² the Authority not to enter that provision in the register²³.

The contents of the register must be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State²⁴. Any person may, on the payment of such fee as may be specified in an order so made, require the Authority to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Authority to be a true copy or extract²⁵. Any sums received by the Authority under these provisions must be paid into the Consolidated Fund²⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1047 et seq post.

3 For the meaning of 'premises' see PARA 1041 note 5 ante.

- 4 Electricity Act 1989 s 49(1) (s 49(1), (2), (4), (6), (7) amended by virtue of the Utilities Act 2000 s 3(2)).
- 5 le subject to the Electricity Act 1989 s 49(3) (as substituted) and to any direction given under s 49(4) (as amended): see the text and notes 21-23 infra.
- 6 For the meaning of 'licence' see PARA 1041 note 12 ante.
- 7 'Exemption' means an exemption under the Electricity Act 1989 s 5 (as substituted and amended) (see PARA 1051 post): s 64(1).
- 8 Ibid s 49(2)(a) (as amended: see note 4 supra).
- 9 For the meaning of 'modifications' see PARA 1035 note 3 ante.
- 10 Electricity Act 1989 s 49(2)(b) (as amended: see note 4 supra).
- 11 As to directions generally see ibid s 107; and PARA 1306 post.
- 12 Ibid s 49(2)(c) (as amended (see note 4 supra); also amended by the Utilities Act 2000 s 108, Sch 8).
- 13 For the meanings of 'final order' and 'provisional order' see PARA 1207 notes 7, 9 post. For general provisions as to orders see the Electricity Act 1989 s 106 (as amended); and PARA 1306 post.
- 14 As to revocation of a final or provisional order see PARA 1207 post.
- 15 le every notice under the Electricity Act 1989 s 25(6) (as amended): see PARA 1207 post.
- 16 Ibid s 49(2)(d) (as amended (see note 4 supra); also amended by the Utilities Act 2000, s 59(3)
- 17 le under the Electricity Act 1989 s 27A(1) (as added): see PARA 1212 post.
- 18 le every notice under ibid s 27A(5) (as added): see PARA 1212 post.
- 19 Ibid s 49(2)(e) (added by the Utilities Act 2000 s 59(3)).
- 20 Electricity Act 1989 s 49(3) (substituted by the Energy Act 2004 s 183(3)).
- 21 As to the Secretary of State see PARA 601 note 1 ante.
- 22 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.
- 23 Ibid s 49(4) (as amended: see note 4 supra).
- 24 Ibid s 49(5). In exercise of the power so conferred, the Secretary of State has made the Electricity (Register) Order 1990, SI 1990/194, which came into force on 31 March 1990: see art 1. The contents of the register are to be available for inspection by the public between 10 am and 4 pm on each working day: arts 2, 3. For the meaning of 'working day' see PARA 1095 note 8 post.
- 25 Electricity Act 1989 s 49(6) (as amended: see note 4 supra). The fee for the supply of a copy of, or extract from, any part of the register certified by the Authority to be a true copy or extract is £2 together with 10p for each page supplied: Electricity (Register) Order 1990, SI 1990/194, art 4 (amended by virtue of the Utilities Act 2000 s 3(2)). As to the functions of the Authority which may be taken into account in fixing such fees and the matters specified in relation to those functions for the purposes of the Finance (No 2) Act 1987 s 102(4), see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, arts 2, 3, Sch 1 Pt I, Sch 2 paras 1-7 (as so amended).
- 26 Electricity Act 1989 s 49(7) (as amended: see note 4 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (3) GENERAL DUTIES AND FUNCTIONS OF THE SECRETARY OF STATE AND THE GAS AND ELECTRICITY MARKETS AUTHORITY/1047. Duty to give reasons for decisions.

1047. Duty to give reasons for decisions.

As soon as reasonably practicable after making any of the following decisions, namely:

- 2065 (1) the revocation of a licence¹;
- 2066 (2) the modification² of the conditions of a licence;
- 2067 (3) the giving of any directions³ or consent in pursuance of a condition included in a licence by virtue of the specified statutory provisions⁴;
- 2068 (4) the determination of a question referred to the Gas and Electricity Markets Authority ('GEMA')⁵ or the Secretary of State⁶ in pursuance of a condition included in a licence⁷;
- 2069 (5) the determination of a dispute referred⁸ to the Authority;
- 2070 (6) the making of a final order⁹, the making or confirmation of a provisional order¹⁰ or the revocation of a final order or of a provisional order which has been confirmed,

the Authority or the Secretary of State must publish a notice¹¹ stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested¹². In preparing such a notice the Authority or the Secretary of State must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons, whether corporate or unincorporate, where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body¹³. The Authority must send a copy of a notice published in respect of a decision mentioned in heads (1) to (4) above or in head (6) above to the licence holder¹⁴ to whose licence, or to whom, the decision relates¹⁵.

The above provisions do not apply to a decision resulting in any provision which the Secretary of State has directed¹⁶ the Authority not to enter in the register of licences and other matters which is required¹⁷ to be kept¹⁸.

1 For the meaning of 'licence' see PARA 1041 note 12 ante.

2 For the meaning of 'modification' see PARA 1035 note 3 ante.

3 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

4 Ie by virtue of *ibid* s 7(3)(a) or (b) (as amended): see PARA 1068 post.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Ie by virtue of the Electricity Act 1989 s 7(3)(c) (as amended): see PARA 1068 post.

8 Ie a dispute referred under *ibid* s 23(1) (as substituted): see PARA 1100 post.

9 For the meaning of 'final order' see PARA 1207 note 7 post.

- 10 For the meaning of 'provisional order' see PARA 1207 note 9 post.
- 11 'Notice' means notice in writing: Electricity Act 1989 s 64(1). As to publication by the Authority see PARA 1045 note 6 ante.
- 12 Ibid s 49A(1), (2) (s 49A added by the Utilities Act 2000 s 42).
- 13 Electricity Act 1989 s 49A(4) (as added: see note 12 supra).
- 14 For the meaning of 'licence holder' see PARA 1041 note 12 ante.
- 15 Electricity Act 1989 s 49A(3) (as added: see note 12 supra).
- 16 Ie under ibid s 49(4) (as amended): see PARA 1046 ante.
- 17 Ie under ibid s 49 (as amended): see PARA 1046 ante.
- 18 Ibid s 49A(5) (as added: see note 12 supra).

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1048. Other statutory powers and duties of the Secretary of State.

The Secretary of State¹ has a number of other statutory powers and duties for the purpose of carrying out his general functions and duties relating to electricity². He may, for example:

- 2071 (1) grant exemption from any of the prohibitions³ on carrying out specified activities relating to electricity without a licence⁴ and revoke or withdraw such exemptions⁵;
- 2072 (2) issue a direction to the Gas and Electricity Markets Authority ('GEMA')⁶ not to impose a modification condition on the transfer of an electricity licence⁷ or not to make a modification in the conditions of a licence⁸ or in the standard conditions of licences⁹;
- 2073 (3) institute certain criminal proceedings¹⁰;
- 2074 (4) modify, during a transitional period, the conditions of certain licences for the purpose of increasing the amount of electricity generated by microgeneration¹¹;
- 2075 (5) direct the Competition Commission¹² not to proceed with a reference to it or not to give effect to a variation of a reference¹³;
- 2076 (6) direct the Authority not to publish certain commercially sensitive material¹⁴;
- 2077 (7) by order, alter the activities requiring a licence¹⁵;
- 2078 (8) make regulations entitling an electricity distributor to recover expenditure incurred in making a connection to premises¹⁶;
- 2079 (9) by order impose on electricity distributors and suppliers an obligation to achieve, within a specified period and in accordance with the order, the carbon emissions reduction target to be determined by the Authority¹⁷;
- 2080 (10) make an order containing a scheme for the adjustment of charges for electricity to help disadvantaged groups of customers¹⁸;
- 2081 (11) make regulations concerning the supply and safety of electricity¹⁹ and grant exemptions from certain requirements of such regulations²⁰;
- 2082 (12) appoint electrical inspectors²¹;
- 2083 (13) give directions for preserving the security of electricity supplies²²;
- 2084 (14) direct that proposed works for the establishment or conversion of an electricity generating station to be fuelled by crude liquid petroleum, any petroleum product or natural gas are not to be carried out²³;
- 2085 (15) by order impose the renewables obligation on designated electricity suppliers²⁴;
- 2086 (16) by order require the continued payment of fossil fuel levy²⁵;
- 2087 (17) give directions with regard to fuel stocks at certain generating stations²⁶;
- 2088 (18) give the required consent for the construction etc of generating stations²⁷ and the installation of overhead electric lines²⁸;
- 2089 (19) give financial assistance for the discharge of nuclear liabilities²⁹.

The Secretary of State must:

- 2090 (a) hold a public inquiry in certain circumstances before granting such a consent as is described in head (18) above³⁰;

2091 (b) in prescribed circumstances, give a screening opinion as to whether development requiring the consent described in head (18) above is EIA development³¹ and a scoping opinion as to the contents of the required environmental statement³².

He is given prospective powers to make regulations concerning billing disputes³³, to issue directions for the purpose of implementing the new trading and transmission arrangements under the Energy Act 2004³⁴ and to modify licence conditions for offshore transmission and distribution³⁵. His consent is required for the exercise of certain powers by the Authority, in particular its powers to make regulations³⁶.

The Secretary of State's specific powers and duties relating to electricity are discussed in more detail below³⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Secretary of State's general functions and duties relating to electricity see PARA 1041 et seq ante. See also PARA 706 et seq ante.

3 Ie any of the prohibitions set out in the Electricity Act 1989 s 4(1)(as amended): see PARA 1050 post.

4 See ibid s 5(1)-(7) (as substituted and amended); and PARA 1051 post.

5 See ibid s 5(8)-(12) (as substituted); and PARA 1052 post.

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 See the Electricity Act 1989 s 7A(8) (as added); and PARA 1070 post.

8 See ibid s 11(4) (as amended); and PARA 1074 post.

9 See ibid s 8A(5) (as added); and PARA 1069 post; s 11A(5) (as added); and PARA 1075 post.

10 See eg ibid s 4(3) (as amended); and PARA 1050 post.

11 See the Climate Change and Sustainable Energy Act 2006 s 8; and PARA 1077 post.

12 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 post), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post) or s 56C (as added and amended) (references regarding licensable activities: see PARAS 1089-1090 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

13 See the Electricity Act 1989 s 12(5) (as amended); and PARA 1081 post.

14 See eg ibid s 13(6) (as amended); and PARA 1083 post; s 56D(8) (as added); and PARA 1091 post.

15 See ibid s 56A (as added); and PARA 1087 post.

16 See ibid s 16(2) (as substituted); and PARA 1096 post.

17 See ibid s 41A(1) (as added and amended); and PARA 1137 post.

18 See ibid s 43A(1) (as added); and PARA 1143 post.

19 See ibid s 29 (as amended); and PARA 1152 post.

20 See the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 33; and PARA 1158 post.

21 See the Electricity Act 1989 s 30 (as amended); and PARA 1178 post.

- 22 See *ibid* s 96; and PARA 1179 post.
- 23 See the Energy Act 1976 s 14(3); and PARA 1216 post.
- 24 See the Electricity Act 1989 s 32 (as substituted and amended); and PARA 1219 post.
- 25 See the Utilities Act 2000 s 67(1)(d); and PARA 1239 post. As to fossil fuel levy see PARA 1241 et seq post.
- 26 See the Electricity Act 1989 s 34 (as amended); and PARA 1248 post.
- 27 See *ibid* s 36 (as amended); and PARA 1249 post.
- 28 See *ibid* s 37; and PARA 1252 post.
- 29 See *ibid* s 97, Sch 12 (as amended); and PARA 1275 post.
- 30 See *ibid* s 36(8), Sch 8 paras 2(2), 3(2); and PARAS 1261-1262 post.
- 31 For the meaning of 'EIA development' see PARA 1254 post.
- 32 See the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, regs 5, 7; and PARAS 1255-1256 post.
- 33 See the Electricity Act 1989 s 44A(1) (as prospectively added) (not in force); and PARA 1144 post.
- 34 See the Energy Act 2004 s 139(1) (not in force); and PARA 1071 post. As to his transitional powers to modify licence conditions for the purpose of implementing those arrangements see s 134; and PARA 1080 post.
- 35 See *ibid* s 90 (not in force); and PARA 1078 post. As to the extension of transmission licences offshore by the modification of co-ordination licences see s 91 (not in force); and PARA 1079 post.
- 36 See eg the Electricity Act 1989 s 6C(4) (as added); and PARA 1067 post; s 39A(1) (as added); and PARA 1111 post.
- 37 See PARA 1050 et seq post.

UPDATE

1048 Other statutory powers and duties of the Secretary of State

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1049. Other statutory powers and duties of the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ has a number of other statutory powers and duties for the purpose of carrying out its general functions and duties relating to electricity². For example, the Authority:

- 2092 (1) is responsible for granting generation, transmission, distribution, supply and interconnector licences³;
- 2093 (2) has power to make regulations under a number of provisions of the Electricity Act 1989, usually conditional on the Secretary of State's⁴ consent⁵;
- 2094 (3) may modify the conditions of licences⁶;
- 2095 (4) may determine certain disputes⁷;
- 2096 (5) may order licence holders⁸ to comply with certain statutory provisions⁹ and impose penalties on them¹⁰;
- 2097 (6) must refer certain consumer complaints to the Gas and Electricity Consumer Council¹¹;
- 2098 (7) may prescribe overall standards of performance and determine standards of performance for individual cases¹² and may determine targets for reductions in carbon emissions¹³;
- 2099 (8) has powers to collect information with respect to levels of performance in relation to such standards¹⁴; and
- 2100 (9) may institute certain criminal proceedings¹⁵.

The Authority's specific powers and duties relating to electricity are discussed in more detail below¹⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Authority's general functions and duties relating to electricity see PARA 1041 et seq ante.

3 See PARA 1065 et seq post.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 See eg paras 1110-1111, 1136 post.

6 See PARA 1074 et seq post.

7 See PARA 1100 post.

8 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

9 See the Electricity Act 1989 (ss 25-27) (as amended); and PARA 1207 et seq post.

10 See ibid ss 27A-27F (as added); and PARA 1212 et seq post.

11 See *ibid* s 46(9) (as substituted); and PARA 1145 post. As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

12 See PARA 1109 et seq post.

13 See PARA 1137 post.

14 See PARA 1138 post.

15 See eg the Electricity Act 1989 s 4(3) (as amended); and PARA 1050 post.

16 See PARA 1050 et seq post.

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(4) REGULATION OF ELECTRICITY SUPPLY ETC

(i) Licensing of Activities relating to Electricity

A. PROHIBITION ON UNLICENSED SUPPLY ETC

1050. Prohibition on unauthorised supply etc.

A person who:

- 2101 (1) generates¹ electricity for the purpose of giving a supply² to any premises³ or enabling a supply to be so given;
- 2102 (2) participates in the transmission⁴ of electricity⁵ for that purpose;
- 2103 (3) distributes⁶ electricity for that purpose;
- 2104 (4) supplies electricity to any premises;
- 2105 (5) participates in the operation of an electricity interconnector⁷,

is guilty of an offence unless he is authorised to do so by a licence⁸. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine⁹; but no proceedings in respect of such an offence may be instituted in England and Wales except by or on behalf of the Secretary of State¹⁰ or the Gas and Electricity Markets Authority ('GEMA')¹¹.

1 For the meaning of 'generate' see PARA 1041 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

3 For these purposes, and as from a day to be appointed, references to premises are references to premises situated at a relevant place, or at a place that is not in a renewable energy zone but is in an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172); Electricity Act 1989 s 4(5) (added by the Energy Act 2004 s 89(2), as from a day to be appointed for these purposes under s 198(2); at the date at which this title states the law, no such day had been appointed). For the meaning of 'premises' generally see PARA 1041 note 5 ante; and for the meaning of 'relevant place' see PARA 1041 note 5 ante.

4 For the meaning of 'transmission' see PARA 1041 note 6 ante.

5 The reference in head (2) in the text to a person who participates in the transmission of electricity is to a person who (1) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place; or (2) makes available for use for the purposes of such a transmission system anything which forms part of it; but for these purposes a person is not to be regarded as making something available just because he consents to its being made available by another: Electricity Act 1989 s 4(3A), (3B) (added by the Energy Act 2004 s 135(1), (3)). For the meaning of 'transmission system' see PARA 1041 note 6 ante.

6 For the meaning of 'distribute' see PARA 1041 note 5 ante.

7 For the meaning of 'electricity interconnector' see PARA 1041 note 11 ante. A reference in the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1051 et seq post) to participating in the operation of an electricity interconnector is a reference to (1) co-ordinating and directing the flow of electricity

into or through an electricity interconnector; or (2) making such an interconnector available for use for the conveyance of electricity; and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector: s 4(3C) (s 4(3C), (3D) added by the Energy Act 2004 s 145(1), (3)). For the purposes of head (2) *supra*, a person is not to be regarded as making something available just because he consents to its being made available by another: Electricity Act 1989 s 4(3D) (as so added).

8 Ibid s 4(1) (amended by the Utilities Act 2000 ss 28(1), (2), 108, Sch 8; Energy Act 2004 ss 135(1), (2), 145(1), (2), 197(9), Sch 23 Pt 1). At the date at which this title states the law, the amendment made by s 197(9), Sch 23 Pt 1 (which repeals the word 'or' between heads (2) and heads (3) in the text), was not in force, but that word has been removed from the text. For the meaning of 'licence' see PARA 1041 note 12 *ante*.

9 Electricity Act 1989 s 4(2). As to the statutory maximum see PARA 689 note 2 *ante*.

10 As to the Secretary of State see PARA 601 note 1 *ante*.

11 Electricity Act 1989 s 4(3) (amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* *ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.

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B. EXEMPTIONS

(A) IN GENERAL

1051. Exemptions from the prohibition on unlicensed supply etc; in general.

The Secretary of State¹ may by order² grant exemption from any of the prohibitions set out in the previous paragraph³:

- 2106 (1) either to a person or to persons of a class⁴;
- 2107 (2) either generally or to such extent as may be specified in the order; and
- 2108 (3) either unconditionally or subject to such conditions as may be so specified⁵.

Before making such an order the Secretary of State must give notice⁶:

- 2109 (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
- 2110 (b) stating the reasons why he proposes to make the order in the terms proposed; and
- 2111 (c) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations with respect to the proposals may be made,

and must consider any representations which are duly made in respect of the proposals and not withdrawn⁷. The notice so required must be given by serving a copy of it⁸ on the Gas and Electricity Markets Authority ('GEMA')⁹ and the Gas and Electricity Consumer Council¹⁰ and by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order¹¹.

An exemption may be granted either indefinitely or for a period specified in, or determined by or under, the exemption¹²; and conditions subject to which an exemption is granted may, in particular, require any person carrying on any activity in pursuance of the exemption:

- 2112 (i) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
- 2113 (ii) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
- 2114 (iii) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified¹³.

Notice of an exemption granted to a person must be given by serving a copy of the exemption on him and by publishing the exemption in such manner as the Secretary of State considers

appropriate for bringing it to the attention of other persons who may be affected by it¹⁴; and notice of an exemption granted to persons of a class must be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class and other persons who may be affected by it¹⁵.

Class exemptions have been granted:

- 2115 (A) with respect to electricity generation¹⁶, to small generators¹⁷, offshore generators¹⁸, generators not exceeding 100 megawatts¹⁹ and generators never subject to central dispatch²⁰, in each case being persons other than licensed generators²¹;
- 2116 (B) with respect to electricity distribution²², to small distributors²³, on-site distributors²⁴, distributors to non-domestic consumers²⁵ and offshore distributors²⁶, in each case being persons other than licensed distributors²⁷; and
- 2117 (C) with regard to electricity supply²⁸, to small suppliers²⁹, persons who make a supply by way of resale³⁰, on-site suppliers³¹ and offshore suppliers³², in each case being persons other than licensed suppliers³³.

A number of individual exemptions have also been granted³⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of orders generally see the Electricity Act 1989 s 106 (as amended); and PARA 1306 post.

3 I.e. exemption from any of ibid s 4(1)(a)-(d) (as amended): see PARA 1050 ante at heads (1)-(5) in the text.

4 For the purposes of the Electricity Act 1989, any class or description may be framed by reference to any matters or circumstances whatever: s 111(2).

5 Ibid s 5(1) (s 5 substituted by the Utilities Act 2000 s 29; the Electricity Act 1989 s 5(1) amended by the Energy Act 2004 s 145(1), (4)).

6 For the meaning of 'notice' see PARA 1047 note 11 ante.

7 Electricity Act 1989 s 5(2) (as substituted: see note 5 supra).

8 As to the service of notices and documents see PARA 1307 post.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

11 Electricity Act 1989 s 5(2) (as substituted: see note 5 supra).

12 Ibid s 5(6) (as substituted: see note 5 supra).

13 Ibid s 5(7) (as substituted: see note 5 supra).

14 Ibid s 5(4) (as substituted: see note 5 supra).

15 Ibid s 5(5) (as substituted: see note 5 supra).

16 I.e. an exemption from the prohibition contained in ibid s 4(1)(a): see PARA 1050 ante at head (1) in the text.

17 See the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(a), Sch 2 Class A; and PARA 1053 post. A person is to be treated as falling within any class specified in Sch 2, 3 or 4 (as amended) notwithstanding that he generates, distributes or supplies electricity, as the case may

be, in circumstances other than those specified in the description of that class if the generation, distribution or supply of electricity in those circumstances would, if taken on its own, be such that that person would fall within another class in Sch 2, 3 or 4 (as amended), as the case may be: art 3(2).

18 See *ibid* Sch 2 Class B; and PARA 1054 post.

19 See *ibid* Sch 2 Class C (as substituted); and PARA 1055 post.

20 See *ibid* Sch 2 Class D (as substituted); and PARA 1056 post.

21 'Licensed generator' means the holder of a licence under the Electricity Act 1989 s 6(1)(a) (as substituted) (see PARA 1065 post): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

22 Is an exemption from the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

23 See the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class A; and PARA 1057 post.

24 See *ibid* Sch 3 Class B; and PARA 1058 post.

25 See *ibid* Sch 3 Class C; and PARA 1059 post.

26 See *ibid* Sch 3 Class D (as added); and PARA 1060 post.

27 'Licensed distributor' means the holder of a licence under the Electricity Act 1989 s 6(1)(c) (as substituted and amended) (see PARA 1065 post): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

28 Is an exemption from the prohibition contained in the Electricity Act 1989 s 4(1)(c): see PARA 1050 ante at head (4) in the text.

29 See the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class A; and PARA 1061 post.

30 See *ibid* Sch 4 Class B; and PARA 1062 post.

31 See *ibid* Sch 4 Class C; and PARA 1063 post.

32 See *ibid* Sch 4 Class D; and PARA 1064 post.

33 'Licensed supplier' means the holder of a licence under the Electricity Act 1989 s 6(1)(d) (as substituted and amended) (see PARA 1065 post): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

34 See (1) the Electricity (Exemption from the Requirement for a Generation Licence) (England and Wales) Order 2002, SI 2002/823; (2) the Electricity (Exemption from the Requirement for a Generation Licence) (England and Wales) Order 2003, SI 2003/2380; (3) the Electricity (Exemption from the Requirement for a Generation Licence) (No 2) Order 2003, SI 2003/3318; (4) the Electricity (Exemption from the Requirement for a Generation Licence) Order 2004, SI 2004/1179; (5) the Electricity (Exemption from the Requirement for a Generation Licence) (No 2) Order 2004, SI 2004/1776; (6) the Electricity (Exemption from the Requirement for a Generation Licence) (England and Wales) Order 2005, SI 2005/2242; (7) the Electricity Act 1989 (Exemption from the Requirement for an Interconnector Licence) Order 2006, SI 2006/2002; (8) the Electricity Act 1989 (Exemption from the Requirement for a Generation Licence) (England and Wales) Order 2006, SI 2006/2978; (9) the Electricity Act 1989 (Exemption from the Requirement for a Generation Licence) (Gunfleet Sand) (England and Wales) Order 2007, SI 2007/990; (10) the Electricity Act 1989 (Exemption from the Requirement for a Generation Licence) (Burbo Bank) (England and Wales) Order 2007, SI 2007/993. Orders relating to Scotland only are not recorded in this work.

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1052. Revocation or withdrawal of exemptions.

The Secretary of State¹ may by order²:

2118 (1) revoke an order by which an exemption³ was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions:

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258. (a) at the person's request;

259. (b) in accordance with any provision of the order by which the exemption was granted; or

260. (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect⁴;

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2119 (2) revoke an order by which an exemption was granted to persons of a class⁵ or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions:

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261. (a) in accordance with any provision of the order by which the exemption was granted; or

262. (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect⁶.

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The Secretary of State may also by direction⁷ withdraw an exemption granted to persons of a class from any person of that class:

2120 (i) at the person's request;

2121 (ii) in accordance with any provision of the order by which the exemption was granted; or

2122 (iii) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person⁸.

Before making an order under head (1)(b), head (1)(c) or head (2) above, or giving a direction under head (ii) or head (iii) above, the Secretary of State must consult the Gas and Electricity Markets Authority ('GEMA')⁹ and give notice¹⁰ of his proposal to do so, with reasons, and of a period within which representations may be made to him¹¹. The notice so required must be given:

2123 (A) where the Secretary of State is proposing to make an order under head (1)(b) or head (1)(c) above, by serving a copy of it¹² on the person to whom the exemption was granted;

2124 (B) where he is proposing to make an order under head (2) above, by publishing it in such manner as the Secretary of State considers appropriate for

bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
 2125 (c) where he is proposing to give a direction under head (ii) or head (iii) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption¹³.

- 1 As to the Secretary of State see PARA 601 note 1 ante.
- 2 As to the making of orders generally see PARA 1306 post.
- 3 For the meaning of 'exemption' see PARA 1046 note 7 ante. As to exemptions see PARA 1051 ante.
- 4 Electricity Act 1989 s 5(8) (s 5 substituted by the Utilities Act 2000 s 29).
- 5 As to the framing of a class see PARA 1051 note 4 ante. As to class exemptions see PARA 1053 et seq post.
- 6 Electricity Act 1989 s 5(9) (as substituted: see note 4 supra).
- 7 As to the giving of directions generally see PARA 1306 post.
- 8 Electricity Act 1989 s 5(10) (as substituted: see note 4 supra).
- 9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 10 For the meaning of 'notice' see PARA 1047 note 11 ante.
- 11 Electricity Act 1989 s 5(11) (as substituted: see note 4 supra).
- 12 As to service of notices and documents see PARA 1307 post.
- 13 Electricity Act 1989 s 5(12) (as substituted: see note 4 supra).

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(B) GENERATION; CLASS EXEMPTIONS

1053. Generation exemptions; Class A.

Persons, other than licensed generators¹, who do not at any time provide more electrical power from any one generating station than:

- 2126 (1) 10 megawatts; or
- 2127 (2) 50 megawatts in the case of a generating station with a declared net capacity² of less than 100 megawatts,

are exempt from the statutory prohibition³ on unlicensed generation of electricity⁴. For these purposes there must be disregarded power supplied to:

- 2128 (a) a single consumer⁵ who occupies premises which are on the same site⁶ as the premises where the generating station is situated and who consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B of the prescribed supply exemptions⁷ and consumes at those premises any of such power not so supplied by him; or
- 2129 (b) two or more consumers who form a qualifying group⁸ each of whom occupies premises which are on the same site as the premises where the generating station is situated and consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B of the prescribed supply exemptions⁹ and consumes at those premises any of such power not so supplied by him;

and for the purposes of head (2) above, power temporarily provided in excess of 50 megawatts due to technical circumstances outside the reasonable control of the person providing that power must also be disregarded¹⁰.

A person is to be treated as generating electricity at any time if he is the operator of plant or equipment which at that time:

- 2130 (i) is generating or capable of generating electricity; or
- 2131 (ii) is not capable of generating electricity only by reason of the maintenance, repair or testing of the plant or equipment¹¹.

1 For the meaning of 'licensed generator' see PARA 1051 note 21 ante.

2 The declared net capacity of a generating station which is driven by any means other than water, wind or solar power is the highest generation of electricity (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant less so much of that capacity as is consumed by the plant: Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1), Sch 1 para 1. The declared net capacity of a generating station which is driven by water, wind or solar power must be

ascertained by the application of the formula $A \times B$ where (1) 'A' is the highest generation of electricity (at the main alternator terminals or, in the case of direct current generation, at the output terminals of the direct current to alternating current converter) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant; and (2) 'B' has the value set out as applicable to the particular description of station, ie (a) for a station driven by tidal or wave power, 0.33; (b) for a station driven by any form of water power other than tidal or wave power, 1; (c) for a station driven by wind power, 0.43; and (d) for a station driven by solar power, 0.1: Sch 1 para 2.

3 Ie the prohibition contained in the Electricity Act 1989 s 4(1)(a): see PARA 1050 ante at head (1) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(a), Sch 2 Class A. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

5 'Consumer' means a person to whom electricity is supplied (whether or not he is the same person as the person who supplies the electricity: *ibid* art 2(1)).

6 Premises are to be treated as on the same site as each other if they are (1) the same premises; (2) immediately adjoining each other; or (3) separated from each other only by a road, railway or watercourse or by other premises occupied by the consumer in question, by any other person who together with that consumer forms a qualifying group (see note 8 *infra*), or by the person seeking to fall within the class in question specified in *ibid* Sch 2 (as amended) or Sch 4: art 2(2)(e).

7 Ie the description of *ibid* Sch 4 Class B: see PARA 1062 post.

8 'Qualifying group' means a group of two or more consumers which are all bodies corporate, and which either (1) are each connected to each other, provided that any body corporate which is connected to, or a parent undertaking in relation to, any of them is a parent undertaking in relation to all of them; or (2) are each related to each other, were related to each other on 31 March 1990 and were supplied with electricity on 31 March 1990 by the person seeking to fall within the class in question specified in *ibid* Sch 2 (as amended) or Sch 4: art 2(1). For these purposes: (a) one body corporate is to be treated as related to another if (i) one of them is a 75% subsidiary of the other; or (ii) both of them are 75% subsidiaries of a third body corporate; and '75% subsidiary' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 838 (as amended); and (b) one body corporate is to be treated as connected to another if (i) 50% or more of the ordinary share capital of one of them is owned directly or indirectly by the other; or (ii) 50% or more of the ordinary share capital of each of them is owned directly or indirectly by a third body corporate; and for the purpose of determining whether 50% or more of the ordinary share capital of a body corporate is owned directly or indirectly by another body corporate the provisions of the Income and Corporation Taxes Act 1988 s 838(2)-(10) apply in relation to this provision as they apply in relation to s 838(1) (as amended): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(2)(b), (c). 'Parent undertaking' is to be construed in accordance with the Companies Act 1985 s 258 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1162, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed); and 'ordinary share capital' has the same meaning as in the Income and Corporation Taxes Act 1988 s 832(1) (as amended): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

9 See note 7 *supra*.

10 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, Sch 2 Class A.

11 *Ibid* art 2(2)(d).

UPDATE

1053 Generation exemptions; Class A

NOTE 8--Companies Act 2006 s 1162 in force on 6 April 2008: SI 2007/3495.

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1054. Generation exemptions; Class B.

Persons, other than licensed generators¹, who do not generate electricity² except at a generating station which is situated on an offshore installation³ and do not supply such electricity except to premises which constitute or are comprised in an offshore installation, are exempt from the statutory prohibition⁴ on unlicensed generation of electricity⁵.

1 For the meaning of 'licensed generator' see PARA 1051 note 21 ante.

2 As to when a person is treated as generating electricity for these purposes see PARA 1053 the text and note 11 ante.

3 For these purposes, 'offshore installation' has the same meaning as in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (as amended) (see reg 3 (as amended)); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

4 Ie the prohibition contained in the Electricity Act 1989 s 4(1)(a): see PARA 1050 ante at head (1) in the text.

5 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(a), Sch 2 Class B. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

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1055. Generation exemptions; Class C.

Persons, other than licensed generators¹, who do not provide any electrical power² except from generating stations which:

2132 (1) on 30 September 2000 were connected to the total system in England and Wales³ or the total system in Scotland⁴; and

2133 (2) are not normally capable of exporting more than 100 megawatts to the total system in Great Britain⁵, disregarding power temporarily provided in excess of 100 megawatts due to technical circumstances outside the reasonable control of the person providing that power,

are exempt from the statutory prohibition⁶ on unlicensed generation of electricity⁷.

1 For the meaning of 'licensed generator' see PARA 1051 note 21 ante.

2 As to when a person is treated as generating electricity for these purposes see PARA 1053 the text and note 11 ante.

3 'Total system in England and Wales' means the transmission system located in England and Wales of the licensed transmitter and all distribution systems located in England and Wales; and 'licensed transmitter' means the holder of a licence under the Electricity Act 1989 s 6(1)(b) (as substituted) (see PARA 1065 post): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1) (definition added by SI 2005/488).

4 'Total system in Scotland' means all transmission and distribution systems located in Scotland: Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1) (definition as added: see note 3 supra).

5 'Total system in Great Britain' means all transmission systems and distribution systems, located in Great Britain, of holders of licences [required] under the Electricity Act 1989 s 4(1)(b) and (bb) (as substituted and added respectively) (see PARA 1050 ante at heads (2)-(3) in the text): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1) (definition as added: see note 3 supra). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

6 Ie the prohibition contained in the Electricity Act 1989 s 4(1)(a): see PARA 1050 ante at head (1) in the text.

7 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(a), Sch 2 Class C (substituted by SI 2005/488). As to when a person falls within a particular class of exemption see the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(2), cited in PARA 1051 note 17 ante.

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1056. Generation exemptions; Class D.

Persons, other than licensed generators¹, who do not provide electrical power² except from generating stations which were connected to the total system in England and Wales³ on 30 September 2000, provided that under the terms and conditions of their generation licences⁴ they were not on that date required to submit those stations to central dispatch by the licensed transmitter⁵, are exempt from the statutory prohibition⁶ on unlicensed generation of electricity⁷. Central dispatch was the process by which the licensed transmitter scheduled and issued direct instructions to licensed generators for the dispatch of electrical power prior to 27 March 2001⁸.

The exemption so granted is, however, subject to compliance with the following condition, namely that the highest generation of electricity from any generating station of such a person, at the main alternator terminals, which can be maintained indefinitely without causing damage to the plant (the 'maximum capacity') must not at any time exceed the maximum capacity of that generating station on 30 September 2000⁹.

1 For the meaning of 'licensed generator' see PARA 1051 note 21 ante.

2 As to when a person is treated as generating electricity for these purposes see PARA 1053 the text and note 11 ante.

3 For the meaning of 'total system in England and Wales' see PARA 1055 note 3 ante.

4 I.e. their licences granted under the Electricity Act 1989 s 6(1)(a) (now as substituted): see PARA 1065 post.

5 For the meaning of 'licensed transmitter' see PARA 1055 note 3 ante.

6 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(a): see PARA 1050 ante at head (1) in the text.

7 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(a), Sch 2 Class D (substituted by SI 2005/488). As to when a person falls within a particular class of exemption see the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(2), cited in PARA 1051 note 17 ante.

8 See *ibid* Sch 2 Class D (as substituted: see note 7 *supra*).

9 *Ibid* art 4(1), (2).

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(C) DISTRIBUTION; CLASS EXEMPTIONS

1057. Distribution exemptions; Class A.

Persons, other than licensed distributors¹, who do not at any time distribute more electrical power than 2.5 megawatts for the purpose of giving a supply to domestic consumers² or enabling a supply to be so given with that electrical power, are exempted from the statutory prohibition³ on unlicensed distribution of electricity⁴. For these purposes, electrical power distributed by a body corporate which is associated⁵ with, connected⁶ to or related⁷ to any distributor and which does not fall within Class B below⁸, is to be treated as distributed by that distributor⁹.

The exemption so granted is subject to compliance with the following conditions¹⁰, namely:

- 2134 (1) that such persons must furnish to the Gas and Electricity Markets Authority ('GEMA')¹¹, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Act 1989¹²;
- 2135 (2) that such persons who at any time distribute more electrical power than 500 kilowatts to domestic consumers and who are vertically integrated undertakings¹³ must keep separate accounts for their distribution activities in their internal accounts¹⁴.

1 For the meaning of 'licensed distributor' see PARA 1051 note 27 ante.

2 'Domestic consumer' means a consumer supplied with electricity at domestic premises (but excluding such consumer in so far as he is supplied at premises other than domestic premises); and 'domestic premises' means premises at which a supply is taken wholly or mainly for domestic purposes: Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

3 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class A. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

5 One body corporate is to be treated as associated with another if (1) one of them is a subsidiary of the other; or (2) both of them are subsidiaries of the same holding company; and 'holding company' and 'subsidiary' have the same meanings as in the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(2)(a).

6 As to when a body corporate is connected to another see PARA 1053 note 8 ante.

7 As to when a body corporate is related to another see PARA 1053 note 8 ante.

8 I.e. which does not fall within the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, Sch 3 Class B: see PARA 1058 post.

9 Ibid Sch 3 Class A, PARA A.1.

10 Ibid art 4(3).

11 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

12 As to the Authority's functions under the Electricity Act 1989 see PARA 1041 et seq ante.

13 'Vertically integrated undertaking' means a person who carries on two or more of the activities of generating, transmitting, distributing and supplying electricity: Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 2(1).

14 Ibid art 4(4)(a), (b) (amended by SI 2007/629).

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1058. Distribution exemptions; Class B.

Persons, other than licensed distributors¹, who do not at any time distribute from any distribution system more electrical power than one megawatt for the purpose of giving a supply to domestic consumers² or enabling a supply to be so given with that electrical power, are exempted from the statutory prohibition³ on unlicensed distribution of electricity⁴, provided that each domestic consumer receives the electrical power, disregarding stand-by electrical power⁵, from a generating station embedded in the same distribution system as himself⁶.

The exemption so granted is subject to compliance with the following conditions⁷, namely:

- 2136 (1) that such persons must furnish to the Gas and Electricity Markets Authority ('GEMA')⁸, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Act 1989⁹;
- 2137 (2) that such persons who at any time distribute more electrical power than 500 kilowatts to domestic consumers and who are vertically integrated undertakings¹⁰ must keep separate accounts for their distribution activities in their internal accounts¹¹.

1 For the meaning of 'licensed distributor' see PARA 1051 note 27 ante.

2 For the meaning of 'domestic consumer' see PARA 1057 note 2 ante.

3 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class B. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

5 For the purposes of *ibid* Sch 3 Class B 'stand-by electrical power' means electricity supplied periodically or intermittently to a person to make good any shortfall in the availability of electricity to that person from its own generation for the purposes of its supply of electricity to domestic consumers seeking such supply, where such shortfall arises from the generating station being wholly or partly out of commission for a temporary period: Sch 3 Class B, PARA B.1.

6 *Ibid* Sch 3 Class B.

7 *Ibid* art 4(3).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 As to the Authority's functions under the Electricity Act 1989 see PARA 1041 et seq ante.

10 For the meaning of 'vertically integrated undertaking' see PARA 1057 note 13 ante.

11 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 4(4)(a), (b) (amended by SI 2007/629).

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1059. Distribution exemptions; Class C.

Persons, other than licensed distributors¹, who do not at any time distribute electrical power for the purpose of giving a supply to domestic consumers² or enabling a supply to be so given with that electrical power, are exempted from the statutory prohibition³ on unlicensed distribution of electricity⁴.

The exemption so granted is subject to compliance with the following conditions⁵, namely:

- 2138 (1) that such persons must furnish to the Gas and Electricity Markets Authority ('GEMA')⁶, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Act 1989⁷;
- 2139 (2) that such persons who at any time distribute more electrical power than 500 kilowatts to domestic consumers and who are vertically integrated undertakings⁸ must keep separate accounts for their distribution activities in their internal accounts⁹.

1 For the meaning of 'licensed distributor' see PARA 1051 note 27 ante.

2 For the meaning of 'domestic consumer' see PARA 1057 note 2 ante.

3 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class C. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

5 Ibid art 4(3).

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 As to the Authority's functions under the Electricity Act 1989 see PARA 1041 et seq ante.

8 For the meaning of 'vertically integrated undertaking' see PARA 1057 note 13 ante.

9 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 4(4)(a), (b) (amended by SI 2007/629).

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1060. Distribution exemptions; Class D.

Persons, other than licensed distributors¹, who distribute electricity generated by an offshore generating station² by means of a distribution system which is not used to convey electricity generated otherwise than by offshore generating stations, are exempted from the statutory prohibition³ on unlicensed distribution of electricity⁴.

The exemption so granted is subject to compliance with the following conditions⁵, namely:

- 2140 (1) that such persons must furnish to the Gas and Electricity Markets Authority ('GEMA')⁶, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Act 1989⁷;
- 2141 (2) that such persons must not distribute electricity for the purpose of giving a supply to domestic premises⁸.

1 For the meaning of 'licensed distributor' see PARA 1051 note 27 ante.

2 For these purposes, 'offshore generating station' means a generating station that is situated within an area of offshore waters; and 'offshore waters' means (1) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; (2) waters within an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172); and (3) waters within an area designated under the Energy Act 2004 s 84(4) (see PARA 1310 post): Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class D, PARA D.1 (Sch 3 Class D added by SI 2007/629). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

3 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class D (as added: see note 2 supra). As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

5 Ibid art 4(3).

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 As to the Authority's functions under the Electricity Act 1989 see PARA 1041 et seq ante.

8 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 4(4)(a), (c) (art 4(4)(c) added by SI 2007/629). For the meaning of 'domestic premises' see PARA 1057 note 2 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/B. EXEMPTIONS/(D) Supply; Class Exemptions/1061. Supply exemptions; Class A.

(D) SUPPLY; CLASS EXEMPTIONS

1061. Supply exemptions; Class A.

Persons, other than licensed suppliers¹, who do not supply any electricity except electricity which they generate themselves² and who do not at any time supply more electrical power than 5 megawatts of which not more than 2.5 megawatts is supplied to domestic consumers³, are exempted from the statutory prohibition⁴ on unlicensed supply of electricity⁵. For these purposes, electrical power supplied by a body corporate which is associated⁶ with any supplier is to be treated as supplied by that supplier⁷.

The exemption so granted is subject to compliance with the following conditions⁸, namely that a person who at any time supplies more electrical power than 500 kilowatts:

- 2142 (1) must not supply electricity to domestic consumers at a price which exceeds such maximum price as may be specified in, or as may be calculated by such method and by reference to such matters as may be specified in, a direction given by the Gas and Electricity Markets Authority ('GEMA')⁹; and
- 2143 (2) must give at least seven days' notice in writing to a domestic consumer before entering into a contract to supply the same¹⁰.

The notice referred to in head (2) above must be in such form as the Authority may direct and must, in particular, specify that the person is authorised to supply electricity by exemption¹¹ and is therefore not subject to the licence conditions and the obligations under the Electricity Act 1989 that he would be subject to if he were a licensed supplier¹².

1 For the meaning of 'licensed supplier' see PARA 1051 note 33 ante.

2 As to when a person is treated as generating electricity see PARA 1053 ante.

3 For the meaning of 'domestic consumer' see PARA 1057 note 2 ante.

4 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(c): see PARA 1050 ante at head (4) in the text.

5 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class A. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

6 As to when one body corporate is associated with another see PARA 1057 note 5 ante.

7 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class A, PARA A.1.

8 Ibid art 4(5).

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 4(6)(a), (b).

11 le under ibid art 3(1)(c).

12 See ibid art 4(6)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/B. EXEMPTIONS/(D) Supply; Class Exemptions/1062. Supply exemptions; Class B.

1062. Supply exemptions; Class B.

Persons, other than licensed suppliers¹, who:

- 2144 (1) do not supply any electricity except:
175
- 263. (a) electricity which is supplied to their premises either by a licensed supplier or by a Class C supplier²; or
- 264. (b) electricity which they generate themselves³ or which is supplied to them by a person authorised by an exemption to supply electricity when either the supply of electricity which is normally available to them from a licensed supplier or a Class C supplier (their 'normal supply') is interrupted temporarily due to circumstances outside their control or the plant or equipment which is used to generate electricity for the purpose of giving their normal supply is being tested; and
176
- 2145 (2) to the extent that they supply Class C electricity⁴:
177
- 265. (a) supply such electricity only to premises which are on the same site⁵ as the relevant premises⁶; and
- 266. (b) comply with all the prescribed conditions⁷,
178

are exempted from the statutory prohibition⁸ on unlicensed supply of electricity⁹.

The conditions referred to in head (2) above are as follows:

- 2146 (i) in respect of each relevant premises the supplier must not in the previous year¹⁰ have supplied from those relevant premises an amount of Class C electricity which is more than 10 per cent of the Class C electricity supplied in that year to those relevant premises¹¹;
- 2147 (ii) if during a year the supplier starts to supply Class C electricity from any particular relevant premises for the first time, at the time he starts to make such supplies he must reasonably expect that the total amount of Class C electricity supplied by him during the remainder of that year from those premises will be no more than 10 per cent of the Class C electricity supplied in that year to those relevant premises¹²;
- 2148 (iii) in respect of each relevant premises the supplier must not in any year supply from those relevant premises more than 250 megawatt hours of Class C electricity to domestic consumers¹³.

A supplier is not, if and to the extent that it would lead to his falling outside Class B, to be treated as supplying Class C electricity to any premises during a year in which the relevant premises are being supplied with electricity by licensed suppliers, unless he supplies more electricity in that year than the amount of electricity which is supplied to those relevant premises by licensed suppliers in that year¹⁴.

1 For the meaning of 'licensed supplier' see PARA 1051 note 33 ante.

2 le by a person in circumstances such that he falls within the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class C (see PARA 1063 post) (a 'Class C supplier') provided that for the purpose of determining for the purpose of Sch 4 Class B and Sch 4 Class B, PARAS B.1, B.2 (see the text and notes 4, 6, 10-13 infra), whether a person is supplying electricity in such circumstances, Sch 4 Class C(2)(a), (b), (c), (d) and (e) (see PARA 1063 notes 4-8 post) is to have effect as if sub-para (ii) and the preceding 'and', in each case (see PARA 1063 post at note 4 head (2), note 5 head (2), note 6 head (2), note 7 head (2) and note 8 head (2)), were omitted: see Sch 4 Class B(1)(a)(ii).

3 As to when a person is treated as generating electricity see PARA 1053 ante.

4 For these purposes, 'Class C electricity' means electricity which is supplied by a person in circumstances such that he falls within ibid Sch 4 Class C: Sch 4 Class B, PARA B.1.

5 As to when premises are on the same site see PARA 1053 note 6 ante.

6 For these purposes, 'relevant premises', in relation to any reference to a supplier falling or seeking to fall within the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, Sch 4 Class B, means the premises from which he supplies that electricity: Sch 4 Class B, PARA B.1.

7 le the conditions set out in ibid Sch 4 Class B, PARA B.2: see the text and notes 10-13 infra.

8 le the prohibition contained in the Electricity Act 1989 s 4(1)(c): see PARA 1050 ante at head (4) in the text.

9 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class B. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

10 For these purposes, 'year' means a period of 12 months running from 1 April to 31 March: ibid Sch 4 Class B, PARA B.1.

11 Ibid Sch 4 Class B, PARA B.2(1).

12 Ibid Sch 4 Class B, PARA B.2(2).

13 Ibid Sch 4 Class B, PARA B.2(3). For the meaning of 'domestic consumer' see PARA 1057 note 2 ante.

14 Ibid Sch 4 Class B, PARA B.3.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/B. EXEMPTIONS/(D) Supply; Class Exemptions/1063. Supply exemptions; Class C.

1063. Supply exemptions; Class C.

Persons, other than licensed suppliers¹, who:

- 2149 (1) do not supply any electricity except:
179
- 267. (a) electricity which they generate themselves²; or
 - 268. (b) electricity which they generate themselves together with electricity which is supplied to them by a licensed supplier; and
- 180
- 2150 (2) provide the output³ of each generating station at which they generate electricity only to:
- 181
- 269. (a) a single consumer⁴; or
 - 270. (b) an on-site qualifying group⁵; or
 - 271. (c) additional group consumers, where the total maximum amount of electrical power supplied to those additional group consumers at any time is 100 megawatts of which not more than one megawatt is supplied to domestic consumers⁶; or
 - 272. (d) a remote consumer⁷; or
 - 273. (e) a remote qualifying group⁸; or
 - 274. (f) additional group consumers within the 100 megawatt limit⁹ and one of the following, namely a single consumer, an on-site qualifying group, a remote consumer or a remote qualifying group; or
 - 275. (g) a single consumer, or an on-site qualifying group, or additional group consumers within the 100 megawatt limit, or a remote consumer, or a remote qualifying group, or a mixed group of consumers of a type described in head (f) above, and any other person in circumstances where the provision of the output of the generating station in question does not amount to the supply of electricity,
- 182

are exempted from the statutory prohibition¹⁰ on unlicensed supply of electricity¹¹. For these purposes, where at any time the supplier in question and some other person generate electricity at the same generating station or provide the output of the same generating station, the generation of electricity by that other person or the provision of the output of that generating station by that other person is to be treated as the generation of electricity and the provision of the output of that generating station respectively by that supplier if that other person, being a body corporate, is associated¹² with that supplier¹³. Two or more generating sets¹⁴ which are operated by the same person or by bodies corporate which are associated with each other are to be treated as a single generating station if they are on the same site¹⁵ as each other, whether or not there is an electrical interconnection between any of them, but otherwise are to be treated as separate generating stations¹⁶.

The exemption so granted is subject to compliance with the following condition, namely that a person must not supply electricity to domestic consumers who are additional group consumers within the 100 megawatt limit at a price which exceeds such maximum price as may be

specified in, or as may be calculated by such method and by reference to such matters as may be specified in, a direction given by the Gas and Electricity Markets Authority ('GEMA')¹⁷.

1 For the meaning of 'licensed supplier' see PARA 1051 note 33 ante.

2 As to when a person is treated as generating electricity see PARA 1053 ante.

3 For these purposes, 'output' in relation to a generating station means the electricity generated at that generating station other than electricity consumed by the plant: Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class C, PARA C.2.

4 Ie provide the output to one consumer who (1) occupies premises which are on the same site as the premises where the generating station is situated; and (2) who consumes all the electricity provided to him by the supplier in question at those premises, other than any of that electricity supplied by that consumer in circumstances such that he falls within ibid Sch 4 Class B (see PARA 1062 ante): see Sch 4 Class C(2)(a). As to when premises are on the same site see PARA 1053 note 6 ante.

5 Ie provide the output to two or more consumers who form a qualifying group each of whom (1) occupies premises which are on the same site as the premises where the generating station is situated; and (2) consumes all the electricity provided to him by the supplier in question at those premises, other than any of that electricity supplied by that consumer in circumstances such that he falls within ibid Sch 4 Class B: see Sch 4 Class C(2)(b). For the meaning of 'qualifying group' see PARA 1053 note 8 ante.

6 Ie provide the output to one or more consumers (1) who each occupy premises which are either on the same site as the premises where the generating station is situated or not on the same site but which receive the electricity supply from that generating station over private wires; and (2) each of whom consumes all the electricity provided to him by the supplier in question at those premises (other than any of that electricity supplied by that consumer in circumstances such that he falls within ibid Sch 4 Class B): see Sch 4 Class C(2)(c). 'Private wires', in relation to a generating station, means electric lines owned by (a) the supplier in question; (b) a consumer who receives a supply from the supplier in question from the generating station; (c) the owner, lessor or lessee of the generating station or of one of the premises to which a supply is made by the supplier in question; or (d) any of the persons described in heads (a)-(c) supra jointly with any other of the persons there described, provided that the owner of those wires is not a licensed distributor: Sch 4 Class C, PARA C.2. For the meaning of 'domestic consumer' see PARA 1057 note 2 ante; and for the meaning of 'licensed distributor' see PARA 1051 note 27 ante.

7 Ie provide the output to one consumer who (1) receives at least a third of the output of that generating station at premises he occupies which are on the same site as the premises where the generating station is situated, or not on the same site but which receive the electricity supply from that generating station over private wires; and (2) consumes all the electricity provided to him by the supplier in question at premises he occupies, other than any of that electricity supplied by that consumer in circumstances such that he falls within ibid Sch 4 Class B: see Sch 4 Class C(2)(d).

8 Ie provide the output to two or more consumers who form a qualifying group (1) who between them receive at least a third of the output of that generating station at premises they occupy which are (a) on the same site as the premises where the generating station is situated; or (b) not on the same site but which receive the electricity supply from that generating station over private wires; and (2) each of whom consumes all the electricity provided to him by the supplier in question at premises he occupies, other than any of that electricity supplied by that consumer in circumstances such that he falls within ibid Sch 4 Class B: see Sch 4 Class C(2)(e).

9 For these purposes, 'additional group consumers within the 100 megawatt limit' means consumers described in ibid Sch 4 Class (2)(c) (see note 6 supra): art 2(1), Sch 4 Class C, PARA C.2.

10 Ie the prohibition contained in the Electricity Act 1989 s 4(1)(c): see PARA 1050 ante at head (4) in the text.

11 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class C. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

12 As to when one body corporate is associated with another see PARA 1057 note 5 ante.

13 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class C, PARA C.1(1).

14 For these purposes, 'generating set' means a combination of the plant and equipment that produces electricity and any other plant or equipment by which that plant or equipment is driven: *ibid* Sch 4 Class C, PARA C.1(2)(a).

15 For these purposes, generating sets are to be treated as being on the same site as each other if they are (1) situated on the same premises as each other; (2) situated on premises which are immediately adjoining each other; or (3) situated on premises which are separated from each other only by a road, railway or watercourse or by other premises occupied by the supplier in question or by a body corporate which is an associate of that supplier: *ibid* Sch 4 Class C, PARA C.1(2)(b).

16 *Ibid* Sch 4 Class C, PARA C.1(2).

17 *Ibid* art 4(7), (8). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

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1064. Supply exemptions; Class D.

Persons, other than licensed suppliers¹, who:

- 2151 (1) do not supply electricity except electricity which has been generated at a generating station which is situated on an offshore installation²; and
- 2152 (2) do not supply such electricity to any premises except premises which constitute or are comprised in an offshore installation,

are exempted from the statutory prohibition³ on unlicensed supply of electricity⁴.

1 For the meaning of 'licensed supplier' see PARA 1051 note 33 ante.

2 For the meaning of 'offshore installation' for these purposes see PARA 1054 note 3 ante.

3 I.e. the prohibition contained in the Electricity Act 1989 s 4(1)(c): see PARA 1050 ante at head (4) in the text.

4 Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(c), Sch 4 Class D. As to when a person falls within a particular class of exemption see art 3(2), cited in PARA 1051 note 17 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/C. GRANTING AND TRANSFER OF LICENCES/1065. Licences authorising supply etc.

C. GRANTING AND TRANSFER OF LICENCES

1065. Licences authorising supply etc.

The Gas and Electricity Markets Authority ('GEMA')¹ may grant any of the following licences:

- 2153 (1) a licence authorising a person to generate² electricity for the purpose of giving a supply³ to any premises⁴ or enabling a supply to be so given ('a generation licence');
- 2154 (2) a licence authorising a person to participate in the transmission⁵ of electricity for that purpose ('a transmission licence');
- 2155 (3) a licence authorising a person to distribute⁶ electricity for that purpose ('a distribution licence');
- 2156 (4) a licence authorising a person to supply electricity to premises ('a supply licence'); or
- 2157 (5) a licence authorising a person to participate in the operation of an electricity interconnector⁸ ('an interconnector licence')⁹.

The same person may not be the holder of both a distribution licence and a supply licence¹⁰. Nor may the same person be the holder of an interconnector licence and the holder of a licence falling within any of heads (1) to (4) above¹¹.

A supply licence may authorise the holder to supply electricity:

- 2158 (a) to any premises;
- 2159 (b) only to premises specified in the licence, or to premises of a description so specified; or
- 2160 (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated¹²;

and the Authority may, with the consent of the holder of a supply licence, modify¹³ terms included in the licence in pursuance of heads (a) to (c) above so as to extend or restrict the premises to which the licence holder may give a supply of electricity¹⁴.

A distribution licence may authorise the holder to distribute electricity in any area, or only in an area specified in the licence¹⁵; and the Authority may, with the consent of the holder of a distribution licence, modify terms included in the licence in pursuance of that provision so as to extend or restrict the area within which the licence holder may distribute electricity¹⁶. It is the duty of an electricity distributor¹⁷ to develop and maintain an efficient, co-ordinated and economical system of electricity distribution and to facilitate competition in the supply and generation of electricity¹⁸.

A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence¹⁹; and the Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in

pursuance of that provision²⁰. It is the duty of the holder of a licence authorising him to participate in the transmission of electricity:

- 2161 (i) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
- 2162 (ii) to facilitate competition in the supply and generation of electricity²¹,

but head (i) above does not have effect to require the holder of a transmission licence which is subject to a condition of the specified kind²² to carry on an activity which he would be authorised by the licence to carry on apart from the condition²³.

An interconnector licence authorising participation in the operation of an electricity interconnector:

- 2163 (A) must specify the interconnector or interconnectors in relation to which participation is authorised; and
- 2164 (B) may limit the forms of participation in the operation of an interconnector which are authorised by the licence²⁴.

A licence, and any modification of a licence under the above provisions²⁵, must be in writing²⁶. Unless previously revoked in accordance with any term of the licence, a licence continues in force for such period as may be specified in or determined by or under the licence²⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'generate' see PARA 1041 note 7 ante.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 As from a day to be appointed, for these purposes 'premises' has the same meaning as in the Electricity Act 1989 s 4 (as amended) (see PARA 1050 note 3 ante): s 6(10) (prospectively added by the Energy Act 2004 s 89(3), as from a day to be appointed under s 198(2); at the date at which this title states the law, no such day had been appointed). For the meaning of 'premises' generally see PARA 1041 note 5 ante.

5 For the meaning of 'transmission' see PARA 1041 note 6 ante.

6 For the meaning of 'distribute' see PARA 1041 note 5 ante.

7 Any person who is authorised by a supply licence to supply electricity is, except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence, described as an 'electricity supplier': see the Electricity Act 1989 s 6(9) (s 6 substituted by the Utilities Act 2000 s 30). See also note 9 infra.

8 For the meaning of references to participating in the operation of an electricity interconnector see PARA 1050 note 7 ante; and for the meaning of 'electricity interconnector' see PARA 1041 note 11 ante.

9 Electricity Act 1989 s 6(1) (as substituted (see note 7 supra); amended by the Energy Act 2004 ss 136(1), 145(1), (5), 197(9), Sch 23 Pt 1).

Where a person was participating in the operation of an electricity interconnector at the time when the power of GEMA to grant electricity interconnector licences came into force, the Secretary of State was given power to grant such a licence to that person under the Electricity Act 1989 s 6 (as amended): see the Energy Act 2004 s 148(1), (2). The Electricity Act 1989 s 6A(5) (as added), s 7 (as amended) and 8A (as added and amended) (notice of licence and licence conditions: see PARAS 1066, 1068-1069 post) have effect in relation to the grant of licences by the Secretary of State by virtue of that power as if (1) references in those provisions to GEMA included references to the Secretary of State; and (2) in s 8A (as added and amended), the words 'the Secretary of State and' in s 8A(4)(b) (as added) and s 8A(5) (as added) were omitted: Energy Act 2004 s 148(3). Before granting a licence to a person by virtue of s 148, the Secretary of State was required to consult (a) that person; (b) GEMA; and (c) such other persons as the Secretary of State considered appropriate; but this requirement might be satisfied by consultation that took place wholly or partly before the commencement of s 148: s 148(4),

(5). For these purposes, 'electricity interconnector licence' means an interconnector licence under the Electricity Act 1989 s 6(1)(e) (as added); and 'participating in the operation of an electricity interconnector' has the same meaning as in Pt I (as amended): Energy Act 2004 s 148(6).

References in any enactment (i) to public electricity suppliers have effect after 1 October 2001 as if they were references to (A) electricity suppliers; (B) electricity distributors; or (C) both electricity suppliers and electricity distributors, according to the nature of the activities carried on by the persons to whom they referred before that time; (ii) to the supply of electricity have effect after that date as if they were references to (A) the supply of electricity; (B) the distribution of electricity; or (C) both the supply and distribution of electricity, according to the nature of the activities to which they referred before that time; and (iii) to holders of licences under the Electricity Act 1989 s 6(2) (as originally enacted) have effect after that date as if they were references to electricity suppliers: Utilities Act 2000 s 31(1)-(3); Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, 2001/3266, art 2, Schedule. 'Electricity distributor' means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence: Electricity Act 1989 s 6(9) (as substituted (see note 7 supra); applied by the Utilities Act 2000 s 106(3)).

10 Electricity Act 1989 s 6(2) (as substituted: see note 7 supra).

11 Ibid s 6(2A) (added by the Energy Act 2004 s 145(1), (6)).

12 Electricity Act 1989 s 6(3) (as substituted: see note 7 supra).

13 For the meaning of 'modification' and cognate expressions see PARA 1035 note 3 ante.

14 Electricity Act 1989 s 6(4) (as substituted: see note 7 supra).

15 Ibid s 6(5) (as substituted: see note 7 supra).

16 Ibid s 6(6) (as substituted: see note 7 supra).

17 For the meaning of 'electricity distributor' see note 9 supra.

18 Electricity Act 1989 s 9(1) (substituted by the Utilities Act 2000 s 50).

19 Electricity Act 1989 s 6(6A) (s 6(6A), (6B) added by the Energy Act 2004 s 136(2)).

20 Electricity Act 1989 s 6(6B) (as added: see note 19 supra).

21 Ibid s 9(2) (amended by the Utilities Act 2000 s 108, Sch 8; the Energy Act 2004 s 143(1), Sch 19 paras 3, 8(1), (2)).

22 Ie a condition of the kind mentioned in the Electricity Act 1989 s 7(2A)(a) (as added): see PARA 1068 post.

23 Ibid s 9(2A) (added by the Energy Act 2004 s 143(1), Sch 19 paras 3, 8(1), (3)).

24 Electricity Act 1989 s 6(6C) (added by the Energy Act 2004 s 145(1), (7)).

25 Ie under the Electricity Act 1989 s 6(4), (6) (as substituted) or s 6(6B) (as added): see the text and notes 13-14, 16, 20 supra.

26 Ibid s 6(7) (substituted by the Energy Act 2004 s 143(1), Sch 19 paras 3, 5).

27 Electricity Act 1989 s 6(8) (as substituted: see note 7 supra).

UPDATE

1065 Licences authorising supply etc

TEXT AND NOTE 9--The Secretary of State may modify (1) a condition of a particular licence under the Electricity Act 1989 s 6(1)(c) or (d) (heads (3) and (4) in the TEXT); (2) the standard conditions incorporated in licences under those provisions by virtue of s 8A (see PARA 1069); (3) a document maintained in accordance with the conditions of licences under s 6(1), or an agreement that gives effect to a document so maintained: Energy Act 2008 s 41(1). The Secretary of State may exercise the power in s 41(1) for

the purpose only of (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity; (b) requiring or enabling the holder of a distribution licence (see Electricity Act 1989 s 6(1)(c)) to make arrangements for the distribution of electricity generated by small-scale low-carbon generation; (c) requiring the holder of a licence to make arrangements related to the matters mentioned in head (a) or (b): Energy Act 2008 s 41(2). 'Small-scale low-carbon generation' means the use, for the generation of electricity, of any plant which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in s 41(5), and the capacity of which to generate electricity does not exceed the specified maximum capacity: s 41(4). 'Plant' includes any equipment, apparatus or appliance: s 41(4). The sources of energy and technologies are (i) biomass; (ii) biofuels; (iii) fuel cells; (iv) photovoltaics; (v) water (including waves and tides); (vi) wind; (vii) solar power; (viii) geothermal sources; (ix) combined heat and power systems with an electrical capacity of 50 kilowatts or less: s 41(5). The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in s 41(5): s 41(6). 'Specified maximum capacity' means the capacity specified by the Secretary of State by order, which must not exceed five megawatts: s 41(4). Modifications made by virtue of s 41(1) may include (A) provision requiring the holder of a supply licence (see Electricity Act 1989 s 6(1)(d)) to make a payment to a small-scale low-carbon generator, or to the Gas and Electricity Markets Authority for onward payment to such a generator, in specified circumstances; (B) provision specifying how a payment under head (A) is to be calculated; (C) provision for the level of payment under head (A) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State; (D) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator; (E) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator; (F) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times; (G) provision specifying how a levy under head (F) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State); (H) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority: Energy Act 2008 s 41(3). 'Small-scale low-carbon generator' means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant: s 41(4). 'Owner', in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement: s 41(4). The power conferred by s 41(1) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied); may be exercised differently in different cases or circumstances; and includes a power to make incidental, supplemental, consequential or transitional modifications: s 41(7). Provision included in a licence by virtue of that power need not relate to the activities authorised by the licence; and may make different provision for different cases: s 41(8).

The procedure with which the Secretary of State must comply in order to exercise the modification powers conferred by s 41 is set out: see Energy Act 2008 s 42. Supplemental provision is made in relation to the modification powers conferred by s 41: see Energy Act 2008 s 43.

The Secretary of State may modify (1) a condition of a particular licence under the Electricity Act 1989 s 6(1)(c) or (d); (2) the standard conditions incorporated in licences under those provisions by virtue of the Electricity Act 1989 s 8A (see PARA 1069); (3) a document maintained in accordance with the conditions of licences under the

Electricity Act 1989 s 6(1), or an agreement that gives effect to a document so maintained: Energy Act 2008 s 88(1)(a), (b), (e). The Secretary of State may exercise the power in the Energy Act 2008 s 88(1) for the purpose only of (a) requiring the holder of a licence to provide or install, or facilitate the provision, installation or operation of, meters of a particular kind, or (b) requiring the holder of a licence to make arrangements related to the matters mentioned in head (a): s 88(2). See further s 88(3)-(7). The procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by s 88 is set out: see Energy Act 2008 s 89. Supplemental provision is made: see Energy Act 2008 s 90.

The Secretary of State may modify (1) a condition of a particular licence under the Electricity Act 1989 s 6(1)(b) or (c); (2) the standard conditions incorporated in licences under those provisions by virtue of the Electricity Act 1989 s 8A (see PARA 1069): Energy Act 2008 s 97(1). The Secretary of State may exercise the power in s 97(1) for the purpose only of enabling the Gas and Electricity Markets Authority to recover and pay into the Consolidated Fund amounts in respect of (a) payments made by the Secretary of State by virtue of the Electricity Act 1989 Sch 7 para 4(2) or (2A) (payments relating to meter examiners); (b) other costs incurred by the Secretary of State in performing a function conferred by the Electricity Act 1989 Sch 7 or by electricity meter regulations (within the meaning of the Energy Act 2008 s 95: see PARAS 1180-1190): Energy Act 2008 s 97(2). See further s 97(3)-(9).

The following provisions are not yet in force. The Secretary of State may modify (1) a condition of a particular licence under the Electricity Act 1989 s 6(1)(a)-(d); (2) the standard conditions incorporated in licences under those provisions by virtue of the Electricity Act 1989 s 8A (see PARA 1069); (3) a document maintained in accordance with the conditions of licences under s 6(1)(a)-(d), or an agreement that gives effect to a document so maintained; the Secretary of State may exercise the above power for the purpose only of facilitating (a) access to a transmission system in Great Britain or offshore waters; (b) efficient use of a transmission system in Great Britain or offshore waters: see Energy Act 2008 s 84. The procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by s 84 is set out: see Energy Act 2008 s 85. Supplemental provision is made: see Energy Act 2008 s 86.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/C. GRANTING AND TRANSFER OF LICENCES/1066. Procedure on applications for licences, modifications of an area or the extension or restriction of certain licences.

1066. Procedure on applications for licences, modifications of an area or the extension or restriction of certain licences.

The following provisions apply to any application for a licence¹, or for the modification² of a supply licence³, a distribution licence⁴ or a transmission licence⁵ under the specified⁶ statutory provisions⁷.

The application must be made in such form and manner, and must contain, or be accompanied by, such information and documents and such fee, if any, as may be prescribed⁸. It must be:

- 2165 (1) made in writing, addressed to the Gas and Electricity Markets Authority ('GEMA')⁹ and delivered or sent by prepaid post to the Authority at its principal office or sent by electronic mail to an address specified by the Authority; and
- 2166 (2) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory¹⁰.

An application must be made in the prescribed form¹¹ or a form to the like effect, and must contain the information specified in that form¹². It must be accompanied by the additional information and documents which are specified¹³ in relation to:

- 2167 (a) transmission licences¹⁴;
- 2168 (b) distribution licences¹⁵;
- 2169 (c) supply licences¹⁶; and
- 2170 (d) interconnector licences¹⁷.

Within the prescribed period¹⁸ after the making of the application the applicant must publish a notice of the application in the prescribed manner¹⁹. Additionally, an applicant for a transmission licence must give notice of the application to any person who holds such a licence and whose interests may be affected if the licence applied for is granted²⁰.

Where the Authority proposes to refuse the application, it must give to the applicant a notice²¹:

- 2171 (i) stating that it proposes to refuse the application;
- 2172 (ii) stating the reasons why it proposes to refuse the application; and
- 2173 (iii) specifying the time within which representations with respect to the proposed refusal may be made,

and must consider any representations which are duly made and not withdrawn²².

Additionally, before granting a transmission licence applied for, the Authority must give notice²³ stating that it proposes to grant the licence, stating the reasons why it proposes to grant the licence and specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed licence may be made, and must consider any representations or objections which are duly made and not withdrawn²⁴.

Where the Authority grants the licence, extension or restriction applied for, it must as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant²⁵.

1 For the meaning of 'licence' see PARA 1041 note 12 ante.

2 For the meaning of 'modification' see PARA 1035 note 3 ante.

3 For the meaning of 'supply licence' see PARA 1065 ante at head (4) in the text.

4 For the meaning of 'distribution licence' see PARA 1065 ante at head (3) in the text.

5 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

6 Ie under the Electricity Act 1989 s 6(4) or (6) (as substituted) or s 6(6B) (as added): see PARA 1065 ante.

7 Ibid s 6A(1) (ss 6A, 6B added by the Utilities Act 2000 s 30; the Electricity Act 1989 s 6A(1) amended by the Energy Act 2004 s 143(1), Sch 19 paras 3, 6).

8 Electricity Act 1989 s 6A(2) (as added: see note 7 supra). For these purposes, 'prescribed' means prescribed in regulations made by the Authority (as to which see note 9 infra): s 6A(6) (as so added). As to the making of regulations generally see PARA 1306 post. For the prescribed fees see the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 7, Sch 3. Any sums received by the Authority under the Electricity Act 1989 s 6A (as added and amended) must be paid into the Consolidated Fund: s 6A(7) (as so added). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 4.

11 For the prescribed form see ibid reg 5, Sch 1.

12 Ibid reg 5.

13 An application in respect of (1) a transmission licence must be accompanied by the information and documents specified in reg 6(1)(a), Sch 2 Pt 1; (2) a distribution licence must be accompanied by the information and documents specified in reg 6(1)(b), Sch 2 Pt 2; (3) a supply licence must be accompanied by the information and documents specified in reg 6(1)(c), Sch 2 Pt 3; and (4) an interconnector licence must be accompanied by the information and documents specified in reg 6(1)(d), Sch 2 Pt 4: see reg 6(1). The obligation imposed by the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 6(1) applies, to the extent that information and documents are specified in Sch 2 by reference to, or in relation to, a standard condition, (a) subject to reg 6(3), in the case of an application for a licence, as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and (b) in the case of an application for a modification of an area, or for an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence: reg 6(2). Where a modification to any standard condition is requested in accordance with Sch 1 para 4, the obligation imposed by reg 6(2)(a) (see head (a) supra) is modified accordingly: reg 6(3).

For these purposes, unless the context otherwise requires, a reference to a standard condition is a reference (i) in relation to a distribution licence, a generation licence, a supply licence or a transmission licence, to a standard condition which is determined under the Utilities Act 2000 s 33(1) (as amended) (see PARA 1069 post) or the Energy Act 2004 s 137(1) (see PARA 1069 post); or (ii) in relation to an interconnector licence, to a standard condition which is determined under s 146(1) (see PARA 1069 post), subject to any modifications of the standard conditions made under the Electricity Act 1989 Pt I (ss 3A-64) (as amended), the Utilities Act 2000 or the Energy Act 2004 after the determination under those provisions: Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 3(2). 'Extension', in relation to a supply licence, means an extension of the licence under the Electricity Act 1989 s 6(4) (as substituted) and, in relation to a distribution licence, means an extension of the licence under s 6(6) (as substituted); 'modification of an area' in relation to a transmission licence, means a modification of an area of the licence under s 6(6B) (as added); and 'restriction' in relation to a supply licence, means a restriction of the licence under s 6(4) (as substituted) of the Act and, in relation to a distribution licence, means a restriction of the licence under s 6(6) (as substituted) and, in relation to a transmission licence, means a modification of an area of the licence under the Electricity Act 1989 s 6(6B) (as added) by a restriction of the area of the licence:

Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 3(1). For the meaning of 'generation licence' see PARA 1065 ante at head (1) in the text; and for the meaning of 'interconnector licence' see PARA 1065 ante at head (5) in the text. Those definitions, and the definitions set out in notes 3-5 supra, are applied by reg 3(1), which extends them to licences to be granted as well as licences granted under the Electricity Act 1989 s 6(1) (as substituted and amended).

14 An applicant for a transmission licence must provide (1) a brief description of the activities that the applicant intends to carry out with respect to the transmission of electricity; (2) a sufficient description of (a) the area to which the application relates; and (b) where different to the area in head (a) supra, the area in which the applicant intends to carry out activities under a transmission licence: *ibid* Sch 2 Pt 1 paras 1, 2. If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement, either with an application made by the applicant in accordance with the relevant regulations, or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 1 note (a). The description given under head (2) supra should enable the areas to be adequately and readily identified by map if the applicant so desires or by any other convenient means: Sch 2 Pt 1 note (b).

If the application is for a modification of an area of a transmission licence and the modification in question constitutes a restriction of the area, the applicant must also provide details of any of the following persons who may be affected by the application: (i) any person authorised by a licence granted under the Electricity Act 1989 s 6(1) (as substituted and amended) (see PARA 1065 ante) or an exemption granted under s 5(1) (as substituted and amended) (see PARA 1051 ante); (ii) any person directly connected to the applicant's transmission system; and (iii) any other person who may reasonably be affected by the restriction which is the subject of the application: Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/21972, Sch 2 Pt 1 para 3.

15 A distribution licence may authorise the holder to operate (1) throughout Great Britain; or (2) within a specified area or areas at specified premises; the applicant must specify which of head (1) or head (2) supra is applicable, and in the case of head (2) supra must provide a sufficient description adequately specifying the area(s) or premises to which the application relates: *ibid* Sch 2 Pt 2 para 1. The description should enable the areas, location or premises concerned to be adequately and readily identified by map if the applicant so desires or by any other convenient means: Sch 2 Pt 2 note (b). The applicant must also provide a statement of the extent (if any) to which the applicant considers it necessary for powers under the Electricity Act 1989 Sch 3 (as amended) (compulsory acquisition of land etc: see PARAS 1283-1284 post) and under Sch 4 (as amended) (other powers etc: see PARA 1287 et seq post) to be given through the licence for which he is applying: Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 2 para 2. He must provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 6 (Safety and Security of Supplies Enquiry Service), 8 (Provisions Relating to the Connection of Metering Equipment), 17 (Provision of Services for Persons who are Pensionable Age, Disabled or Chronically Sick), 18 (Provision of Services for Persons who are Blind or Deaf), 19 (Code of Practice on Procedures with Respect to Site Access), and 21 (Complaint Handling Procedure): Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 2 para 3. The applicant must also provide particulars of his proposed arrangements for compliance with the applicable requirements of any modifications that the Authority has indicated, in writing, that it proposes to make to the standard licence conditions prior to the granting of any distribution licence; and of his proposed arrangements for compliance with the applicable requirements of standard conditions BA4 (Undertaking from Ultimate Controller) and BA5 (Credit Rating of Licensee): Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 2 paras 4, 5. If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement either with an application made by the applicant in accordance with the relevant regulations or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 2 note (a).

If the application is for a restriction of a licence, the applicant must provide: (a) an estimate of the total number of premises to which the applicant distributes electricity at the time of the application and to which the applicant would cease to distribute electricity if the application were acceded to ('relevant premises'); (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in Sch 2 Pt 2 para 6(2)) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with the Electricity Act 1989 s 16 (as substituted) (ensuring the connection of all such relevant consumers is maintained: see PARA 1094 post): Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 2 para 4(1). For the purposes of head (b) supra, a person is a relevant consumer if (i) immediately before the restriction takes effect, he is connected to the distribution system of the holder of the licence; and (ii) his premises are to be excluded from the licence by the restriction: Sch 2 Pt 2 para 4(2).

16 A supply licence may authorise the holder to supply electricity (1) to any premises; (2) only to premises specified in the licence, or to premises of a description so specified; or (3) only to any premises situated in a specified area, or to premises of a specified description which are so situated: the applicant must specify which of head (1), head (2) or head (3) supra is applicable: *ibid* Sch 2 Pt 3 para 1. He must also provide a sufficient description adequately specifying the premises or a description of the premises and the location of the premises intended to be supplied, and, in the case of an application that relates to head (3) supra, also the specified area; and must also state whether the application relates to domestic premises: Sch 2 Pt 3 para 1. The description should enable the areas, location or premises to be adequately and readily identified by map if the applicant so desires or by any other convenient means: Sch 2 Pt 3 note (b). 'Domestic premises' means premises used wholly or mainly for domestic purposes: reg 3(1). If the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement either with an application made by the applicant in accordance with the relevant regulations, or subsequent to such an application in pursuance of a condition of the applicant's licence: Sch 2 Pt 3 note (a).

If the application is for a restriction of a licence the applicant must provide: (a) an estimate of the total number of premises to which the applicant supplies electricity at the time of the application and which the applicant would cease to supply if the application were acceded to ('relevant premises'); and (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in Sch 2 Pt 3 para 4(c)) in relation to the applicant, a description of the applicant's proposed arrangements under standard condition 10 (Restriction or Revocation of licence) for (i) ensuring continuity of supply for all such relevant consumers; and (ii) in the case of each such consumer who is supplied with electricity in pursuance of a contract (which does not include any contract which, by virtue of the Electricity Act 1989 Sch 6 para 3 (as added) (see PARA 1104 post) is deemed to have been made), securing such continuity on the same terms as nearly as may be as the terms of the contract: Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 3 para 2(a), (b). For the purposes of head (b) supra, a person is a relevant consumer if (A) immediately before the restriction takes effect, he is being supplied with electricity by the holder of the licence; and (B) his premises are to be excluded from the licence by the restriction: Sch 2 Pt 3 para 4(c).

17 An application in respect of an interconnector licence must specify the actual or proposed point of connection to an electricity transmission or electricity distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection: *ibid* Sch 2 Pt 4 para 1. In relation to an application for a licence in respect of an interconnector that was not completed by 3 August 2003, it must state whether the applicant seeks not to have applied to the licence any or all of the following standard licence conditions: (1) conditions relating to the use of revenues; (2) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector; (3) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector: Sch 2 Pt 4 para 2. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in heads (1)-(3) supra not to be in effect the following additional information must be provided in respect of those licence conditions: (a) the period of time for which the applicant seeks that the licence condition or conditions not be in effect; (b) a statement setting out the evidence and reasoning as to why the applicant considers (i) the investment in the interconnector enhances competition in electricity supply; (ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not be or would not have been made unless those licence conditions were not in effect; (iii) that, should the licence conditions not be in effect for the period of time sought, this will not be detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked; and (c) a further statement that (i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of its legal form, from the system operators in whose systems the interconnector to which the application relates will be built; and (ii) charges will be levied on users of the interconnector; and (iii) since the partial market opening referred to in European Parliament and EC Council Directive 96/92 (OJ L27, 30.1.97, p 20) concerning common rules for the internal market in electricity, art 19 (repealed), no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector: Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, Sch 2 Pt 4 para 3.

18 The prescribed period is ten working days: *ibid* reg 8(1).

19 Electricity Act 1989 s 6A(3) (as added: see note 7 supra). The prescribed manner of publication for that purpose is to be either by (1) requesting the Authority to place the notice on the website address of the Authority (at 'www.ofgem.gov.uk' or such other website address as may be notified to the applicant by the Authority in writing); or (2) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant's website address on the website address of the Authority (at 'www.ofgem.gov.uk' or such other website address as may be notified to the applicant by the Authority in writing): Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007, SI 2007/1972, reg 8(2). Where an application is for the restriction of a licence, the applicant must also ensure that notice of application is published within the prescribed period in such

newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates: reg 8(3).

20 Electricity Act 1989 s 6B(1), (2) (as added (see note 7 supra); s 6B(2) substituted by the Energy Act 2004 s 143(1), Sch 19 paras 3, 7(1), (2)).

21 For the meaning of 'notice' see PARA 1047 note 11 ante.

22 Electricity Act 1989 s 6A(4) (as added: see note 7 supra).

23 Such a notice must be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them: *ibid* s 6B(4) (as added: see note 7 supra). The Authority must send a copy of such a notice to (1) the applicant; (2) the Secretary of State; and (3) any person who holds a transmission licence and whose interests may be affected by the grant of the licence to which the application relates: s 6B(5) (as so added; amended by the Energy Act 2004 s 143(1), Sch 19 paras 3, 7(1), (3)). As to the Secretary of State see PARA 601 note 1 ante.

24 Electricity Act 1989 s 6B(3) (as added: see note 7 supra).

25 *Ibid* s 6A(5) (as added: see note 7 supra).

UPDATE

1066 Procedure on applications for licences, modifications of an area or the extension or restriction of certain licences

TEXT AND NOTES--The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009, SI 2009/3191, have been made under the Electricity Act 1989 s 6A(2), (3), (6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/C. GRANTING AND TRANSFER OF LICENCES/1067. Competitive tenders for offshore transmission licences.

1067. Competitive tenders for offshore transmission licences.

As from a day to be appointed¹, the following provisions have effect. The Gas and Electricity Markets Authority ('GEMA')² may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed³ cases, of a determination on a competitive basis of the person to whom an offshore transmission licence⁴ is to be granted⁵. That provision may include:

- 2174 (1) provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
- 2175 (2) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
- 2176 (3) provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
- 2177 (4) provision for regulating the manner in which applications are considered and determined⁶.

Regulations under these provisions:

- 2178 (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and
- 2179 (b) may dispense with or supplement provision made in relation to applications for transmission licences by or under the specified⁷ statutory provisions⁸.

The approval of the Secretary of State⁹ is required for the making of such regulations¹⁰.

1 le as from a day to be appointed under the Energy Act 2004 s 198(2).

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For these purposes, 'prescribed' means prescribed in or determined under regulations made by the Authority: Electricity Act 1989 s 6C(5) (s 6C prospectively added by the Energy Act 2004 s 92, as from a day to be appointed (see note 1 supra); at the date at which this title states the law, no such day had been appointed).

4 For these purposes, 'offshore transmission licence' means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and 'offshore transmission' means the transmission within an area of offshore waters of electricity generated by a generating station in such an area: Electricity Act 1989 s 6C(5), (6) (as added: see note 3 supra). 'Offshore waters' means (1) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and (2) waters within an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172); Electricity Act 1989 s 6C(7) (as so added). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text; and for the meanings of 'generating station', 'transmission' and 'transmission system' see PARA 1041 note 6 ante.

- 5 Ibid s 6C(1) (as added: see note 3 supra).
- 6 Ibid s 6C(2) (as added: see note 3 supra).
- 7 Ie under ibid ss 6A, 6B (as added and amended): see PARA 1066 ante.
- 8 Ibid s 6C(3) (as added: see note 3 supra).
- 9 As to the Secretary of State see PARA 601 note 1 ante.
- 10 Electricity Act 1989 s 6C(4) (as added: see note 3 supra). As to the making of regulations generally see PARA 1306 post.

UPDATE

1067 Competitive tenders for offshore transmission licences

TEXT AND NOTES--For supplemental provision with respect to the Electricity Act 1989 s 6C see Electricity Act 1989 s 6D (ss 6D, 6E, Sch 2A added by Energy Act 2008 s 44(2), (4), Sch 2). The Electricity Act 1989 Sch 2A (which provides for property schemes in connection with grants of offshore transmission licences) has effect: s 6E. In exercise of the powers conferred on him, the Secretary of State has made the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, SI 2009/1340, which relate to calculation and payment of costs incurred in connection with transmission assets for a transitional tender exercise (regs 3, 4); qualifying projects and developer's payment and security (regs 5, 6); commencement of a tender exercise (reg 7); entry conditions (reg 8); pre-qualification stage (regs 9, 10); qualification to tender stage (regs 11, 12); invitation to tender stage (reg 13); evaluation stage (regs 14-16); withdrawal (reg 17); cancellation and treatment of payments and security on cancellation (regs 18, 19); disqualification (reg 20); notification of successful bidder (regs 21, 22); and cost recovery (reg 23).

NOTE 1--Appointed day is 20 May 2009: SI 2009/1269.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/C. GRANTING AND TRANSFER OF LICENCES/1068. Conditions of licences; in general.

1068. Conditions of licences; in general.

A licence¹ may include:

- 2180 (1) such conditions, whether or not relating to the activities authorised by the licence, as appear to the Gas and Electricity Markets Authority ('GEMA')² to be requisite or expedient having regard to the general duties of the Authority with regard to electricity³; and
- 2181 (2) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence⁴.

Conditions included by virtue of head (1) above:

- 2182 (a) in a transmission licence⁵ or distribution licence⁶ may⁷:
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 - 276. (i) require the licence holder⁸ to enter into agreements with other persons for the use of any electric lines⁹ and electrical plant¹⁰ of his, wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence, for such purposes as may be specified in the conditions; and
 - 277. (ii) include provision for determining the terms on which such agreements are to be entered into¹¹;
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2183 (b) in a transmission licence may¹²:
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 - 278. (i) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or
 - 279. (ii) restrict where he may carry on an activity which he is authorised by the licence to carry on¹³;
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2184 (c) in a licence may¹⁴ require the licence holder:
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 - 280. (i) to comply with any direction¹⁵ given by the Authority or the Secretary of State¹⁶ as to such matters as are specified in the licence or are of a description so specified;
 - 281. (ii) except in so far as the Authority or the Secretary of State consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
 - 282. (iii) to refer for determination by the Authority or the Secretary of State such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified; and
 - 283. (iv) to refer for approval by the Authority or the Secretary of State such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified¹⁷.

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2185 (d) in a transmission licence or a distribution licence may require the holder, in such circumstances as are specified in the licence:

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284. (i) so to increase his charges for the transmission¹⁸ or distribution¹⁹ of electricity as to raise such amounts as may be determined by or under the conditions; and

285. (ii) to pay the amounts so raised to such licence holders as may be so determined²⁰;

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2186 (e) in a licence may:

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286. (i) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated, whether before or after the imposition of the conditions, by the Secretary of State or the Authority; and

287. (ii) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions are to have such effect as may be specified in the conditions²¹.

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Conditions included in a licence may contain provision for the conditions:

2187 (A) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or

2188 (B) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined²²;

and any provision so included in a licence has effect in addition to the provision made by Part I of the Electricity Act 1989²³ with respect to the modification²⁴ of the conditions of a licence²⁵.

Conditions included in a licence may also provide for references in the conditions to any document to operate as references to that document as revised or reissued from time to time²⁶.

1 For the meaning of 'licence' see PARA 1041 note 12 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 I.e the duties imposed by the Electricity Act 1989 ss 3A-3C (as added and amended): see PARAS 1041-1043 ante.

4 Ibid s 7(1) (amended by the Utilities Act 2000 s 32(1), (2)). The conditions included by virtue of head (2) in the text may require the payment of sums relating to the expenses of the Gas and Electricity Consumer Council and of the Secretary of State in relation to the establishment of the Authority and the Council: see the Utilities Act 2000 s 8; and PARA 732 ante. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. Any sums received by the Authority in consequence of the provisions of any condition of a licence must be paid into the Consolidated Fund: Electricity Act 1989 s 7(7) (amended by the Utilities Act 2000 s 32(1), (8)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

5 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

6 For the meaning of 'distribution licence' see PARA 1065 ante at head (3) in the text.

7 I.e without prejudice to the generality of the Electricity Act 1989 s 7(1)(a) (as amended) (see head (1) in the text).

- 8 For the meaning of 'licence holder' see PARA 1041 note 12 ante.
- 9 For the meaning of 'electric line' see PARA 1041 note 5 ante.
- 10 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.
- 11 Electricity Act 1989 s 7(2) (amended by the Utilities Act 2000 s 32(1), (3)).
- 12 See note 7 supra.
- 13 Electricity Act 1989 s 7(2A) (added by the Energy Act 2004 s 136(3)).
- 14 See note 7 supra.
- 15 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.
- 16 As to the Secretary of State see PARA 601 note 1 ante.
- 17 Electricity Act 1989 s 7(3) (amended by the Utilities Act 2000 s 32(1), (4)). For the purposes of the Electricity Act 1989, any description may be framed by reference to any matters or circumstances whatever: s 111(2).
- 18 For the meaning of 'transmission' see PARA 1041 note 6 ante.
- 19 For the meaning of 'distribution' see PARA 1041 note 5 ante.
- 20 Electricity Act 1989 s 7(3A) (added by the Utilities Act 2000 s 32(1), (5)).
- 21 Electricity Act 1989 s 7(4) (amended by virtue of the Utilities Act 2000 s 3(2)).
- 22 Electricity Act 1989 s 7(5) (substituted by the Utilities Act 2000 s 32(1), (6)).
- 23 *le ibid* Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1069 et seq post.
- 24 For the meaning of 'modification' see PARA 1035 note 3 ante.
- 25 Electricity Act 1989 s 7(6).
- 26 *Ibid* s 7(6A) (added by the Utilities Act 2000 s 32(1), (7)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(i) Licensing of Activities relating to Electricity/C. GRANTING AND TRANSFER OF LICENCES/1069. Standard conditions of licences.

1069. Standard conditions of licences.

The Utilities Act 2000 makes provision with regard to the standard conditions that may be included in generation, distribution or supply licences¹ and the Energy Act 2004 makes provision with regard to the standard conditions that may be included in transmission licences² and electricity interconnector licences³. Each condition which by virtue of the relevant provisions of the 2000 or 2004 Act⁴ is a standard condition for the purposes of any such type of licence must be incorporated by reference in each licence of that type which is granted⁵.

Subject to the following provisions, the Gas and Electricity Markets Authority ('GEMA')⁶ may, in granting a licence of any type, modify⁷ any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case⁸. The Authority must not, however, so make any modifications of a condition of a licence of any type unless it is of the opinion that the modifications are such that:

- 2189 (1) the licence holder⁹ would not be unduly disadvantaged in competing with other holders of licences of that type; and
- 2190 (2) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences, including the holder of the licence being modified¹⁰.

Before making any such modifications, the Authority must give notice¹¹:

- 2191 (a) stating that it proposes to make the modifications and setting out their effect;
- 2192 (b) stating the reasons why it proposes to make the modifications; and
- 2193 (c) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹². Such a notice must be given:

- 2194 (i) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- 2195 (ii) by sending a copy of the notice to the Secretary of State and the Gas and Electricity Consumer Council¹³.

If, within the time specified in the notice, the Secretary of State directs¹⁴ the Authority not to make any modification, the Authority must comply with the direction¹⁵.

The modification under the above provisions¹⁶ of part of a condition of a licence does not prevent any other part of the condition which is not so modified being regarded as a standard condition for the statutory¹⁷ purposes¹⁸.

1 The standard conditions for the purposes of licences of any type may contain provision (1) for any standard condition included in a licence of that type not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions; (2) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or (3) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined: Utilities Act 2000 s 33(2). Such conditions as might be determined by the Secretary of State before 1 October 2001 (ie the commencement date of s 33(3): see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule), and published by him in such manner as he considers appropriate, in relation to any of the types of licence mentioned in the Electricity Act 1989 s 6(1)(a), (c) and (d) (as substituted and amended) (see PARA 1065 ante at heads (1), (3) and (4) in the text) (ie in relation to generation licences, distribution licences or supply licences) are to be standard conditions for the purposes of licences of that type, subject to any modifications of the standard conditions for the purposes of licences of that type made: (a) under Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1070 et seq post) after the determination under the Utilities Act 2000 s 33 (as amended); (b) under the Energy Act 2004; or (c) under the Climate Change and Sustainable Energy Act 2006 s 7 (sale of electricity generated by microgeneration; power to modify distribution and supply licences etc: see PARA 1077 post): Utilities Act 2000 s 33(1) (amended by the Energy Act 2004 ss 143(1), 197(9), Sch 19 para 20, Sch 23 Pt 1; the Climate Change and Sustainable Energy Act 2006 s 7(7)). As to the Secretary of State see PARA 601 note 1 ante.

2 The standard conditions for the purposes of transmission licences may contain provision (1) for any standard condition included in a transmission licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in, or determined under, the standard conditions; (2) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; (3) for any standard condition included in such a licence which is suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined: Energy Act 2004 s 137(4). If the Secretary of State considered it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he might determine new standard conditions in relation to transmission licences: s 137(1). That power might not be exercised (a) after the end of the period of 18 months beginning with 24 August 2004 (see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(1), Sch 1); or (b) on or after 1 September 2004 (see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(2), Sch 2): Energy Act 2004 s 137(7). The Secretary of State must publish any conditions determined under s 137(1) in such manner as he considers appropriate: s 137(2). Conditions published in accordance with s 137(2) are to be standard conditions for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made (i) under the Electricity Act 1989 Pt I (as amended); or (ii) under the Energy Act 2004, after the determination under s 137(1): s 137(3). For these purposes, 'transmission licence' means a licence under the Electricity Act 1989 s 6(1)(b) (as substituted) (see PARA 1065 ante at head (2) in the text); and references to the new trading and transmission arrangements are to be construed in accordance with the Energy Act 2004 s 133 (see PARA 1071 post): s 142. As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.

3 Before 1 April 2005 (ie the commencement of *ibid* s 146(6): see the Energy Act 2004 (Commencement No 5) Order 2005, SI 2005/877, art 2(1), Sch 1), the Secretary of State was to determine standard conditions for electricity interconnector licences: Energy Act 2004 s 146(1). Those standard conditions may contain provision (1) for a standard condition included in an electricity interconnector licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions; (2) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or (3) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined: s 146(2). The Secretary of State must publish the standard conditions so determined by him and the publication must be in such manner as the Secretary of State considers appropriate: s 146(3), (4). The standard conditions determined by the Secretary of State have effect subject to any modifications made under the Electricity Act 1989 Pt I (as amended) or under the Energy Act 2004: s 146(5). 'Electricity interconnector licence' means an interconnector licence under the Electricity Act 1989 s 6(1)(e) (as added) (see PARA 1065 ante at head (5) in the text): Energy Act 2004 s 146(7). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.

4 Ie by virtue of the Utilities Act 2000 s 33 (as amended) or the Energy Act 2004 s 137 or s 146: see notes 1-3 *supra*.

5 Electricity Act 1989 s 8A(1), (1A), (1B) (s 8A added by Utilities Act 2000 s 33; the Electricity Act 1989 s 8A(1) amended by the Energy Act 2004 s 137(5); the Electricity Act 1989 s 8A(1A), (1B) respectively added by the Energy Act 2004 ss 137(6), 146(6)). In the case of generation, distribution, supply or transmission licences, the standard conditions referred to in the text are to be so incorporated in licences granted on or after 1 September 2004 (ie the date when s 137(6) came into force: see note 2 supra); and in the case of interconnector licences, they are to be so incorporated in licences granted on or after 1 April 2005 (ie the date when s 146(6) came into force: see note 3 supra). These provisions are, however, subject to the Electricity Act 1989 s 8A(2) (as added): see the text and notes 6-8 infra.

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 For these purposes, 'modify' includes fail to incorporate and 'modification' is to be construed accordingly: Electricity Act 1989 s 8A(8) (as added: see note 5 supra).

8 Ibid s 8A(2) (as added: see note 5 supra).

9 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

10 Electricity Act 1989 s 8A(6) (as added: see note 5 supra).

11 For the meaning of 'notice' see PARA 1047 note 11 ante.

12 Electricity Act 1989 s 8A(3) (as added: see note 5 supra).

13 Ibid s 8A(4) (as added: see note 5 supra). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

14 As to directions generally see ibid s 107; and PARA 1306 post.

15 Ibid s 8A(5) (as added: see note 5 supra).

16 Ie under ibid s 8A(2) (as added): see the text and notes 6-8 supra.

17 Ie for the purposes of ibid Pt I (as amended): see PARA 1041 et seq ante, PARA 1070 et seq post.

18 Ibid s 8A(7) (as added: see note 5 supra).

UPDATE

1069 Standard conditions of licences

NOTE 1--Utilities Act 2000 s 33(1) further amended: Energy Act 2008 Sch 5 para 13, Sch 6.

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1070. Transfer of licences.

A licence¹ is capable of being transferred by the licence holder², with the consent of the Gas and Electricity Markets Authority ('GEMA')³, in accordance with the following conditions but subject to any term as to transfer⁴ contained in the licence⁵. It may, however, include conditions which must be complied with before the licence can be transferred⁶. A transfer may relate to the whole or any part of the licence⁷; and this reference to part of a licence is a reference to a part of the activities authorised by the licence, whether described by reference to activities being carried on by the licence holder or to activities which he is authorised by the licence to carry on⁸.

The Authority's consent may be given subject to compliance with such modification or other conditions⁹ as the Authority considers appropriate¹⁰. In the case of a partial transfer, conditions so imposed may make, as respects so much of the licence as is proposed to be retained by the transferor, provision different from that made as respects so much of the licence as is proposed to be transferred¹¹.

In deciding whether to give its consent to a proposed transfer, the Authority must apply the same criteria as it would apply if the Authority were deciding whether:

- 2196 (1) in the case of a general transfer, to grant a corresponding licence to the transferee; or
- 2197 (2) in the case of a partial transfer:
- 193 288. (a) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
- 289. (b) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained¹².
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The Authority must give the Secretary of State¹³ not less than 28 days' notice¹⁴ of any proposal to impose a modification condition¹⁵. If, before the expiry of the time specified in such a notice, the Secretary of State directs¹⁶ the Authority not to impose the condition, the Authority must comply with the direction¹⁷.

Before giving consent to the transfer of a licence, the Authority must give notice:

- 2198 (i) stating that it proposes to grant consent to the transfer;
- 2199 (ii) stating the reasons why it proposes to give consent; and
- 2200 (iii) specifying the time from the date of publication of the notice, not being less than two months, within which representations or objections with respect to the transfer may be made,

and must consider any representations or objections that are duly made and not withdrawn¹⁸. The notice must be given by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer¹⁹.

A purported transfer of a licence is void:

2201 (A) if the licence is not capable of transfer or the Authority has not given its consent;

2202 (B) if the purported transfer is in breach of a condition of the licence; or

2203 (C) if there has, before the purported transfer, been a contravention²⁰ of a condition subject to compliance with which the Authority's consent is given²¹.

1 For the meaning of 'licence' see PARA 1041 note 12 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For these purposes, 'transfer' includes any form of transfer or assignment: Electricity Act 1989 s 7A(12) (s 7A added by the Utilities Act 2000 s 41).

5 Electricity Act 1989 s 7A(1)(a) (as added: see note 4 supra).

6 Ibid s 7A(1)(b) (as added: see note 4 supra).

7 Ibid s 7A(2) (as added: see note 4 supra).

8 Ibid s 7A(3) (as added: see note 4 supra).

9 For these purposes, 'modification condition' means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence: ibid s 7A(12) (as added: see note 4 supra). For the meaning of 'modification' see PARA 1035 note 3 ante.

10 Ibid s 7A(4) (as added: see note 4 supra).

11 Ibid s 7A(5) (as added: see note 4 supra).

12 Ibid s 7A(6) (as added: see note 4 supra).

13 As to the Secretary of State see PARA 601 note 1 ante.

14 For the meaning of 'notice' see PARA 1047 note 11 ante.

15 Electricity Act 1989 s 7A(7) (as added: see note 4 supra).

16 As to directions generally see ibid s 107; and PARA 1306 post.

17 Ibid s 7A(8) (as added: see note 4 supra).

18 Ibid s 7A(9) (as added: see note 4 supra).

19 Ibid s 7A(10) (as added: see note 4 supra). As to publication by the Authority see PARA 1045 note 6 ante.

20 Unless the context otherwise requires, 'contravention', in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions are to be construed accordingly: ibid s 111(1).

21 Ibid s 7A(12) (as added: see note 4 supra).

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(ii) New Trading and Transmission Arrangements under the Energy Act 2004

1071. New trading and transmission arrangements; in general.

The Energy Act 2004 introduced new arrangements relating to the trading and transmission¹ of electricity in Great Britain² designed:

- 2204 (1) to promote the creation of a single competitive wholesale electricity trading market; and
- 2205 (2) to introduce a single set of arrangements for access to and use of any transmission system³ in Great Britain⁴.

Those arrangements are referred to in the relevant provisions⁵ of that Act as the 'new trading and transmission arrangements'⁶.

For the purpose of implementing those arrangements, the Secretary of State⁷ was given transitional powers to modify licence conditions, as discussed below⁸, and to determine new standard conditions in relation to transmission licences⁹, as has already been discussed¹⁰. As from a day to be appointed¹¹, transitional powers are also conferred on the Secretary of State, for the purpose of implementing the new trading and transmission arrangements, and if he considers it necessary or expedient to do so, by direction¹²:

- 2206 (a) to require the Gas and Electricity Markets Authority ('GEMA')¹³ to grant a transmission licence to such person, and on such terms and subject to such conditions, as the direction may provide;
- 2207 (b) to require GEMA to refuse an application for a transmission licence¹⁴.

The Secretary of State is to consult¹⁵ GEMA before issuing such a direction¹⁶. The power under head (a) above may only be exercised on one occasion and then only to require the grant of a single licence¹⁷; and the power under head (b) above may not be exercised once the power under head (a) above has been exercised¹⁸.

As from a day to be appointed¹⁹, if GEMA receives an application for a transmission licence at a time when the power under head (b) above is exercisable, it must as soon as practicable send a copy of the application to the Secretary of State²⁰. GEMA must provide the Secretary of State with all such information as he may require for the purposes of or in connection with the carrying out of any of his functions under the relevant²¹ statutory provisions²²; and each holder of an electricity licence²³ must provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the carrying out of any of those functions²⁴. The general restrictions on disclosure of information²⁵ do not apply to a disclosure made in pursuance of these provisions²⁶.

The Energy Act 2004 also makes provision:

- 2208 (i) for a licensing scheme in relation to existing transmission licences²⁷;

2209 (ii) about property arrangements schemes²⁸.

Where the effect of a modification of licence conditions²⁹ or a licensing scheme such as is described in head (i) above is to reduce in any respect the area in which the holder of a transmission licence may carry on activities, Schedule 4 to the Electricity Act 1989³⁰, which contains provisions with regard to the powers of licence holders, has effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on³¹.

The Secretary of State may by order make in connection with the coming into force of any of the relevant statutory provisions³² such transitional provision or saving as he considers necessary or expedient³³.

1 For the meaning of 'transmission' see PARA 1041 note 6 ante (definition applied by the Energy Act 2004 s 133(2)).

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 For the meaning of 'transmission system' see PARA 1041 note 6 ante (definition applied by the Energy Act 2004 s 133(2)).

4 Ibid s 133(1).

5 Ie in ibid Pt 3 Ch 1 (ss 133-144, Schs 17-19): see PARA 1069 note 2 ante; the text and notes 1-4 supra, 6-31 infra; and PARAS 1072-1073, 1080 post.

6 See ibid s 133(1).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 See the Energy Act 2004 s 134; and PARA 1080 post.

9 As to the standard conditions of licences see PARA 1069 ante; and the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

10 See the Energy Act 2004 s 137; and PARA 1069 note 2 ante.

11 Ie as from a day to be appointed under the Energy Act 2004 s 198(2). At the date at which this title states the law, no such day had been appointed.

12 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

13 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

14 Energy Act 2004 s 139(1) (not in force: see note 11 supra). The powers under s 139(1) may not be exercised after the end of the period of 18 months beginning with the day on which s 139(1) comes into force: s 139(4) (not in force). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.

15 This requirement may be satisfied by consultation before, as well as by consultation after, the commencement of ibid s 139: s 139(3) (not in force: see note 11 supra).

16 Ibid s 139(2) (not in force: see note 11 supra).

17 Ibid s 139(5) (not in force: see note 11 supra).

18 Ibid s 139(6) (not in force: see note 11 supra).

19 See note 11 supra.

20 Energy Act 2004 s 140(1) (not in force: see note 11 supra).

21 Ie his functions under ibid Pt 1 Ch 3.

- 22 Ibid s 140(2) (not in force: see note 11 supra).
- 23 Ie a licence under the Electricity Act 1989 s 6 (as substituted and amended): see PARA 1065 ante.
- 24 Energy Act 2004 s 140(3) (not in force: see note 11 supra).
- 25 Ie the Utilities Act 2000 s 105(1) (as amended): see PARA 767 ante.
- 26 Energy Act 2004 s 140(4) (not in force: see note 11 supra).
- 27 See *ibid* s 138, Sch 17; and PARA 1072 post.
- 28 See *ibid* s 141, Sch 18; and PARA 1073 post.
- 29 Ie under *ibid* s 134: see PARA 1080 post.
- 30 Ie the Electricity Act 1989 Sch 4 (as amended): see PARA 1287 et seq post.
- 31 Energy Act 2004 s 143(2).
- 32 Ie any provision of *ibid* Pt 1 Ch 3.
- 33 *Ibid* s 144.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(ii) New Trading and Transmission Arrangements under the Energy Act 2004/1072. Conversion of existing transmission licences.

1072. Conversion of existing transmission licences.

Before 1 September 2004¹, the Secretary of State² was to make a scheme in relation to existing transmission licences³. Such a scheme must provide for each licence to which it relates to have effect on and after such date as the scheme may provide:

- 2210 (1) as a transmission licence under the relevant provision of the Electricity Act 1989⁴ as amended by the Energy Act 2004⁵; and
- 2211 (2) with the inclusion of such provision as to the area or areas in which the holder is authorised to participate in the transmission of electricity⁶ as the scheme may provide⁷.

Such a scheme must⁸ provide that the conditions which are⁹ standard conditions¹⁰ for the purposes of transmission licences are incorporated by reference in each licence to which the scheme relates, in place of the existing standard conditions of that licence¹¹; and may provide that each licence to which it relates is to have effect with such incidental, consequential and supplementary modifications¹² as appear to the Secretary of State to be necessary or expedient¹³. It may make such transitional provision as appears to the Secretary of State to be necessary or expedient and may make different provision for different cases¹⁴.

As soon as practicable after making such a scheme, the Secretary of State must publish the text of each licence to which the scheme relates as it has effect by virtue of the scheme¹⁵. Any text so published is to be treated as authoritative unless the contrary is shown¹⁶. The Secretary of State may:

- 2212 (a) change the date on which such a scheme is to come into operation¹⁷;
- 2213 (b) include in such a scheme provision amending a code or agreement relevant to the conditions of an existing transmission licence if it appears to him to be necessary or expedient to do so in consequence of anything for which the scheme makes provision¹⁸.

Such a scheme has effect according to its terms¹⁹.

If at any time after such a scheme has come into operation the Secretary of State considers it appropriate to do so, he may by order²⁰ provide that the scheme is, for all purposes, to be deemed to have come into operation with such modifications as may be specified in the order²¹. Such an order may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme, and in connection with giving effect to that provision from that time may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate²².

Before carrying out any function under the above provisions the Secretary of State must consult²³ GEMA, and holders of existing transmission licences, in such manner as he considers appropriate²⁴.

1 le before the commencement of the Energy Act 2004 s 136. Section 136 (which makes amendments to the Electricity Act 1989 s 6 (as substituted and amended) and s 7 (as amended) (see PARAS 1065, 1068 ante)) came into force on 1 September 2004: see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(2), Sch 2.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Energy Act 2004 s 138, Sch 17 para 1(1). For these purposes, references to an existing transmission licence are to a transmission licence which was in force immediately before 1 September 2004 (ie the day on which s 136 came into force: see note 1 supra): Sch 17 para 6. For the meaning of 'transmission licence' see now para 1065 ante at head (2) in the text.

4 le under the Electricity Act 1989 s 6(1)(b) (as substituted): see PARA 1065 ante at head (2) in the text.

5 le as amended by the Energy Act 2004 Pt 3 Ch 1 (ss 133-144, Schs 17-19). The relevant amendment is made by s 136: see note 1 supra; and PARA 1065 ante.

6 le such provision under the Electricity Act 1989 s 6(6A) (as added): see PARA 1065 ante.

7 Energy Act 2004 Sch 17 para 1(2).

8 le subject to ibid Sch 17 para 1(4): see the text and notes 12-13 infra.

9 le by virtue of ibid s 137(3): see PARA 1069 note 2 ante.

10 As to the standard conditions of licences see PARA 1069 ante.

11 Energy Act 2004 Sch 17 para 1(3).

12 For the meaning of 'modifications' see PARA 1035 note 3 ante.

13 Energy Act 2004 Sch 17 para 1(4). Modifications under Sch 17 para 1(4) may relate to (1) the terms of a licence; or (2) the conditions of a licence (including the standard conditions which would otherwise be incorporated by virtue of Sch 17 para 1(3)): Sch 17 para 1(5). The modification under Sch 17 para 1(4) of what would otherwise be a standard condition of a licence to which the scheme relates does not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1073 et seq post): Energy Act 2004 Sch 17 para 3(2).

14 Ibid Sch 17 para 1(6).

15 Ibid Sch 17 para 1(7).

16 Ibid Sch 17 para 1(8).

17 Ibid Sch 17 para 1(9).

18 Ibid Sch 17 para 2.

19 Ibid Sch 17 para 3(1).

20 Such an order is subject to the negative resolution procedure: ibid Sch 17 para 4(3). As to the negative resolution procedure see PARA 602 note 2 ante.

21 Ibid Sch 17 para 4(1).

22 Ibid Sch 17 para 4(2).

23 This requirement may be satisfied by consultation before, as well as by consultation after, 1 September 2004 (ie the commencement of ibid Sch 17 para 5: see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(2), Sch 2): Energy Act 2004 Sch 17 para 5(2).

24 Ibid Sch 17 para 5(1).

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1073. Property arrangements schemes.

The Gas and Electricity Markets Authority ('GEMA')¹ may, on application², make a scheme providing for the transfer to the system operator³ of, or the creation in favour of the system operator of any rights in relation to, property, rights or liabilities of an existing transmission licence holder⁴. Such a scheme ('a property arrangements scheme') may also contain:

- 2214 (1) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the relevant existing transmission licence holder;
- 2215 (2) provision for the creation of any rights or liabilities as between the relevant existing transmission licence holder⁵ and the system operator;
- 2216 (3) provision for imposing on the relevant existing transmission licence holder or the system operator an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;
- 2217 (4) supplemental, incidental and consequential provision⁶.

The property, rights or liabilities which may be transferred by a property arrangements scheme include property, rights or liabilities which would not otherwise be capable of being transferred⁷. If a property arrangements scheme provides for the division of an estate or interest in land and any rent is either payable in respect of the estate or interest under a lease, or charged on the estate or interest, the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest⁸. A property arrangements scheme that contains provision which adversely affects a third party⁹ may also contain provision requiring the system operator or the relevant existing transmission licence holder to pay the third party compensation¹⁰.

On an application for the making of a property arrangements scheme, GEMA must, in relation to any property, rights or liabilities in respect of which the application proposes provision of a kind mentioned above¹¹, determine¹² whether provision of such a kind is, in relation to that property, or those rights or liabilities, necessary or expedient for implementation purposes¹³; but this does not apply if the system operator and the relevant existing transmission licence holder agree that provision of such a kind is, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes¹⁴. If GEMA determines that provision of such a kind is not, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, it must refuse the application in relation to that property, or those rights or liabilities¹⁵. If, however, GEMA determines that provision of such a kind is, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, or if the system operator and the relevant existing transmission licence holder agree that that is the case, then GEMA must¹⁶ make a property arrangements scheme in relation to that property, or those rights or liabilities¹⁷.

Where GEMA is required to make a property arrangements scheme, the terms of the scheme must¹⁸ be such as the system operator and the relevant existing transmission licence holder may agree or, if they fail to agree, as GEMA may determine¹⁹. GEMA may not include in a

property arrangements scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for implementation purposes for the provision to be made²⁰. Where GEMA does include in a property arrangements scheme provision which would adversely affect a third party, GEMA must determine whether the scheme should include provision for compensation and, if so, what that provision should be²¹. A property arrangements scheme must not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made²².

A property arrangements scheme has effect according to its terms²³. A transaction of any description effected by or under a property arrangements scheme has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register²⁴. Subject to that, a transaction of any description effected by or under a property arrangements scheme is binding on all persons, notwithstanding that it would otherwise have required the consent or concurrence of any person²⁵.

Any person aggrieved²⁶ by a determination of GEMA under these provisions may apply to the Competition Appeal Tribunal ('the tribunal')²⁷ for a review of the determination²⁸. On such an application, the tribunal may:

- 2218 (a) dismiss the application; or
- 2219 (b) make an order substituting its own determination²⁹.

Where the tribunal makes an order under head (b) above:

- 2220 (i) and GEMA has not made a property arrangements scheme in relation to the property, rights or liabilities concerned, the tribunal may include in the order provision requiring GEMA to make a property arrangements scheme in relation to that property, or those rights or liabilities³⁰;
- 2221 (ii) and GEMA has made a property arrangements scheme in relation to the property, rights or liabilities concerned, but the scheme has not come into operation, then where the tribunal's determination is that provision of the kind mentioned above³¹ is not, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes, it may include in the order provision quashing the scheme³²; and in any other case, the tribunal may include in the order provision for the scheme to have effect with such amendments with respect to any matter dealt with by GEMA's determination as it thinks fit, and to the extent that GEMA's determination dealt with any financial matter, provision requiring GEMA to redetermine the matter in accordance with the order and to amend the scheme accordingly³³;
- 2222 (iii) and GEMA has made a property arrangements scheme in relation to the property, rights or liabilities concerned which has come into operation, the tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between the system operator, the relevant existing transmission licence holder, and any third party adversely affected by the scheme, in the light of its determination³⁴.

An order under head (b) above may include provision for the award of interest at such rate and for such period as the tribunal thinks fit³⁵. There is a right of appeal with leave on a point of law to the Court of Appeal³⁶ against any decision of the tribunal under these provisions³⁷.

Where a person makes an application³⁸ for the review of a determination:

- 2223 (A) and GEMA has not made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates, the tribunal may on application³⁹ by the system operator or the relevant existing transmission

licence holder make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned⁴⁰;

- 2224 (B) and GEMA has made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates, the tribunal may on application⁴¹ by the system operator, the relevant existing transmission licence holder, or a third party who is adversely affected by any provision of the scheme, make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned⁴².

If an order under head (A) or head (B) above is registered in England and Wales in accordance with rules of court or any practice direction, it is enforceable as an order of the High Court⁴³. Subject to rules of court or any practice direction, an order under head (A) or head (B) above may be registered by a person entitled to any right under the interim arrangements for which the order makes provision⁴⁴.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 An application under the Energy Act 2004 s 141, Sch 18 (see the text and notes 3-44 infra) is not allowed to be made orally: Sch 18 para 22. No application for a property arrangements scheme might be made after the end of the period of three months beginning with 1 September 2004 (ie the day on which s 141 came into force: see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(2), Sch 2): Energy Act 2004 Sch 18 para 2(2). The application might be made by the system operator (see note 3 infra) or the relevant existing transmission licence holder (see note 5 infra) and was to specify the property, rights or liabilities in relation to which provision of a kind mentioned in Sch 18 para 1(1) was proposed to be included in the scheme: Sch 18 para 2(1), (3).

3 The Secretary of State may by order designate the holder of a transmission licence as the system operator for these purposes; and 'system operator' means the person so designated: *ibid* Sch 18 paras 21, 23(1). The Secretary of State has designated National Grid Company plc (company registered no 2366977) as the system operator for these purposes: Energy Act 2004 (Designation of System Operator) Order 2004, SI 2004/2242, art 2.

4 See the Energy Act 2004 Sch 18 para 1(1). For these purposes, 'existing transmission licence' means a transmission licence which was in force immediately before 1 September 2004 (ie the day on which s 136 (which amends the Electricity Act 1989 s 6 (as substituted and amended) and s 7 (as amended) (see PARAS 1065, 1068 ante) came into force: see the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(2), Sch 2): Energy Act 2004 Sch 18 para 23(1). For the meaning of 'transmission licence' see now para 1065 ante at head (2) in the text.

5 For these purposes, 'relevant existing transmission licence holder', in relation to a property arrangements scheme, or an application for such a scheme, means the existing transmission licence holder to whose property, rights or liabilities the scheme, or application, relates: *ibid* Sch 18 para 23(1).

6 *Ibid* Sch 18 para 1(2).

7 *Ibid* Sch 18 para 1(3).

8 *Ibid* Sch 18 para 1(4).

9 For these purposes, a provision of a property arrangements scheme adversely affects a third party if (1) his consent or concurrence would be required to the making of the provision otherwise than by means of the scheme; and (2) he does not consent to the making of the provision by means of the scheme: *ibid* Sch 18 para 23(2). 'Third party', in relation to a property arrangements scheme, means a person other than the system operator or the relevant existing transmission licence holder: Sch 18 para 23(1).

10 *Ibid* Sch 18 para 1(5).

11 *Ie* provision of a kind mentioned in *ibid* Sch 18 para 1(1): see the text and notes 1-4 supra.

12 GEMA may engage such consultants as it thinks fit for the purpose of advising it in relation to the making of a determination under *ibid* Sch 18: Sch 18 para 7. GEMA may also require any of the following persons to give it information and assistance in connection with the making of a determination under Sch 18: (1) the

system operator; (2) any existing transmission licence holder; and (3) any person who makes representations to GEMA about the application to which the determination relates: Sch 18 para 6.

13 Ibid Sch 18 para 3(1). For these purposes, 'implementation purposes' means the purposes of implementing the new trading and transmission arrangements in accordance with the timetable for implementation for the time being published by GEMA: Sch 18 para 23(1). For the meaning of 'the new trading and transmission arrangements' see PARA 1071 ante.

14 Ibid Sch 18 para 3(2).

15 Ibid Sch 18 para 3(3).

16 Ie subject to ibid Sch 18 para 4(2): see the text and note 20 infra.

17 Ibid Sch 18 para 3(4).

18 Ie subject to ibid Sch 18 para 4(2)-(4): see the text and notes 20-22 infra.

19 Ibid Sch 18 para 4(1). A determination under Sch 18 para 4, so far as relating to any financial matter, must be made on the basis of what is just in all the circumstances of the case; and so far as relating to any other matter, must be made on the basis of what appears to GEMA to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for implementation purposes: Sch 18 para 5(1), (2).

20 Ibid Sch 18 para 4(2).

21 Ibid Sch 18 para 4(3).

22 Ibid Sch 18 para 4(4).

23 Ibid Sch 18 para 8.

24 Ibid Sch 18 para 9(1).

25 Ibid Sch 18 para 9(2).

26 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

27 As to the Competition Appeal Tribunal see COMPETITION vol 18 (2009) PARAS 13-17.

28 Energy Act 2004 Sch 18 para 10(1). Subject to Sch 18 para 10(3), no such application may be made after the end of the period of seven days beginning with the day on which the determination is made: Sch 18 para 10(2). Where, however, GEMA has made a property arrangements scheme, such an application may be made in respect of a determination relating to the scheme at any time before the end of the period of seven days beginning with the day on which the scheme is made: Sch 18 para 10(3).

29 Ibid Sch 18 para 10(4).

30 Ibid Sch 18 para 11(1), (2). Where Sch 18 para 4 applies because of provision under Sch 18 para 11, anything the tribunal has determined is to be treated for the purposes of Sch 18 para 4 as determined by GEMA: Sch 18 para 11(3).

31 See note 11 supra.

32 Energy Act 2004 Sch 18 para 12(1), (2).

33 Ibid Sch 18 para 12(1), (3).

34 Ibid Sch 18 para 13(1), (2). Without prejudice to the generality of Sch 18 para 13(2), the Tribunal may include in the order (1) provision for retransfer; (2) provision for the surrender or extinction of rights; and (3) provision for the payment of compensation: Sch 18 para 13(3).

35 Ibid Sch 18 para 14.

36 Ie the Enterprise Act 2002 s 120(6)-(8) (see COMPETITION vol 18 (2009) PARA 271) applies in relation to decisions of the tribunal under the Energy Act 2004 Sch 18 as it applies in relation to decisions under the Enterprise Act 2002 s 120 (as amended).

37 See the Energy Act 2004 Sch 18 para 15.

38 *Ie* under *ibid* Sch 18 para 10(1): see the text and notes 26-28 *supra*.

39 No such application may be made after the end of the period of seven days beginning with the day on which the application under *ibid* Sch 18 para 10(1) is made: Sch 18 para 16(4).

40 *Ibid* Sch 18 para 16(1), (2). Without prejudice to the generality of Sch 18 para 16(2), the power under that provision includes, in particular, power to make provision for the system operator to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the tribunal thinks fit: Sch 18 para 16(3). In exercising its powers under Sch 18 para 16 or Sch 18 para 17 (see heads (A)-(B) in the text), the tribunal must have regard, in particular, to what is necessary or expedient for implementation purposes: Sch 18 para 18. Schedule 18 paras 16, 17 are without prejudice to any powers of the tribunal to make orders on an interim basis under rules under the Enterprise Act 2002 s 15 (see COMPETITION vol 18 (2009) PARA 16): Energy Act 2004 Sch 18 para 19.

41 No such application may be made after the end of the period of seven days beginning with the day on which the application under *ibid* Sch 18 para 10(1) is made: Sch 18 para 17(4).

42 *Ibid* Sch 18 para 17(1), (2). Without prejudice to the generality of Sch 18 para 17(2), the power under that provision includes, in particular, power (1) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the tribunal thinks fit; (2) to make provision for the system operator to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the tribunal thinks fit: Sch 18 para 17(3). As to the exercise of powers under Sch 17 see also note 40 *supra*.

43 *Ibid* Sch 18 para 20(1). Schedule 18 para 20(1), (3) applies to an order on an interim basis made under rules under the Enterprise Act 2002 s 15 in connection with an application under Sch 18 para 10(1) as it applies to an order under Sch 18 para 16 or 17: Sch 18 para 20(4).

44 *Ibid* Sch 18 para 20(3). See also note 43 *supra*.

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(iii) Modification of Licences

1074. Modification of particular licences by agreement.

Subject to the following provisions, the Gas and Electricity Markets Authority ('GEMA')¹ may modify² the conditions of a particular licence³. It may not, however, make any modifications under these provisions unless the licence holder⁴ has consented to the modifications and, in the case of standard conditions⁵ of the licence, the Authority is of the opinion that the modifications:

- 2225 (1) are requisite to meet the circumstances of the particular case; and
- 2226 (2) are such that:
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- 290. (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
- 291. (b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences, including the holder of the licence being modified⁶.
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Before so making modifications, the Authority must give notice⁷:

- 2227 (i) stating that it proposes to make the modifications and setting out their effect;
- 2228 (ii) stating the reasons why it proposes to make the modifications; and
- 2229 (iii) specifying the period, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn⁸. Such a notice must be given:

- 2230 (A) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- 2231 (B) by serving a copy⁹ of the notice on the holder of the licence¹⁰.

The Authority must also send a copy of such a notice to the Secretary of State¹¹; and if, within the period specified in the notice, the Secretary of State directs¹² the Authority not to make any modifications, the Authority must comply with the direction¹³.

The modification under these provisions of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹⁴ purposes¹⁵.

- 1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 2 For the meaning of 'modify' see PARA 1035 note 3 ante.
- 3 Electricity Act 1989 s 11(1) (s 11(1) substituted, and s 11(1A) added, by the Utilities Act 2000 s 34(1)). For the meaning of 'licence' see PARA 1041 note 12 ante.
- 4 For the meaning of 'licence holder' see PARA 1041 note 12 ante.
- 5 As to the standard conditions of licences see PARA 1069 ante; and as to modification of such conditions for all licences of a type see PARA 1075 post.
- 6 Electricity Act 1989 s 11(1A) (as added: see note 3 supra).
- 7 For the meaning of 'notice' see PARA 1047 note 11 ante.
- 8 Electricity Act 1989 s 11(2) (s 11(2)-(4) amended by virtue of the Utilities Act 2000 s 3(2)).
- 9 As to the service of notices and documents see PARA 1307 post.
- 10 Electricity Act 1989 s 11(3) (as amended: see note 8 supra).
- 11 As to the Secretary of State see PARA 601 note 1 ante.
- 12 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.
- 13 Ibid s 11(4) (as amended: see note 8 supra).
- 14 Ie for the purposes of ibid Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1075 et seq post.
- 15 Ibid s 11(5) (added by the Utilities Act 2000 s 34(2)).

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1075. Modification of standard conditions of licences.

Subject to the following provisions, the Gas and Electricity Markets Authority ('GEMA')¹ may modify² the standard conditions³ of any type⁴ of licences⁵. Where at any time the Authority modifies the standard conditions of licences of any type under these provisions, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that type⁶.

Before making any such modifications, the Authority must give notice⁷:

- 2232 (1) stating that it proposes to make the modifications and setting out their effect;
- 2233 (2) stating the reasons why it proposes to make the modifications; and
- 2234 (3) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn⁸. Such a notice must be given by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications and by sending a copy of the notice⁹ to each relevant licence holder¹⁰, to the Secretary of State¹¹ and to the Gas and Electricity Consumer Council¹². If, within the time specified in the notice, the Secretary of State directs¹³ the Authority not to make any modification, the Authority must comply with the direction¹⁴.

The Authority may not so make any modifications of the standard conditions of licences of any type unless:

- 2235 (a) no notice of objection to those modifications is given to the Authority within the time specified in the notice described in heads (1) to (3) above by any relevant licence holder¹⁵;
 - 2236 (b) if one or more relevant licence holders gives or give notice of objection to the Authority within that time:
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- 292. (i) the proportion, expressed as a percentage, of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed¹⁶; and
 - 293. (ii) the specified percentage, that is the proportion, expressed as a percentage, of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed¹⁷, is less than such percentage as may be prescribed¹⁸; or
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- 2237 (c) heads (i) to (iii) below apply to the case¹⁹; and those heads so apply where the Authority is satisfied that:
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294. (i) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
295. (ii) the modifications would remove or reduce the burden without removing any necessary protection; and
296. (iii) the modifications are such that no holder of a licence of the type in question would be unduly disadvantaged in competing with other holders of such licences²⁰.
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Where the Authority modifies the standard conditions of licences of any type:

- 2238 (A) the Authority must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- 2239 (B) the Authority must publish the modifications in such manner as it considers appropriate²¹.

The Secretary of State has modified²² the standard conditions of electricity supply licences²³ in order to bring them into conformity with the European Directive²⁴ requiring member states to ensure that electricity suppliers specify, in or with bills and in promotional materials made available to final customers, certain information regarding the contribution of each energy source to the overall fuel mix of the supplier over the preceding year²⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'modify' see PARA 1035 note 3 ante.

3 As to the standard conditions of licences see PARA 1069 ante; and as to their modification in the case of particular licences see PARA 1074 ante.

4 I.e. of any licences of any type mentioned in the Electricity Act 1989 s 6(1) (as substituted and amended): see PARA 1065 ante at heads (1)-(5) in the text.

5 Ibid s 11A(1) (s 11A added by the Utilities Act 2000 s 35).

6 Electricity Act 1989 s 11A(2) (as added: see note 5 supra).

7 For the meaning of 'notice' see PARA 1047 note 11 ante.

8 Electricity Act 1989 s 11A(3) (as added: see note 5 supra).

9 As to the service of notices and documents see PARA 1307 post.

10 For these purposes, 'relevant licence holder', in relation to proposed modifications of standard conditions of licences of any type, means the holder of a licence of that type (1) which is to be modified under the proposals by the inclusion of any new standard condition; or (2) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect at the time specified in the notice under the Electricity Act 1989 s 11A(3) (as added) (see the text and notes 7-8 supra): s 11A(10) (as added (see note 5 supra); definition amended by the Energy Act 2004 s 197(8), (9), Sch 23 Pt 1).

11 As to the Secretary of State see PARA 601 note 1 ante.

12 Electricity Act 1989 s 11A(4) (as added: see note 5 supra). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

13 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

14 Ibid s 11A(5) (as added: see note 5 supra).

15 Ibid s 11A(6)(a) (as added: see note 5 supra).

16 Ibid s 11A(6)(b)(i) (as added: see note 5 supra). For these purposes, 'prescribed' means prescribed in an order made by the Secretary of State: *ibid* s 11A(10) (as added: see note 5 supra). A statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 11A(11) (as so added). The prescribed percentage for these purposes is 20%: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 3(1).

17 Ie the percentage given by the Electricity Act 1989 s 11A(7) (as added: see note 5 supra). For the purposes of s 11A(7) (as added), 'weighted according to market share' means multiplied by a factor which is (1) in the case of electricity suppliers who are relevant licence holders and who have given notice of objection, the total number of metering points registered at the relevant time to those suppliers divided by the total number of metering points registered at the relevant time to electricity suppliers who are relevant licence holders; (2) in the case of electricity distributors who are relevant licence holders and who have given notice of objection, the total number of metering points registered to electricity suppliers which are at the relevant time on or connected to the distribution systems of those distributors divided by the total number of metering points registered to electricity suppliers which are at the relevant time on or connected to the distribution systems of electricity distributors who are relevant licence holders; (3) in the case of licensed generators who are relevant licence holders and who have given notice of objection, the sum of the average weekly registered capacity of those generators in each four week period in the 12 months (or such period for which the generator has been a licensed generator where this is less than 12 months) which ends at the relevant time divided by the sum of the average weekly registered capacity of all generators who are relevant licence holders in each four week period in the 12 months (or such period for which the generator has been a licensed generator where this is less than 12 months) which ends at the relevant time, as calculated (in each case) by the Authority on the basis of the information available to it: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 3(2). For these purposes: (a) a metering point is registered to an electricity supplier where that supplier is the supplier responsible for the provision of a supply through that metering point in accordance with the provisions of a supply licence granted by the Authority under the Electricity Act 1989 6(1)(d) (as substituted and amended) (see PARA 1065 ante at head (4) in the text); (b) 'the relevant time', in heads (1)-(2) supra, is 23.59 hours on the last day of the calendar month preceding the day on which the Authority gives a relevant notice, and in head (3) supra, is 23.59 hours on the Monday preceding the last day on which representations or objections may be made with respect to the proposals in a relevant notice; and (c) 'a relevant notice' is a notice given by the Authority pursuant to s 11A(3) (as added) which makes proposals in respect of conditions included or to be included in a licence of the type held by the relevant licence holder and in relation to which the Authority is making a calculation under these provisions: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 3(3)-(5). 'Licensed generator' means the holder of a licence under the Electricity Act 1989 s 6(1)(a) (as substituted) (see PARA 1065 ante at head (1) in the text); 'metering point' means any energised or de-energised entry or exit point to, from or on a transmission system of any holder of a transmission licence or distribution system of any electricity distributor where a meter or other metering equipment is used for the purpose of measuring electricity conveyed to or from that system; 'registered capacity' means the maximum amount of electricity which the licensed generator who operates a generating station has agreed with the operator of the distribution system or the transmission system to which the generating station is connected may be provided by it to that system (other than in exceptional circumstances) from time to time; and 'relevant licence holder' has the meaning given to it in s 11A(10) (as added and amended) (see note 10 supra): Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 2.

18 Electricity Act 1989 s 11A(6)(b)(ii), (7) (as added: see note 5 supra). The prescribed percentage for these purposes is 20%: Electricity and Gas (Modification of Standard Conditions of Licences) Order 2003, SI 2003/1746, art 3(1).

19 Electricity Act 1989 s 11A(6)(c) (as added: see note 5 supra).

20 Ibid s 11A(8) (as added: see note 5 supra).

21 Ibid s 11A(9) (as added: see note 5 supra). As to publication by the Authority see PARA 1045 note 6 ante.

22 Ie as the designated minister under the European Communities Act 1972 s 2(2).

23 As to electricity supply licences see PARA 1065 ante at head (4) in the text.

24 Ie European Parliament and EC Council Directive 2003/54 (OJ L176, 15.7.2003, p 37) concerning common rules for the internal market in electricity, art 3.6.

25 See the Electricity (Fuel Mix Disclosure) Regulations 2005, SI 2005/391, reg 2, Schedule.

UPDATE

1075 Modification of standard conditions of licences

NOTE 24--Directive 2003/54 replaced: see PARA 653.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iii) Modification of Licences/1076. Licence modifications relating to new electricity trading arrangements under the Utilities Act 2000.

1076. Licence modifications relating to new electricity trading arrangements under the Utilities Act 2000.

The Secretary of State¹ had transitional powers to modify²:

- 2240 (1) the conditions of a particular licence³; or
- 2241 (2) the standard conditions⁴ of any type of licences⁵,

where he considered it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity⁶. That power included power:

- 2242 (a) to make modifications relating to the operation of transmission systems⁷ and distribution systems⁸; and
- 2243 (b) to make incidental or consequential, or transitional, modifications⁹.

Those powers were to be exercised within the period of two years beginning with 28 July 2000¹⁰. Before so making modifications the Secretary of State was to consult¹¹ the holder of any licence being modified and such other persons as he considered appropriate¹².

Any modification of part of a standard condition of a licence under head (1) above does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹³ purposes¹⁴. Where the standard conditions of licences of any type were modified under head (2) above, the Secretary of State must make, as nearly as may be, the same modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time¹⁵.

The Secretary of State must publish any modifications under these provisions in such manner as he considers appropriate¹⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'modify' see PARA 1035 note 3 ante.

3 For the meaning of 'licence' see PARA 1041 note 12 ante.

4 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

5 I.e. any licences of any type mentioned in the Electricity Act 1989 s 6(1) (as substituted and amended): see PARA 1065 ante at heads (1)-(5) in the text.

6 See *ibid* s 15A(1) (s 15A added by the Utilities Act 2000 s 68).

7 For the meaning of 'transmission system' see PARA 1041 note 6 ante.

8 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

- 9 See the Electricity Act 1989 s 15A(2) (as added: see note 6 supra).
- 10 See *ibid* s 15A(8) (as added: see note 6 supra). 28 July 2000 is the date when the Utilities Act 2000 received Royal Assent.
- 11 Any consultation undertaken by the Secretary of State before 28 July 2000 (ie the commencement of the Electricity Act 1989 s 15A (as amended)) was as effective for those purposes as if undertaken after that date: see s 15A(4) (as added: see note 6 supra).
- 12 See *ibid* s 15A(3) (as added: see note 6 supra).
- 13 *Ie* for the purposes of *ibid* Pt I (ss 3A-64) (as amended): see *PARA 1041 et seq ante*, *PARA 1077 et seq post*.
- 14 *Ibid* s 15A(5) (as added: see note 6 supra).
- 15 *Ibid* s 15A(6) (as added: see note 6 supra).
- 16 *Ibid* s 15A(7) (as added: see note 6 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iii) Modification of Licences/1077. Modification of distribution and supply licences etc for the purpose of increasing the amount of electricity generated by microgeneration.

1077. Modification of distribution and supply licences etc for the purpose of increasing the amount of electricity generated by microgeneration.

During the period which began with 21 August 2007 and which ends with 21 August 2009¹, the Secretary of State² may exercise the following powers³. Where the Secretary of State considers it appropriate to do so for the purpose of increasing the amount of the electricity consumed in Great Britain⁴ that is generated by microgeneration⁵, he may make:

- 2244 (1) relevant modifications of the conditions of a distribution licence⁶ or a supply licence⁷ held by a particular person;
- 2245 (2) relevant modifications of the standard conditions⁸ of distribution licences or supply licences⁹;

and for these purposes, 'relevant modifications' means:

- 2246 (a) in relation to a distribution licence, modifications:
 - 201 297. (i) imposing conditions requiring the holder of such a licence to provide information to holders of supply licences about the connection to the distribution system, or use, of microgeneration plant¹⁰; or
 - 298. (ii) for the purposes of enabling or facilitating holders of supply licences to satisfy any conditions of such licences of a description mentioned in head (b) below; and
 - 202
- 2247 (b) in relation to a supply licence, modifications imposing conditions requiring the holder of such a licence to offer to acquire electricity generated by microgeneration by the licence holder's customers;

and also includes incidental, consequential or transitional modifications¹¹.

Before making any modification of a distribution licence or a supply licence under these powers, the Secretary of State must consult the holder of any licence being modified and such other persons as he considers appropriate¹²; and he must publish every modification so made by him¹³ in such manner as he considers appropriate¹⁴. A modification under head (1) above of part of a standard condition of a distribution licence or supply licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹⁵ purposes¹⁶.

Where the Secretary of State makes modifications under head (2) above of the standard conditions of distribution licences or supply licences, the Gas and Electricity Markets Authority ('GEMA')¹⁷ must make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in distribution licences or, as the case may be, supply licences granted after that time¹⁸. Where GEMA so makes modifications of standard conditions, it must publish the modifications in such manner as it considers appropriate¹⁹.

Conditions included in a distribution licence or supply licence by virtue of a power conferred by the above provisions need not relate to the activities authorised by the licence²⁰. They may do any of the things authorised in relation to licences of that kind by the specified provisions²¹ of the Electricity Act 1989²².

- 1 le during the period which begins with the first anniversary of the commencement of the Climate Change and Sustainable Energy Act 2006 s 7 and ends with the third anniversary of that commencement: see ss 8(5), 28(1).
- 2 As to the Secretary of State see PARA 601 note 1 ante.
- 3 Climate Change and Sustainable Energy Act 2006 s 8(5). The Electricity Act 1989 ss 3A-3D (as added and amended) (see PARAS 1041-1043 ante) apply to the carrying out of functions so conferred on the Secretary of State as they apply in relation to the carrying out of functions conferred on him by or under Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1081 et seq post): Climate Change and Sustainable Energy Act 2006 s 8(6).
- 4 For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 5 For the meaning of 'microgeneration' see PARA 619 note 2 ante.
- 6 For these purposes, 'distribution licence' has the meaning given by the Electricity Act 1989 s 6(1)(c) (as substituted and amended) (see PARA 1065 ante at head (3) in the text): Climate Change and Sustainable Energy Act 2006 s 7(6).
- 7 For these purposes, 'supply licence' has the meaning given by the Electricity Act 1989 s 6(1)(d) (as substituted and amended) (see PARA 1065 ante at head (4) in the text): Climate Change and Sustainable Energy Act 2006 s 7(6).
- 8 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.
- 9 Climate Change and Sustainable Energy Act 2006 s 7(1); and see note 3 supra.
- 10 For these purposes, 'microgeneration plant' means plant used, or intended for use, for generating electricity by microgeneration, where 'plant' includes any equipment, apparatus or appliance: *ibid* s 7(6).
- 11 *Ibid* s 7(2).
- 12 *Ibid* s 8(1).
- 13 *Ibid* s 8(2).
- 14 *Ibid* s 8(3).
- 15 le for the purposes of the Electricity Act 1989 Pt I (as amended): see PARA 1041 et seq ante, PARA 1081 et seq post.
- 16 Climate Change and Sustainable Energy Act 2006 s 7(3).
- 17 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 18 Climate Change and Sustainable Energy Act 2006 s 7(4). The Electricity Act 1989 ss 3A-3D (as added and amended) (see PARAS 1041-1043 ante) apply to the carrying out of functions so conferred on GEMA as they apply in relation to the carrying out of functions conferred on it by or under Pt I (as amended) (see PARA 1041 et seq ante, PARA 1081 et seq post): Climate Change and Sustainable Energy Act 2006 s 8(6).
- 19 *Ibid* s 8(4).
- 20 *Ibid* s 7(5).
- 21 le authorised by the Electricity Act 1989 s 7(2)-(4) (as amended): see PARA 1068 ante.
- 22 Climate Change and Sustainable Energy Act 2006 s 7(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iii) Modification of Licences/1078. Modification of licence conditions for offshore transmission and distribution.

1078. Modification of licence conditions for offshore transmission and distribution.

As from a day to be appointed¹, the following provisions have effect. If the Secretary of State² considers it appropriate to do so for purposes connected with offshore transmission³ or offshore distribution⁴, he may:

- 2248 (1) modify⁵ the standard conditions⁶ of transmission licences⁷ or distribution licences⁸;
- 2249 (2) modify, for purposes that in relation to modifications made under head (1) above are incidental, consequential or transitional purposes, the conditions of a particular transmission licence or a particular distribution licence;
- 2250 (3) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence; and
- 2251 (4) modify an agreement that gives effect to a code so maintained⁹.

These powers are only to be exercisable during the 18 months beginning with the date on which these provisions are brought into force¹⁰.

Before so making a modification, the Secretary of State must consult¹¹ the holder of any licence being modified and such other persons as he considers appropriate¹².

The Secretary of State must publish every modification so made by him¹³ in such manner as he considers appropriate¹⁴.

Where the Secretary of State makes modifications under head (1) above of the standard conditions of licences of any type, the Gas and Electricity Markets Authority ('GEMA')¹⁵ must:

- 2252 (a) make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- 2253 (b) publish the modifications in such manner as it considers appropriate¹⁶.

A modification under head (2) above of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹⁷ purposes¹⁸.

¹ ie as from a day to be appointed under the Energy Act 2004 s 198(2). At the date at which this title states the law, no such day had been appointed and the provisions set out in this paragraph were not in force.

² As to the Secretary of State see PARA 601 note 1 ante.

³ For these purposes, 'offshore transmission' means transmission within an area of offshore waters of electricity generated by a generating station in such an area; and 'offshore waters' means (1) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and (2) waters within an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172); Energy Act 2004 s 90(9) (not in force: see note 1 supra). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA

31 note 3. For the meanings of 'transmission' and 'generating station' see PARA 1041 note 6 ante (definitions applied by s 90(10) (not in force)).

4 For these purposes, 'offshore distribution' means distribution within an area of offshore waters of electricity generated by a generating station in such an area: *ibid* s 90(9) (not in force: see note 1 *supra*). For the meaning of 'distribution' see PARA 1041 note 5 ante (definition applied by s 90(10) (not in force)).

5 For the meaning of 'modify' see PARA 1035 note 3 ante (definition applied by s 90(10) (not in force)).

6 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

7 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

8 For the meaning of 'distribution licence' see PARA 1065 ante at head (3) in the text.

9 Energy Act 2004 s 90(1) (not in force: see note 1 *supra*).

10 *Ibid* s 90(8) (not in force: see note 1 *supra*). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.

11 This requirement may be satisfied by consultation that took place wholly or partly before the commencement of *ibid* s 90: s 90(3) (not in force: see note 1 *supra*).

12 *Ibid* s 90(2) (not in force: see note 1 *supra*).

13 *Ibid* s 90(4) (not in force: see note 1 *supra*).

14 *Ibid* s 90(5) (not in force: see note 1 *supra*).

15 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

16 Energy Act 2004 s 90(6) (not in force: see note 1 *supra*).

17 *Ie* for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq* ante, PARA 1081 *et seq* post.

18 Energy Act 2004 s 90(7) (not in force: see note 1 *supra*).

UPDATE

1078 Modification of licence conditions for offshore transmission and distribution

NOTE 1--Appointed day is 19 June 2009: SI 2009/1269.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iii) Modification of Licences/1079. Extension of transmission licences offshore.

1079. Extension of transmission licences offshore.

As from a day to be appointed¹, the following provisions have effect. Where, on that day, a transmission licence² is in force that authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system³ by means of which electricity is transmitted within Great Britain⁴, or within an area of Great Britain (the 'co-ordination licence'), the Secretary of State⁵ may make such modifications⁶ of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following:

- 2254 (1) an area of the territorial sea adjacent to Great Britain⁷; and
- 2255 (2) an area designated under the specified provision⁸ of the Continental Shelf Act 1964⁹.

The modifications that may be so made by the Secretary of State include such modifications of the co-ordination licence, including modifications of the conditions included in it, as he considers appropriate for incidental, consequential or transitional purposes¹⁰. Where he considers it appropriate to do so for purposes that, in relation to modifications so made, are incidental or consequential purposes, he may also make:

- 2256 (a) modifications of the conditions of a particular licence¹¹, other than the co-ordination licence;
- 2257 (b) modifications of the standard conditions¹² of licences of any type¹³.

These powers are only to be exercisable during the 18 months beginning with the date on which these provisions are brought into force¹⁴.

Before making a modification under these provisions, the Secretary of State must consult¹⁵ the holder of any licence being modified and such other persons as he considers appropriate¹⁶.

The Secretary of State must publish every modification so made by him¹⁷ in such manner as he considers appropriate¹⁸.

A modification of part of a standard condition of the co-ordination licence¹⁹ or of part of a standard condition of a particular licence²⁰ under these provisions does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory²¹ purposes²².

Where the Secretary of State makes modifications under head (b) above of the standard conditions of licences of any type, the Gas and Electricity Markets Authority ('GEMA')²³ must:

- 2258 (i) make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- 2259 (ii) publish the modifications in such manner as it considers appropriate²⁴.

- 1 le as from a day to be appointed under the Energy Act 2004 s 198(2). At the date at which this title states the law, no such day had been appointed and the provisions set out in this paragraph were not in force.
- 2 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.
- 3 For the meaning of 'transmission system' see PARA 1041 note 6 ante (definition applied by the Energy Act 2004 s 91(12) (not in force: see note 1 supra)).
- 4 For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 5 As to the Secretary of State see PARA 601 note 1 ante.
- 6 For the meaning of 'modification' see PARA 1035 note 3 ante (definition as applied: see note 3 supra).
- 7 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.
- 8 le designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172.
- 9 Energy Act 2004 s 91(1), (2) (not in force: see note 1 supra). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.
- 10 Ibid s 91(3) (not in force: see note 1 supra).
- 11 For the meaning of 'licence' see PARA 1041 note 12 ante (definition as applied: see note 3 supra).
- 12 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.
- 13 Energy Act 2004 s 91(4) (not in force: see note 1 supra).
- 14 Ibid s 91(11) (not in force: see note 1 supra).
- 15 This requirement may be satisfied by consultation that took place wholly or partly before the commencement of these provisions: ibid s 91(6) (not in force: see note 1 supra).
- 16 Ibid s 91(5) (not in force: see note 1 supra).
- 17 Ibid s 91(7) (not in force: see note 1 supra).
- 18 Ibid s 91(8) (not in force: see note 1 supra).
- 19 le a modification under ibid s 91(2): see the text and notes 5-9 supra.
- 20 le a modification under ibid s 91(4)(a): see head (a) in the text.
- 21 le for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1081 et seq post.
- 22 Energy Act 2004 s 91(9) (not in force: see note 1 supra).
- 23 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 24 Energy Act 2004 s 91(10) (not in force: see note 1 supra).

UPDATE

1079 Extension of transmission licences offshore

NOTE 1--Appointed day is 19 June 2009: SI 2009/1269.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iii) Modification of Licences/1080. Modification of licence conditions for purpose of implementing new trading and transmission arrangements under the Energy Act 2004.

1080. Modification of licence conditions for purpose of implementing new trading and transmission arrangements under the Energy Act 2004.

The Energy Act 2004 conferred transitional powers on the Secretary of State¹, if he considered it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements², whether wholly or partly, to modify³:

- 2260 (1) the conditions of a particular licence⁴; or
- 2261 (2) the standard conditions⁵ of any of the following types of licence, namely generation⁶, transmission⁷, distribution⁸ or supply⁹ licences¹⁰.

This power included:

- 2262 (a) power to make modifications relating to the operation of distribution systems¹¹; and
- 2263 (b) power to make incidental, consequential or transitional modifications¹².

Those powers were to be exercised within 18 months of 24 August 2004¹³.

Before making such modifications, the Secretary of State was required to consult¹⁴ the holder of any licence being modified and such other persons as he considered appropriate¹⁵.

The Secretary of State must publish any such modifications in such manner as he considers appropriate¹⁶. Any modification under head (1) above of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹⁷ purposes¹⁸.

Where the Secretary of State has modified the standard conditions of licences of any type under head (2) above, the Gas and Electricity Markets Authority ('GEMA')¹⁹ must:

- 2264 (i) make, as nearly as may be, the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- 2265 (ii) publish the modifications in such manner as it considers appropriate²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'new trading and transmission arrangements' see PARA 1071 ante.

3 For the meaning of 'modify' see PARA 1035 note 3 ante.

4 ie a particular licence under the Electricity Act 1989 s 6 (as substituted and amended): see PARA 1065 ante.

5 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

6 For the meaning of 'generation licence' see PARA 1065 ante at head (1) in the text.

- 7 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.
- 8 For the meaning of 'distribution licence' see PARA 1065 ante at head (3) in the text.
- 9 For the meaning of 'supply licence' see PARA 1065 ante at head (4) in the text.
- 10 See the Energy Act 2004 s 134(1). As to the exercise of these powers see also s 191, cited in PARA 764 note 6 ante.
- 11 For the meaning of 'distribution system' see PARA 1041 note 5 ante (definition applied by ibid s 134(9)).
- 12 See ibid s 134(2).
- 13 See ibid s 134(8); and the Energy Act 2004 (Commencement No 2) Order 2004, SI 2004/2184, art 2(1), Sch 1.
- 14 That requirement might be satisfied by consultation before, as well as by consultation after, the commencement of the Energy Act 2004 s 134 (ie 24 August 2004): see s 134(4).
- 15 See ibid s 134(3).
- 16 Ibid s 134(5).
- 17 Ie for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1081 et seq post.
- 18 Energy Act 2004 s 134(6).
- 19 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 20 Energy Act 2004 s 134(7). As to publication by the Authority see PARA 1045 note 6 ante.

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1081. Modification references to the Competition Commission.

The Gas and Electricity Markets Authority ('GEMA')¹ may make to the Competition Commission² a reference which is so framed as to require the Commission to investigate and report on the questions:

- 2266 (1) whether any matters which relate to the carrying on of activities authorised or regulated by a particular licence³ and which are specified in the reference operate, or may be expected to operate, against the public interest⁴; and
- 2267 (2) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications⁵ of the conditions of the licence⁶.

The Authority may also make to the Commission a reference which is so framed as to require the Commission to investigate and report on the questions:

- 2268 (a) whether any matters which relate to the carrying on of activities authorised or regulated by licences of any of the following types, that is generation⁷, transmission⁸, distribution⁹, supply¹⁰ or interconnector licences¹¹, and which are specified in the reference operate, or may be expected to operate, against the public interest; and
- 2269 (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions¹² of licences of that type¹³.

The Authority may, at any time, by notice¹⁴ given to the Commission vary a reference under these provisions by adding to the matters specified in the reference or by excluding from the reference some of the matters so specified; and on receipt of any such notice the Commission must give effect to the variation¹⁵.

The Authority may specify in such a reference, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference:

- 2270 (i) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
- 2271 (ii) any modifications of the relevant conditions¹⁶ by which, in its opinion, those effects could be remedied or prevented¹⁷.

Every such reference must specify a period, not longer than six months beginning with the date of the reference, within which a report on the reference is to be made¹⁸.

As soon as practicable after making a reference under these provisions, or a variation of such a reference, the Authority:

- 2272 (A) must serve a copy¹⁹ of the reference or variation on the holder of the licence or, as the case may be, the relevant licence holders²⁰, and on the Gas and Electricity Consumer Council²¹; and
- 2273 (B) must publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it²².

The Authority must also send a copy of a reference under heads (a) and (b) above, or a variation of such a reference, to the Secretary of State²³; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs²⁴ the Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission must comply with the direction²⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see the text and notes 3-23 infra; and PARA 1082 post), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 For the meaning of 'licence' see PARA 1041 note 12 ante.

4 As to the matters to which the Commission is to have regard in determining whether any matter operates, or may be expected to operate, against the public interest see the Electricity Act 1989 s 24(7) (as amended); and PARA 1082 post.

5 For the meaning of 'modification' see PARA 1035 note 3 ante.

6 Electricity Act 1989 s 12(1) (s 12(1) substituted, and s 12(1A) added, by the Utilities Act 2000 s 36(1), (2)).

7 For the meaning of 'generation licence' see PARA 1065 ante at head (1) in the text.

8 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

9 For the meaning of 'distribution licence' see PARA 1065 ante at head (3) in the text.

10 For the meaning of 'supply licence' see PARA 1065 ante at head (4) in the text.

11 For the meaning of 'interconnector licence' see PARA 1065 ante at head (5) in the text.

12 As to the standard conditions of licences see PARA 1069 ante; as to their modification generally see PARA 1075 ante; and as to the transitional power conferred on the Secretary of State to modify certain standard conditions in order to fund modification references see the Energy Act 2004 s 177; and PARA 742 ante.

13 Electricity Act 1989 s 12(1A) (as added: see note 6 supra).

14 For the meaning of 'notice' see PARA 1047 note 11 ante.

15 Electricity Act 1989 s 12(2) (amended by the Utilities Act 2000 s 108, Sch 8; and by virtue of s 3(2); the Electricity Act 1989 s 12(2), (3), (5)-(7) also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 24(b)).

16 For these purposes, and the purposes of the Electricity Act 1989 s 12A (as added: see PARA 1082 post), s 13 (as amended) (see PARA 1083 post), s 14 (as amended) (see PARA 1084 post) and s 14A (as added and amended: see PARA 1084 post), 'relevant conditions': (1) in relation to a reference under s 12(1) (as substituted) (see heads (1)-(2) in the text), means the conditions of the licence to which the reference relates; and (2) in relation to a reference under s 12(1A) (as added) (see heads (a)-(b) in the text), means the standard conditions of the licences to which the reference relates: s 12(6A) (added by the Utilities Act 2000 s 36(1), (7); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (3)(a)).

17 Electricity Act 1989 s 12(3) (as amended (see note 15 supra); also amended by the Utilities Act 2000 s 36(1), (3); and by virtue of s 3(2)).

18 Electricity Act 1989 s 12A(1) (added by the Enterprise Act 2002 s 278, Sch 25 para 20(1), (4)).

19 As to the service of notices and documents see PARA 1307 post.

20 For these purposes, and the purposes of the Electricity Act 1989 s 12A (as added: see PARA 1082 post), s 13 (as amended) (see PARA 1083 post), s 14 (as amended) (see PARA 1084 post) and s 14A (as added and amended: see PARA 1084 post), 'relevant licence holder' means the holder of a licence to which a reference under s 12(1A) (as added) (see heads (a)-(b) in the text) relates: s 12(6A) (as added: see note 16 supra).

21 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

22 Electricity Act 1989 s 12(4) (amended by the Utilities Act 2000 s 36(1), (4); and by virtue of s 3(2)).

23 As to the Secretary of State see PARA 601 note 1 ante.

24 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

25 Ibid s 12(5) (as amended (see note 15 supra); also amended by the Utilities Act 2000 s 36(1), (5); and by virtue of s 3(2)).

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1082. Procedure on modification references.

It is the duty of the Gas and Electricity Markets Authority ('GEMA')¹, for the purpose of assisting the Competition Commission² in carrying out an investigation on a modification reference³ or in carrying out functions in the exercise of its power to veto modifications⁴, to give to the Commission:

- 2274 (1) any information⁵ in its possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either requested by the Commission for that purpose or is information which, in the Authority's opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- 2275 (2) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters⁶.

The Commission, for the purpose of carrying out any such investigation or such functions, must take account of any information given to it for that purpose under the above provisions⁷.

In determining for the purposes of a modification reference whether any particular matter operates, or may be expected to operate, against the public interest, the Commission must have regard to the matters as respects which general duties are imposed⁸ on the Secretary of State⁹ and the Authority¹⁰.

The provisions of Part 3 of the Enterprise Act 2002¹¹ which set out the Commission's powers of investigation relating to:

- 2276 (a) the attendance of witnesses and the production of documents etc¹²;
- 2277 (b) general enforcement of the powers under head (a) above¹³;
- 2278 (c) penalties¹⁴;
- 2279 (d) the main procedural requirements with regard to penalties¹⁵;
- 2280 (e) payments and interest by instalments¹⁶;
- 2281 (f) appeals in relation to penalties¹⁷;
- 2282 (g) the recovery of penalties¹⁸; and
- 2283 (h) statement of policy in relation to the enforcement of notices under the provisions mentioned in head (a) above¹⁹,

apply, with specified modifications²⁰, for the purposes of modification references as they apply for the purposes of references under that Part of the 2002 Act²¹.

Provisions of Part 3 of the 2002 Act which have effect for the purposes of the provisions referred to in heads (a) to (h) above, including, in particular, provisions relating to offences and the making of orders, have effect for the purposes of the application of those provisions as mentioned above, in relation to those provisions as so applied²²; and accordingly, corresponding provisions of the Electricity Act 1989 do not have effect in relation to those provisions as so applied²³.

A report of the Commission on a modification reference²⁴ does not have effect, and no action is to be taken by the Authority to make modifications in relation to it²⁵, unless the report is made before the end of the period specified in the reference²⁶ or such further period, if any, as may be allowed²⁷ by the Authority²⁸. The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months²⁹. No more than one such extension is possible in relation to the same reference³⁰. The Authority must, in the case of an extension so made by it, publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and send a copy of what has been so published by it to the holder of the licence³¹ or, as the case may be, the relevant licence holders³².

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARA 1081 ante; and the text and notes 3-10 infra), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 Ie a reference under the Electricity Act 1989 s 12 (as amended): see PARA 1081 ante.

4 Ie under ibid s 14A (as added and amended): see PARA 1084 post.

5 For the meaning of 'information' see PARA 1044 note 10 ante.

6 Electricity Act 1989 s 12(6)(a), (b) (amended by the Utilities Act 2000 s 36(1), (6); and by virtue of s 3(2); the Electricity Act 1989 s 12(6), (7) also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 20(b)).

7 Electricity Act 1989 s 12(6) (as amended: see note 6 supra).

8 Ie by ibid ss 3A-3C (as added and amended): see PARAS 1041-1043 ante.

9 As to the Secretary of State see PARA 601 note 1 ante.

10 Electricity Act 1989 s 12(7) (as amended (see note 6 supra); also amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 25; and by virtue of s 3(2)).

11 Ie the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq.

12 Ie ibid s 109.

13 Ie ibid s 110. In its application by virtue of the Electricity Act 1989 s 12B(1) (as added), the Enterprise Act 2002 s 110 has effect as if s 110(2) were omitted and in s 110(9) the words from 'or section' to 'section 65(3))' were omitted: Electricity Act 1989 s 12B(2) (ss 12A, 12B added by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (4)).

14 Ie the Enterprise Act 2002 s 111.

15 Ie ibid s 112.

16 Ie ibid s 113.

17 Ie ibid s 114.

18 Ie ibid s 115. In its application by virtue of the Electricity Act 1989 s 12B(1) (as added), the Enterprise Act 2002 s 111(5)(b)(ii) has effect as if (1) for the words 'published (or, in the case of a report under section 50 or 65, given)' there were substituted 'made'; (2) for the words 'published (or given)', in both places where they appear, there were substituted 'made'; and (3) the words 'by this Part' were omitted: Electricity Act 1989 s 12B(3) (as added: see note 13 supra).

19 le the Enterprise Act 2002 s 116.

20 le the modifications mentioned in the Electricity Act 1989 s 12B(2), (3) (as added): see notes 13, 18 supra.

21 Ibid s 12B(1) (as added: see note 13 supra).

22 See ibid s 12B(4) (as added: see note 13 supra).

23 Ibid s 12B(5) (as added: see note 13 supra).

24 As to such reports see PARA 1083 post.

25 le no action is to be taken in relation to it under the Electricity Act 1989 s 14 (as amended): see PARA 1084 post.

26 As to specifying a period in the reference see PARA 1081 the text and note 18 ante.

27 le under the Electricity Act 1989 s 12B(3) (as added): see the text and note 29 infra.

28 Ibid s 12B(2) (as added: see note 13 supra).

29 Ibid s 12B(3) (as added: see note 13 supra).

30 Ibid s 12B(4) (as added: see note 13 supra).

31 For the meaning of 'licence' see PARA 1041 note 12 ante.

32 Electricity Act 1989 s 12B(5) (as added: see note 13 supra). For the meaning of 'relevant licence holders' see PARA 1081 note 16 ante. As to publication by the Authority see PARA 1045 note 6 ante.

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1083. Reports on modification references.

The report by the Competition Commission¹ on a modification reference² must be made to the Gas and Electricity Markets Authority ('GEMA')³. In making such a report the Commission:

- 2284 (1) must include in the report definite conclusions on the questions comprised in the reference together with such an account of the Commission's reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of the Commission's conclusions⁴;
- 2285 (2) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest⁵, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have⁶; and
- 2286 (3) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions⁷, must specify in the report modifications by which those effects could be remedied or prevented⁸.

For the purposes of subsequent action⁹, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in accordance with the relevant statutory provision¹⁰ in connection with the reference concerned¹¹; and if a member of a group so constituted disagrees with any conclusions contained in such a report as the conclusions of the Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing¹².

Absolute privilege attaches to any such report for the purposes of the law relating to defamation¹³. In making any such report, however, the Commission must have regard to the following considerations before disclosing any information¹⁴:

- 2287 (a) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest¹⁵;
- 2288 (b) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests¹⁶;
- 2289 (c) the extent to which the disclosure of the information mentioned in head (b) above is necessary for the purposes of the report¹⁷.

The Authority must¹⁸:

- 2290 (i) on receiving a report on a reference with regard to a particular licence¹⁹, send a copy of it to the licence holder²⁰ and to the Secretary of State²¹ and, not less than 14 days after that copy is received by the Secretary of State, send another copy to the Gas and Electricity Consumer Council²² and publish that other copy in

such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²³;

2291 (ii) on receiving a report on a reference with regard to matters relating to the carrying on of activities authorised or regulated by electricity licences²⁴, send a copy of it to the Secretary of State and, not less than 14 days after that copy is received by the Secretary of State:

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299. (A) send another copy to the Council and to each relevant licence holder²⁵; and

300. (B) not less than 24 hours after complying with head (A) above, publish the copy sent to the Council in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²⁶.

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If, however, it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in head (i) or head (ii) above, direct²⁷ the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be sent to the Council, or to the Council and the relevant licence holders, and published as there mentioned²⁸.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 I.e. a reference under the Electricity Act 1989 s 12 (as amended): see PARAS 1081-1082 ante.

3 Ibid s 13(4) (s 13(1), (4) amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 24(b); the Electricity Act 1989 also amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

As to the time limit for making a report on a modification reference see PARA 1082 ante.

4 Electricity Act 1989 s 13(1)(a) (as amended: see note 3 supra).

5 As to the matters to which the Commission must have regard in making such a determination see ibid s 12(7) (as amended); and PARA 1082 ante.

6 Ibid s 13(1)(b) (as amended: see note 3 supra).

7 For the meaning of 'modification' see PARA 1035 note 3 ante; and for the meaning of 'the relevant conditions' for these purposes see PARA 1081 note 16 ante.

8 Electricity Act 1989 s 13(1)(c) (as amended (see note 3 supra); also amended by the Utilities Act 2000 s 37(1), (2)).

9 I.e. for the purposes of the Electricity Act 1989 s 14 (as amended), s 14A (as added and amended): see PARAS 1084-1085 post.

10 I.e. constituted in pursuance of the Competition Act 1998 s 45(7), Sch 7 para 15 (as amended): see COMPETITION vol 18 (2009) PARA 11.

11 Electricity Act 1989 s 13(1A) (s 13(1A), (1B) added by the Enterprise Act 2002, s 278(1), Sch 25 para 20(1), (5)(a)).

12 Electricity Act 1989 s 13(1B) (as added: see note 11 supra).

13 Ibid s 13(3) (s 13(3) substituted, and s 13(3A)-(3D) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (5)(b)).

- 14 Electricity Act 1989 s 13(3A) (as added: see note 13 supra). For the meaning of 'information' see PARA 1044 note 10 ante.
- 15 Ibid s 13(3B) (as added: see note 13 supra).
- 16 Ibid s 13(3C) (as added: see note 13 supra).
- 17 Ibid s 13(3D) (as added: see note 13 supra).
- 18 Ie subject to ibid s 13(6) (as amended): see the text and notes 27-28 infra.
- 19 Ie a report on a reference under ibid s 12(1) (as substituted): see PARA 1081 ante at heads (1)-(2) in the text.
- 20 For the meaning of 'licence holder' see PARA 1041 note 12 ante.
- 21 As to the Secretary of State see PARA 601 note 1 ante.
- 22 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.
- 23 Electricity Act 1989 s 13(5) (amended by the Utilities Act 2000 s 37(1), (3); and by virtue of s 3(2)).
- 24 Ie a report on a reference under the Electricity Act 1989 s 12(1A) (as added): see PARA 1081 ante at heads (a)-(b) in the text.
- 25 For the meaning of 'relevant licence holder' for these purposes see PARA 1081 note 20 ante.
- 26 Electricity Act 1989 s 13(5A) (added by the Utilities Act 2000 s 37(1), (4)).
- 27 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.
- 28 Electricity Act 1989 s 13(6) (amended by the Utilities Act 2000 s 37(1), (5)).

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1084. Modifications of licence following report.

Where a report of the Competition Commission¹ on a modification reference²:

- 2292 (1) includes conclusions to the effect that any of the matters specified in the reference operate or may be expected to operate against the public interest³;
- 2293 (2) specifies effects adverse to the public interest which those matters have or may be expected to have;
- 2294 (3) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions⁴; and
- 2295 (4) specifies modifications by which those effects could be remedied or prevented,

the Gas and Electricity Markets Authority ('GEMA')⁵ must, subject to the following provisions, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report⁶ and must, before making such modifications, have regard to the modifications specified in the report⁷.

Where at any time the Authority so modifies the standard conditions⁸ of licences of any type in consequence of a reference with regard to matters relating to the carrying on of activities authorised or regulated by such licences⁹, it may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of such licences granted before that time¹⁰. It must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in such licences granted after that time and must publish the modifications made for those purposes in such manner as it considers appropriate¹¹. Before making such modifications, the Authority must have regard to the modifications specified in the report¹².

Before making modifications under the above provisions, the Authority must give notice¹³:

- 2296 (a) stating that it proposes to make the modifications and setting out their effect;
- 2297 (b) stating the reasons why it proposes to make the modifications; and
- 2298 (c) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁴. Such a notice must be given:

- 2299 (i) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- 2300 (ii) by serving a copy¹⁵ of the notice on the holder of the licence or, as the case may be, the relevant licence holders¹⁶.

After considering any representations or objections made in response to proposals set out in such a notice, the Authority must give notice to the Commission setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report and stating the reasons for making the modifications¹⁷; and the Authority must include with that notice a copy of any representations or objections received in relation to the earlier notice¹⁸ of its proposals¹⁹. If the period of four weeks from the date on which that notice to the Commission is given elapses without a direction not to make the modifications set out in that notice²⁰ having been given to it, the Authority must either:

- 2301 (A) make the modifications set out in the notice; or
- 2302 (B) if a direction not to make specified modifications²¹ has been given, make the modifications which are not specified in the direction²².

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 post) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 I.e. a reference under the Electricity Act 1989 s 12 (as amended): see PARAS 1081-1082 ante.

3 As to the matters to which the Commission must have regard in making such a determination see *ibid* s 12(7) (as amended); and PARA 1082 ante.

4 For the meaning of 'modification' see PARA 1035 note 3 ante; and for the meaning of 'the relevant conditions' for these purposes see PARA 1081 note 20 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Electricity Act 1989 s 14(1) (amended by the Utilities Act 2000 s 38(1), (2); and by virtue of s 3(2); also amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 24(b)).

The modification under the Electricity Act 1989 s 14(1) (as so amended) of part of a standard condition of a particular licence in consequence of a reference under s 12(1) (as amended) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1085 et seq post): s 14(8) (s 14(5)-(9) added by the Utilities Act 2000 s 38(1), (5)). For the meaning of 'licence' see PARA 1041 note 12 ante.

7 Electricity Act 1989 s 14(2) (s 14(2)-(4) amended by virtue of the Utilities Act 2000 s 3(2)).

8 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

9 I.e. in consequence of a reference under the Electricity Act 1989 s 12(1A) (as added): see PARA 1081 ante at heads (a)-(b) in the text.

10 *Ibid* s 14(1A) (added by the Utilities Act 2000 s 38(1), (3)).

11 Electricity Act 1989 s 14(9) (as added: see note 6 supra).

12 See note 7 supra.

13 For the meaning of 'notice' see PARA 1047 note 11 ante.

14 Electricity Act 1989 s 14(3) (as amended: see note 7 supra).

15 As to the service of notices and documents see PARA 1307 post.

16 Electricity Act 1989 s 14(4) (as amended (see note 7 supra); also amended by the Utilities Act 2000 s 38(1), (4)).

17 Electricity Act 1989 s 14(5) (as added: see note 6 supra).

18 Ie the notice under *ibid* s 14(3) (as amended).

19 *Ibid* s 14(6) (as added: see note 6 supra).

20 Ie a direction under *ibid* s 14A(1)(b) (as added): see *PARA 1085 post*.

21 See note 20 supra.

22 Electricity Act 1989 s 14(7) (as added: see note 6 supra). The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under s 14(5) (as added) and on the application of the Commission, direct that the period for giving a direction under s 14A(1) (as added), and, accordingly, the period mentioned in s 14(7) (as so added) is to be extended by 14 days: s 14A(2) (added by the Utilities Act 2000 s 39).

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1085. Competition Commission's power to veto modifications following report.

The Competition Commission¹ may, within the period of four weeks after the date on which it is given a notice of proposed modifications², direct the Gas and Electricity Markets Authority ('GEMA')³ either

- 2303 (1) not to make the modifications set out in that notice⁴; or
- 2304 (2) not to make such of the modifications as may be specified in the direction⁵;

and the Authority must comply with any such direction⁶. The power to give such a direction may only be exercised in respect of such of the modifications set out in the notice of proposals⁷ as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications⁸.

If the Commission gives such a direction, the Commission must give notice⁹ setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it¹⁰; and must itself make such modifications of the relevant conditions¹¹ as appear to it to be requisite for the purpose of remedying or preventing:

- 2305 (a) if the direction was given under head (1) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
- 2306 (b) if the direction was given under head (2) above, such of those adverse effects as are not remedied or prevented by the modifications made¹² by the Authority¹³.

In exercising its function to make such modifications, the Commission must have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence¹⁴; and before so making modifications the Commission must give notice¹⁵:

- 2307 (i) stating that it proposes to make the modifications and setting them out;
- 2308 (ii) stating the reason why it proposes to make them;
- 2309 (iii) specifying the period, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁶.

Where, in consequence of a reference with regard to matters relating to the carrying on of activities authorised or regulated by electricity licences of any type¹⁷, the Commission so modifies¹⁸ the standard conditions¹⁹ of licences of any type, the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time²⁰; and where the Commission modifies the standard conditions of licences of any type as mentioned above, it must make, as

nearly as may be, the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time²¹ and must publish the modifications made for those purposes in such manner as it considers appropriate²².

After making modifications under these provisions the Commission must publish a notice stating that the modifications have been made and setting them out, with the reasons for making them²³.

For the purposes of the law relating to defamation, absolute privilege attaches to any notice under the above provisions²⁴. In giving²⁵ or publishing²⁶ any such notice, however, the Commission must have regard to the following considerations before disclosing any information²⁷:

- 2310 (A) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest²⁸;
- 2311 (B) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests²⁹;
- 2312 (C) the extent to which the disclosure of the information mentioned in head (B) above is necessary for the purposes of the notice³⁰.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see the text and notes 2-30 infra) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 I.e. a notice under the Electricity Act 1989 s 14(5) (as added): see PARA 1084 ante. For the meaning of 'modifications' see PARA 1035 note 3 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Electricity Act 1989 s 14A(1)(a) (s 14A added by the Utilities Act 2000 s 39).

5 Electricity Act 1989 s 14A(1)(b) (as added: see note 4 supra).

6 Ibid s 14A(1) (as added: see note 4 supra). As to the time limit for giving such a direction see PARA 1084 the text and note 22 ante.

Section 14A (as added and amended) does not apply to the modification of a licence following a report of the Commission made before 1 October 2001 (ie the commencement of the Utilities Act 2000 s 39: see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule): Electricity Act 1989 s 14A(14) (as added: see note 4 supra).

7 I.e. the notice under ibid s 14(5)(a) (as added): see PARA 1084 ante.

8 Ibid s 14A(3) (as added: see note 4 supra). The following provisions of the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq apply, with the modifications mentioned in the Electricity Act 1989 s 14A(11G), (11H) (as added), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under s 14A (as added and amended) as they apply for the purposes of any investigation on references under the Enterprise Act 2002 Pt 3 (as amended), ie: (1) s 109 (attendance of witnesses and production of documents etc); (2) s 110 (enforcement of powers under s 109: general); (3) s 111 (penalties); (4) s 112 (penalties: main procedural requirements); (5) s 113 (payments and interest by instalments); (6) s 114 (appeals in relation to penalties); (7) s 115 (recovery of penalties); and (8) s 116 (statement of policy on enforcement of notices under s 109): Electricity Act 1989 s 14A(11F) (s 14A(11A)-(11J) added by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (6)(a)). The Enterprise Act 2002 s 110 has effect, in its application by virtue of the Electricity Act 1989 s 14A(11F) (as so added) as if: (a) the Enterprise Act 2002 s 110(2) were omitted; (b) in s 110(4), for the words 'the publication of the report of the Commission on the reference concerned' there were substituted 'the publication by the Commission of a notice under

section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction has been given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period'; and (c) in the Enterprise Act 2002 s 110(9) the words from 'or section' to 'section 65(3))' were omitted: Electricity Act 1989 s 14A(11G) (as so added). The Enterprise Act 2002 s 115(5)(b) has effect, in its application by virtue of the Electricity Act 1989 s 14A(11F) (as so added) as if for the Enterprise Act 2002 s 115(5)(b)(ii) there were substituted: '(ii) if earlier, the day on which a notice is published by the Commission under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction is given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.': Electricity Act 1989 s 14A(11H) (as so added). Provisions of the Enterprise Act 2002 Pt 3 (as amended) which have effect for the purposes of ss 109-116 (including, in particular, provisions relating to offences and the making of orders) have effect, for the purposes of the application of those sections by virtue of the Electricity Act 1989 s 14A(11F) (as so added), in relation to those sections as applied by virtue of s 14A(11F) (as so added): s 14A(11I) (as so added). Accordingly, corresponding provisions of the Electricity Act 1989 do not have effect in relation to those sections as so applied: s 14A(11J) (as so added).

9 For the meaning of 'notice' see PARA 1047 note 11 ante. A notice under *ibid* s 14A(4)(a) or (6) (as added) must be given (1) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and (2) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders: s 14A(7) (as added: see note 4 *supra*). For the meaning of 'licence' see PARA 1041 note 12 ante; and for the meaning of 'the relevant licence holders' for these purposes see PARA 1081 note 20 ante. As to the service of notices and documents see PARA 1307 post.

10 Electricity Act 1989 s 14A(4)(a) (as added: see note 4 *supra*).

11 For the meaning of 'the relevant conditions' for these purposes see PARA 1081 note 20 ante.

12 *Ie* made under the Electricity Act 1989 s 14(7)(b) (as added): see PARA 1084 ante.

13 *Ibid* s 14A(4)(b) (as added: see note 4 *supra*). The modification under s 14A (as added and amended) of part of a standard condition of a particular licence in consequence of a reference under s 12(1) (as substituted) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Pt I (ss 3A-64) (as amended) (see PARA 1041 *et seq* ante, PARA 1086 *et seq* post): s 14A(11) (as so added).

14 *Ibid* s 14A(5) (as added: see note 4 *supra*).

15 See note 9 *supra*.

16 Electricity Act 1989 s 14A(6) (as added: see note 4 *supra*).

17 *Ie* a reference under *ibid* s 12(1A) (as added): see PARA 1081 ante at heads (a)-(b) in the text.

18 *Ie* under *ibid* s 14A(4)(b) (as added).

19 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

20 Electricity Act 1989 s 14A(9) (as added: see note 4 *supra*).

21 *Ibid* s 14A(10)(a) (as added: see note 4 *supra*).

22 *Ibid* s 14A(10)(b) (as added: see note 4 *supra*).

23 *Ibid* s 14A(8) (as added: see note 4 *supra*).

24 *Ibid* s 14A(11A) (as added: see note 8 *supra*).

25 *Ie* under *ibid* s 14A(4)(a) or (6) (as added).

26 *Ie* under *ibid* s 14A(8) (as added): see the text and note 23 *supra*.

27 *Ibid* s 14A(11B) (as added: see note 8 *supra*). For the meaning of 'information' see PARA 1044 note 10 ante.

- 28 Ibid s 14A(11C) (as added: see note 8 supra).
- 29 Ibid s 14A(11D) (as added: see note 8 supra).
- 30 Ibid s 14A(11E) (as added: see note 8 supra).

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1086. Modification by order under other enactments.

Where the Office of Fair Trading¹, the Competition Commission² or, as the case may be, the Secretary of State³ ('the relevant authority') makes a relevant order⁴, the order may also provide for the modification⁵ of:

- 2313 (1) the conditions of a particular licence⁶; or
- 2314 (2) the standard conditions⁷ of electricity licences of any type⁸,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order⁹.

The modification under head (1) above of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the statutory¹⁰ purposes¹¹.

Where at any time the relevant authority modifies under head (2) above the standard conditions of licences of any type, the relevant authority:

- 2315 (a) must also make, as nearly as may be, the same modifications of those conditions for the purposes of their incorporation in such licences granted after that time; and
- 2316 (b) may, after consultation with the Gas and Electricity Markets Authority ('GEMA')¹², make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of such licences granted before that time¹³;

and where at any time the relevant authority modifies standard conditions under head (a) above for the purposes of their incorporation in licences granted after that time, the relevant authority must publish those modifications in such manner as the relevant authority considers appropriate¹⁴.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For these purposes, 'relevant order' means (1) an order under the Enterprise Act 2002 s 75, s 83 or s 84, or Sch 7 para 5, 10 or 11, where (a) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or (b) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or (2) an order under s 160 or s 161 where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity:

Electricity Act 1989 s 15(2) (s 15(1), (2) substituted by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 5(1), (2)). The reference in head (1) supra to the Enterprise Act 2002 Sch 7 para 5, 10 or 11 includes a reference to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592, Sch 2 para 5, 10 or 11: see art 16, Sch 4 para 8. Expressions used in the Electricity Act 1989 s 15 (as amended) and in the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended) or (as the case may be) Pt 4 (ss 131-184) (see COMPETITION vol 18 (2009) PARA 276 et seq) have the same meanings in the Electricity Act 1989 s 15 (as amended) as in the Enterprise Act 2002 Pt 3 (as amended) or Pt 4: Electricity Act 1989 s 15(3) (substituted by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 5(1), (5)).

5 For the meaning of 'modification' see PARA 1035 note 3 ante.

6 For the meaning of 'licence' see PARA 1041 note 12 ante.

7 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.

8 le licences of any type mentioned in the Electricity Act 1989 s 6(1) (as substituted and amended): see PARA 1065 ante at heads (1)-(5) in the text.

9 Ibid s 15(1) (as substituted: see note 4 supra).

10 le for the purposes of ibid Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1087 et seq post.

11 Ibid s 15(2A) (s 15(2A)-(2C) added by the Utilities Act 2000 s 40(1), (3)).

12 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

13 Electricity Act 1989 s 15(2B) (as added (see note 11 supra); substituted by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 5(1), (3)).

14 Electricity Act 1989 s 15(2C) (as added (see note 11 supra); amended by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 Pt 1 para 5(1), (4)).

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(iv) Alteration of Activities requiring Licence

1087. Power to alter activities requiring licence.

The Secretary of State¹ may by order² provide:

- 2317 (1) that specified activities are to become licensable activities; or
- 2318 (2) that specified activities are to cease to be licensable activities³;

and activities are licensable activities if undertaking them without the authority of a licence⁴ or exemption⁵ constitutes an offence under the statutory prohibition⁶ on unlicensed activities⁷.

Such an order may make consequential, transitional, incidental or supplementary provision including:

- 2319 (a) amendments, or repeals, in any provision of the Electricity Act 1989 or any other enactment; and
- 2320 (b) provision modifying any standard conditions of licences⁸ or, in the case of an order under head (1) above, provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities⁹;

but may only provide for activities to become licensable activities if they are activities connected with the generation¹⁰, transmission¹¹, distribution¹² or supply¹³ of electricity¹⁴.

An order under these provisions providing for activities:

- 2321 (i) to become licensable activities may only be made on the application of the Gas and Electricity Markets Authority ('GEMA')¹⁵ made¹⁶ in accordance with the relevant statutory provisions¹⁷;
- 2322 (ii) to cease to be licensable activities may be made either on the application of the Authority made¹⁸ in accordance with the relevant statutory provisions¹⁹ or following consultation²⁰ by the Secretary of State²¹.

Such an order may provide that it is to remain in force only for a period specified in the order²².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 No such order may be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: Electricity Act 1989 s 56A(8) (s 56A added by the Utilities Act 2000 s 43). As to the power to make orders generally see PARA 1306 post

3 Electricity Act 1989 s 56A(1) (as added: see note 2 supra).

4 For the meaning of 'licence' see PARA 1041 note 12 ante.

5 For the meaning of 'exemption' see PARA 1046 note 7 ante.

- 6 le an offence under the Electricity Act 1989 s 4(1) (as amended): see PARA 1050 ante.
- 7 Ibid s 56A(2) (as added: see note 2 supra); and see s 64(1) (definition added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (5)).
- 8 As to the standard conditions of licences see PARA 1069 ante; and as to their modification generally see PARA 1075 ante.
- 9 Electricity Act 1989 s 56A(3) (as added: see note 2 supra).
- 10 For the meaning of 'generation' see PARA 1041 note 7 ante.
- 11 For the meaning of 'transmission' see PARA 1041 note 6 ante.
- 12 For the meaning of 'distribution' see PARA 1041 note 5 ante.
- 13 For the meaning of 'supply' see PARA 1041 note 10 ante.
- 14 Electricity Act 1989 s 56A(4) (as added: see note 2 supra).
- 15 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 16 le made in accordance with the Electricity Act 1989 s 56B (as added): see PARA 1088 post.
- 17 Ibid s 56A(5) (as added: see note 2 supra).
- 18 le made in accordance with ibid s 56E (as added): see PARA 1092 post.
- 19 Ibid s 56A(6)(a) (as added: see note 2 supra).
- 20 le in accordance with ibid s 56F (as added): see PARA 1093 post.
- 21 Ibid s 56A(6)(b) (as added: see note 2 supra).
- 22 Ibid s 56A(7) (as added: see note 2 supra). At the date at which this title states the law, no such order had been made.

UPDATE

1087 Power to alter activities requiring licence

TEXT AND NOTES--The Electricity Act 1989 s 56FA (ss 56FA-56FC added by Energy Act 2008 Sch 4 para 2) gives the Secretary of State an order-making power to both create new licensable activities under the Electricity Act 1989 s 56A in relation to smart metering and to order that such new licensable activities will cease to be licensable. Supplemental provision with respect to procedure is made: see Electricity Act 1989 s 56FB. The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted: see Electricity Act 1989 s 56FC.

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1088. Application by the Gas and Electricity Markets Authority for an order including new activities.

If the Gas and Electricity Markets Authority ('GEMA')¹ proposes to make an application for an order providing for activities to become licensable activities², it must give notice³:

- 2323 (1) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
- 2324 (2) setting out the conditions which it would expect such an order to determine to be standard conditions⁴ for the purposes of licences⁵ authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
- 2325 (3) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections which are duly made and not withdrawn⁶. The notice must be given by serving a copy on the Gas and Electricity Consumer Council⁷ and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to it to be carrying on, or be intending to carry on, the activities, and of any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities⁸.

If an objection has been duly made, and not withdrawn, by a person who is carrying on or intends to carry on the activities, the Authority must make a reference⁹ to the Competition Commission¹⁰ before making the application¹¹; and in any other case where the Authority considers it appropriate to make a reference to the Commission¹² before making the application, the Authority may make such a reference¹³. If a reference is made to the Commission, the application must not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest¹⁴.

The application must set out:

- 2326 (a) the activities which the Authority considers should become licensable activities; and
- 2327 (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which the Authority would expect to be included in such licences¹⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licensable activities' see PARA 1087 ante.

3 For the meaning of 'notice' see PARA 1047 note 11 ante.

- 4 As to the standard conditions of licences see PARA 1069 ante.
- 5 For the meaning of 'licence' see PARA 1041 note 12 ante.
- 6 Electricity Act 1989 s 56B(1) (s 56B added by the Utilities Act 2000 s 43).
- 7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to the service of notices and documents see PARA 1307 post.
- 8 Electricity Act 1989 s 56B(2) (as added: see note 6 supra).
- 9 *Ie* under *ibid* s 56C (as added): see PARA 1089 post.
- 10 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.
- 11 Electricity Act 1989 s 56B(3) (as added: see note 6 supra).
- 12 See note 9 supra.
- 13 Electricity Act 1989 s 56B(4) (as added: see note 6 supra).
- 14 *Ibid* s 56B(5) (as added: see note 6 supra).
- 15 *Ibid* s 56B(6) (as added: see note 6 supra).

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1089. References to the Competition Commission before application for an order including new licensable activities.

A reference to the Competition Commission¹ before the Gas and Electricity Markets Authority ('GEMA')² makes an application for an order including new licensable activities³ must require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest⁴. Every such reference must specify a period, not longer than six months beginning with the date of the reference, within which a report on the reference is to be made⁵. The Authority may, at any time, by notice⁶ given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission must give effect to the variation⁷.

The Authority must specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference⁸:

- 2328 (1) the conditions which the Authority would expect to be determined to be standard conditions⁹ for the purposes of licences¹⁰ authorising the undertaking of the activities specified in the reference and any other conditions which the Authority would expect to be included in such licences; and
- 2329 (2) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have¹¹.

As soon as practicable after making the reference, or a variation of the reference, the Authority must serve a copy of it on the Gas and Electricity Consumer Council¹² and must publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it, and of any other persons appearing to the Authority to be likely to be affected by it¹³.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see the text and notes 2-13 infra; and PARA 1090 post) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 I.e a reference under the Electricity Act 1989 s 56C (as added and amended): see the text and notes 4-13 infra; and PARA 1090 post. For the meaning of 'licensable activities' see PARA 1087 ante; and as to applications for an order including new licensable activities see PARA 1088 ante.

4 Ibid s 56C(1) (s 56C added by the Utilities Act 2000 s 43). As to the matters to which the Commission is to have regard in making such a determination see the Electricity Act 1989 s 56C(6) (as so added); and PARA 1090 post.

5 Ibid s 56CA(1) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (12)).

6 For the meaning of 'notice' see PARA 1047 note 11 ante.

7 Electricity Act 1989 s 56C(2) (as added: see note 4 supra).

8 As to the procedure on such investigation see PARA 1090 post.

9 As to the standard conditions of licences see PARA 1069 ante.

10 For the meaning of 'licence' see PARA 1041 note 12 ante.

11 Electricity Act 1989 s 56C(3) (as added: see note 4 supra).

12 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to the service of notices and documents see PARA 1307 post.

13 Electricity Act 1989 s 56C(4) (as added: see note 4 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(4) REGULATION OF ELECTRICITY SUPPLY ETC/(iv) Alteration of Activities requiring Licence/1090. Procedure on a reference before application for an order including new licensable activities.

1090. Procedure on a reference before application for an order including new licensable activities.

The Gas and Electricity Markets Authority ('GEMA')¹ must, for the purpose of assisting the Competition Commission² in carrying out the investigation on the reference before the Authority makes an application for an order including new licensable activities³, give to the Commission:

- 2330 (1) any information⁴ which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- 2331 (2) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,

and the Commission must take account of the information for the purpose of carrying out the investigation⁵. In determining for these purposes whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission must have regard to:

- 2332 (a) the matters referred to in the statutory provision setting out the principal objective and general duties of the Secretary of State⁶ and the Authority⁷;
- 2333 (b) any social or environmental policies set out or referred to in guidance issued⁸ by the Secretary of State; and
- 2334 (c) any advice about health and safety in relation to electricity given⁹ by the Health and Safety Commission¹⁰.

The provisions of Part 3 of the Enterprise Act 2002¹¹ which set out the Commission's powers of investigation relating to:

- 2335 (i) the attendance of witnesses and the production of documents etc¹²;
- 2336 (ii) general enforcement of the powers under head (i) above¹³;
- 2337 (iii) penalties¹⁴;
- 2338 (iv) the main procedural requirements with regard to penalties¹⁵;
- 2339 (v) payments and interest by instalments¹⁶;
- 2340 (vi) appeals in relation to penalties¹⁷;
- 2341 (vii) the recovery of penalties¹⁸; and
- 2342 (viii) statement of policy in relation to the enforcement of notices under the provisions mentioned in head (i) above¹⁹,

apply, with specified modifications²⁰, for the purposes of such references as they apply for the purposes of references under that Part of the 2002 Act²¹. The provision of that Part of the 2002 Act relating to false or misleading information²² also applies, with modifications²³, in relation to

functions of the Commission in connection with such references as it applies in relation to its functions under Part 3 of that 2002 Act²⁴.

Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of the provisions of that Act mentioned above²⁵, including, in particular, provisions relating to offences and the making of orders, have effect for the purposes of the application of those provisions as mentioned above, in relation to those provisions as so applied²⁶; and accordingly, corresponding provisions of the Electricity Act 1989 do not have effect in relation to those provisions as so applied²⁷.

A report of the Commission on a such a reference²⁸ does not have effect²⁹ unless the report is made before the end of the period specified in the reference³⁰ or such further period, if any, as may be allowed³¹ by the Authority³². The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months³³; but no more than one such extension is possible in relation to the same reference³⁴. The Authority must publish such an extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it³⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see PARA 1089 ante; and the text and notes 3-10 infra) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

3 Ie the reference under the Electricity Act 1989 s 56C (as added): see PARA 1089 ante. For the meaning of 'licensable activities' see PARA 1087 ante; and as to applications by the Authority for an order including new licensable activities see PARA 1088 ante.

4 For the meaning of 'information' see PARA 1044 note 10 ante.

5 Electricity Act 1989 s 56C(5) (s 56C(5), (6) added by the Utilities Act 2000 s 43).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Ie the matters referred to in the Electricity Act 1989 s 3A (as added and amended): see PARA 1041 ante.

8 Ie under ibid s 3B (as added): see PARA 1042 ante.

9 Ie under ibid s 3C (as added): see PARA 1043 ante.

10 Ibid s 56C(6) (as added: see note 5 supra). As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

11 Ie the Enterprise Act 2002 Pt 3 (ss 22-130) (as amended): see COMPETITION vol 18 (2009) PARA 172 et seq.

12 Ie ibid s 109.

13 Ie ibid s 110. In its application by virtue of the Electricity Act 1989 s 56CB(1) (as added), the Enterprise Act 2002 s 110 has effect as if (1) s 110(2) were omitted; and (2) in s 110(9), the words from 'or section' to 'section 65(3)' were omitted: Electricity Act 1989 s 56CB(2) (ss 56CA, 56CB added by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (12)).

14 Ie the Enterprise Act 2002 s 111.

15 Ie ibid s 112.

16 Ie ibid s 113.

17 Ie ibid s 114.

- 18 Ie ibid s 115. In its application by virtue of the Electricity Act 1989 s 56CB(1) (as added), the Enterprise Act 2002 s 111(5)(b)(ii) effect as if (1) for the words 'published (or, in the case of a report under section 50 or 65, given)' there were substituted 'made'; (2) for the words 'published (or given)', in both places where they appear, there were substituted 'made'; and (3) the words 'by this Part' were omitted: Electricity Act 1989 s 56CB(3) (as added: see note 13 supra).
- 19 Ie the Enterprise Act 2002 s 116.
- 20 Ie with the modifications mentioned in the Electricity Act 1989 s 56CB(2), (3) (as added): see notes 13, 18 supra.
- 21 Ibid s 56CB(1) (as added: see note 13 supra).
- 22 Ie the Enterprise Act 2002 s 117.
- 23 Ie as if, in ibid s 117(1)(a) and (2), the words 'the OFT, OFCOM,' and 'or the Secretary of State' were omitted: Electricity Act 1989 s 56CB(4) (as added (see note 13 supra); amended by the Communications Act 2003 s 389(1), Sch 16 para 3).
- 24 Electricity Act 1989 s 56CB(4) (as added: see note 13 supra).
- 25 Ie the Enterprise Act 2002 ss 109-117.
- 26 Electricity Act 1989 s 56CB(5) (as added: see note 13 supra).
- 27 Ibid s 56CB(6) (as added: see note 13 supra).
- 28 Ie a report on a reference under ibid s 56C (as added and amended): see PARA 1089 ante. As to such reports see PARA 1091 post.
- 29 Ie in particular for the purposes of ibid s 56B(5) (as added): see PARA 1088 ante.
- 30 As to the period specified in the reference see PARA 1089 the text and note 5 ante.
- 31 Ie under the Electricity Act 1989 s 56CA(3) (as added): see the text and note 33 infra.
- 32 Ibid s 56CA(2) (as added: see note 13 supra).
- 33 Ibid s 56CA(3) (as added: see note 13 supra).
- 34 Ibid s 56CA(4) (as added: see note 13 supra).
- 35 Ibid s 56CA(5) (as added: see note 13 supra). As to publication by the Authority see PARA 1045 note 6 ante.

UPDATE

1090 Procedure on a reference before application for an order including new licensable activities

TEXT AND NOTE 10--Reference to Health and Safety Commission now to Health and Safety Executive: 1989 Act s 56C(6) (amended by SI 2008/960).

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1091. Reports on references before application for an order including new licensable activities.

A report of the Competition Commission¹ on a reference before the Gas and Electricity Markets Authority ('GEMA')² makes an application for an order including new licensable activities³ must be made to the Authority⁴. In making a report on such a reference the Commission must include in the report definite conclusions on whether the fact that the activities specified in the reference, or the reference as varied, are not licensable activities operates, or may be expected to operate, against the public interest⁵. The Commission must also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions⁶.

Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it must specify in the report:

- 2343 (1) the effects adverse to the public interest which that fact has or may be expected to have; and
- 2344 (2) any modifications⁷ to the conditions specified in the reference⁸ which the Commission considers appropriate⁹.

A conclusion contained in a report of the Commission is to be disregarded¹⁰ if the conclusion is not that of at least two-thirds of the members of the group constituted¹¹ in connection with the reference concerned in accordance with the relevant statutory provision¹²; and if a member of a group so constituted disagrees with any conclusions contained in a report made on such a reference as the conclusions of the Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing¹³.

For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on such a reference¹⁴; but in making any report on such a reference the Commission must have regard to the following considerations before disclosing any information¹⁵:

- 2345 (a) the need to exclude from disclosure, so far as practicable, any information whose disclosure the Commission thinks is contrary to the public interest¹⁶;
- 2346 (b) the need to exclude from disclosure, so far as practicable, either commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests¹⁷;
- 2347 (c) the extent to which the disclosure of the information mentioned in head (b) above is necessary for the purposes of the report¹⁸.

On receiving the report, the Authority must send a copy of it to the Secretary of State¹⁹ and must²⁰, not less than 14 days after the copy is received by the Secretary of State, send another

copy to the Gas and Electricity Consumer Council²¹ and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it²². If, however, it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of that period of 14 days, direct²³ the Authority to exclude that matter from the copy of the report to be so sent to the Council and published²⁴.

1 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see PARAS 1089-1090 ante) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 I.e. a report on a reference under the Electricity Act 1989 s 56C (as added and amended): see PARAS 1089-1090 ante. For the meaning of 'licensable activities' see PARA 1087 ante; and as to applications by the Authority for an order including new licensable activities see PARA 1088 ante.

4 Ibid s 56D(5) (s 56D added by the Utilities Act 2000 s 43).

5 Electricity Act 1989 s 56D(1) (as added: see note 4 supra). As to the matters to which the Commission must have regard in making such a determination see s 56C(6) (as added); and PARA 1090 ante.

6 Electricity Act 1989 s 56D(2) (as added: see note 4 supra).

7 For the meaning of 'modifications' see PARA 1035 note 3 ante.

8 I.e. in accordance with the Electricity Act 1989 s 56C(3)(a) (as added): see PARA 1089 ante.

9 Ibid s 56D(3) (as added: see note 4 supra).

10 I.e. for the purposes of ibid s 56B(3) (as added): see PARA 1088 ante.

11 I.e. constituted in pursuance of the Competition Act 1998 s 45(7), Sch 7 para 15 (as amended): see COMPETITION vol 18 (2009) PARA 11.

12 Electricity Act 1989 s 56D(3A) (s 56D(3A), (3B) added by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (13)(a)).

13 Electricity Act 1989 s 56D(3B) (as added: see note 12 supra).

14 Ibid s 56D(4) (s 56D(4) substituted, and s 56D(4A)-(4D) added, by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (13)(b)).

15 Electricity Act 1989 s 56D(4A) (as added: see note 14 supra). For the meaning of 'information' see PARA 1044 note 10 ante.

16 Ibid s 56D(4B) (as added: see note 14 supra).

17 Ibid s 56D(4C) (as added: see note 14 supra).

18 Ibid s 56D(4D) (as added: see note 14 supra).

19 Ibid s 56D(6) (as added: see note 4 supra). As to the Secretary of State see PARA 601 note 1 ante.

20 I.e. subject to ibid s 56D(8) (as added): see the text and notes 23-24 infra.

21 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

22 Electricity Act 1989 s 56D(7) (as added: see note 4 supra).

- 23 As to directions generally see *ibid* s 107; and *PARA 1306* post.
- 24 *Ibid* s 56D(8) (as added: see note 4 *supra*).

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1092. Application by the Gas and Electricity Markets Authority for an order excluding activities.

Before making an application for an order providing for activities to cease to be licensable activities¹, the Gas and Electricity Markets Authority ('GEMA')² must give notice³:

- 2348 (1) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
- 2349 (2) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections duly made and not withdrawn⁴. The notice must be given:

- 2350 (a) by serving a copy on the Secretary of State⁵ and the Gas and Electricity Consumer Council⁶; and
- 2351 (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order⁷.

An application under these provisions must set out:

- 2352 (i) the activities which the Authority considers should cease to be licensable activities; and
- 2353 (ii) the Authority's reasons for proposing that the order be made⁸.

1 As to such orders, and for the meaning of 'licensable activities', see PARA 1087 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For the meaning of 'notice' see PARA 1047 note 11 ante.

4 Electricity Act 1989 s 56E(1) (s 56E added by the Utilities Act 2000 s 43).

5 As to the Secretary of State see PARA 601 note 1 ante; and as to the service of notices and documents see PARA 1307 post.

6 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

7 Electricity Act 1989 s 56E(2) (as added: see note 4 supra).

8 Ibid s 56E(3) (as added: see note 4 supra).

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1093. Consultation by Secretary of State about order excluding activities.

If the Secretary of State¹ proposes to make an order providing for activities to cease to be licensable activities², otherwise than on an application³ by the Gas and Electricity Markets Authority ('GEMA')⁴, he must give notice⁵:

- 2354 (1) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
- 2355 (2) specifying a reasonable period, not being less than 28 days from the date of publication of the notice, within which representations or objections may be made with respect to the proposal,

and must consider any representations or objections duly made and not withdrawn⁶. The notice must be given:

- 2356 (a) by serving a copy on the Authority and the Gas and Electricity Consumer Council⁷; and
- 2357 (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such an order⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the power to make such orders, and for the meaning of 'licensable activities', see PARA 1087 ante.

3 Is an application under the Electricity Act 1989 s 56E (as added): see PARA 1092 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 For the meaning of 'notice' see PARA 1047 note 11 ante.

6 Electricity Act 1989 s 56F(1) (s 56F added by the Utilities Act 2000 s 43).

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante. As to the service of notices and documents see PARA 1307 post.

8 Electricity Act 1989 s 56F(2) (as added: see note 6 supra).

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(5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY

(i) Duties of Electricity Distributors

1094. The duty to connect on request.

An electricity distributor¹ is under a duty:

- 2358 (1) to make a connection² between a distribution system³ of his and any premises⁴, when required to do so⁵ by:
- 205
- 301. (a) the owner or occupier⁶ of the premises; or
- 302. (b) an authorised supplier⁷ acting with the consent of the owner or occupier of the premises,
- 206
- 2359 for the purpose of enabling electricity to be conveyed to or from the premises;
- 2360 (2) to make a connection between a distribution system of his and any distribution system of another authorised distributor⁸, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system⁹.

Any such duty includes a duty to provide such electric lines or electrical plant¹⁰ as may be necessary to enable the connection to be used for the purpose for which it is required¹¹.

These duties are to be performed subject to such terms as may be agreed¹² for so long as the connection is required¹³.

Where a person requires a connection to be made by an electricity distributor in pursuance of the above provisions, he must give the distributor a notice¹⁴ requiring him to offer terms for making the connection¹⁵. That notice must specify:

- 2361 (i) the premises or distribution system to which a connection to the distributor's system is required;
- 2362 (ii) the date on or by which the connection is to be made; and
- 2363 (iii) the maximum power at which electricity may be required to be conveyed through the connection¹⁶.

The person requiring a connection must also give the distributor such other information in relation to the required connection as the distributor may reasonably request¹⁷; and such a request must be made as soon as practicable after the notice requiring the offer of terms is given, if not made before that time¹⁸. As soon as practicable after receiving the notice requiring the offer of terms and any information so requested, the distributor must give to the person requiring the connection a notice:

- 2364 (A) stating the extent, if any, to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;
 2365 (B) specifying any payment which that person will be required to make¹⁹;
 2366 (C) specifying any security which that person will be required to give²⁰; and
 2367 (D) stating any other terms which that person will be required²¹ to accept²²;

and such a notice must also contain a statement of the effect of the statutory provision²³ relating to the determination of disputes arising between an electricity distributor and a person requiring a connection²⁴.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 For these purposes, and the purposes of the Electricity Act 1989 ss 16A-23 (as amended) (see the text and notes 14-24 infra; and PARA 1095 et seq post), any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant): s 16(4)(a) (s 16 substituted by the Utilities Act 2000 s 44). For the meanings of 'electric line' and 'electrical plant' see PARA 1041 note 5 ante.

3 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 For these purposes, and the purposes of the Electricity Act 1989 ss 16A-23 (as amended) (see the text and notes 14-24 infra; and PARA 1095 et seq post), any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant): s 16(4)(b) (as substituted: see note 2 supra).

6 There is no statutory definition of 'occupier' for these purposes; but it seems that in general a person is an occupier if he has a sufficient degree of control over the state of the premises or over the activities of persons thereon, and that, in order to be an occupier, it is not necessary for a person to have entire control over the premises, but it is sufficient for him to share the control with others: *Wheat v Lacon & Co Ltd* [1966] AC 552, [1966] 1 All ER 582, HL; see also *H & N Emanuel Ltd v GLC* [1971] 2 All ER 835, 115 Sol Jo 226, CA; *Harris v Birkenhead Corpn* [1976] 1 All ER 341, [1976] 1 WLR 279, CA; *Jackson v Hall* [1980] AC 854, [1980] 1 All ER 177, HL; *Bromwich v Patel (Thakorbhai)* [1993] PIQR P 95; *Vodden v Gayton and Gayton* [2001] PIQR P 4; *Ribee v Norrie* (2000) 81 P & CR D37, 33 HLR 777, CA; *Rhind v Astbury Water Park Ltd* [2003] EWHC 1029 (QB), [2003] All ER (D) 217 (May), affd [2004] EWCA Civ 756, [2004] All ER (D) 129 (Jun). The expression 'occupier' includes a person who has a licence entitling him to possession (*Stevens v Bromley London Borough Council* [1972] Ch 400, [1972] 1 All ER 712, CA; *R v Tao* [1977] QB 141, [1976] 3 All ER 65, CA; *International Ferry Traders Ltd v Adur District Council* [2004] EWCA Civ 288, [2004] 2 EGLR 89, [2004] RVR 65) and a statutory tenant (*Brown v Ministry of Housing and Local Government* [1953] 2 All ER 1385, [1953] 1 WLR 1370), but not persons such as squatters whose entry on the premises was unlawful and forcible (*Woodcock v South Western Electricity Board* [1975] 2 All ER 545, [1975] 1 WLR 983).

7 'Authorised supplier' means a person who is authorised by a licence or exemption to supply electricity: Electricity Act 1989 s 64(1) (definition added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (2)). For the meaning of 'licence' see PARA 1041 note 12 ante; and for the meaning of 'exemption' see PARA 1046 note 7 ante. For the meaning of 'supply' see PARA 1041 note 10 ante.

8 'Authorised distributor' means a person who is authorised by a licence or exemption to distribute electricity: Electricity Act 1989 s 64(1) (definition added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (2)). For the meaning of 'distribute' see PARA 1041 note 5 ante.

9 Electricity Act 1989 s 16(1) (as substituted: see note 2 supra). The duties under s 16 (as substituted) are subject to ss 16A-64 (as amended) and any regulations made under those provisions: s 16(5) (as so substituted).

10 For these purposes, and the purposes of *ibid* ss 16A-23 (as amended) (see the text and notes 14-24 infra; and PARA 1095 et seq post), any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one: s 16(4)(c) (as substituted: see note 2 supra).

11 *Ibid* s 16(2) (as substituted: see note 2 supra).

12 *Ie* under *ibid* s 16A (as added): see the text and notes 14-24 infra.

- 13 Ibid s 16(3) (as substituted: see note 2 supra).
- 14 For the meaning of 'notice' see PARA 1047 note 11 ante.
- 15 Electricity Act 1989 s 16A(1) (s 16A added by the Utilities Act 2000 s 44).
- 16 Electricity Act 1989 s 16A(2) (as added: see note 15 supra).
- 17 Ibid s 16A(3) (as added: see note 15 supra).
- 18 Ibid s 16A(4) (as added: see note 15 supra).
- 19 Ie under ibid s 19(1) (as amended) or under regulations made under s 19(2) (as substituted): see PARA 1096 post. For the prescribed standards as to the time within which the distributor must give an estimate of any connection charges see PARA 1117 post.
- 20 Ie under ibid s 20 (as amended): see PARA 1097 post.
- 21 Ie under ibid s 21 (as substituted): see PARA 1098 post.
- 22 Ibid s 16A(5) (as added: see note 15 supra).
- 23 Ie the effect of ibid s 23 (as amended): see PARA 1100 post.
- 24 Ibid s 16A(6) (as added: see note 15 supra).

UPDATE

1094 The duty to connect on request

TEXT AND NOTES 15-24--The Secretary of State may, after consulting the Authority, make provision by regulations for the purpose of entitling an electricity distributor to require a person requiring a connection in pursuance of the Electricity Act 1989 s 16(1) to pay connection offer expenses to such extent as is reasonable in all the circumstances: Electricity Act 1989 s 16A(4A) (s 16A(4A)-(4C) added by Energy Act 2008 s 98(2)). In the Electricity Act 1989 s 16A 'connection offer expenses' means expenses which (1) are of a kind specified by the regulations, and (2) have been reasonably incurred by the electricity distributor: s 16A(4B). Regulations under s 16A(4A) may specify (a) circumstances in which an electricity distributor may not require the payment of connection offer expenses by virtue of the regulations; (b) the manner in which expenses reasonably incurred by an electricity distributor are to be calculated for the purposes of head (2): s 16A(4C).

TEXT AND NOTE 22--Electricity Act 1989 s 16A(5) amended: Energy Act 2008 s 98(3).

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1095. Exceptions from the duty to connect.

Nothing in the statutory duty to make a connection¹ requires an electricity distributor² to make a connection³ if and to the extent that:

- 2368 (1) he is prevented from doing so by circumstances not within his control;
- 2369 (2) circumstances exist by reason of which his doing so would or might involve his being in breach of supply and safety regulations⁴, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
- 2370 (3) it is not reasonable in all the circumstances for him to be required to do so⁵.

Head (3) above does not, however, permit an electricity distributor to disconnect any premises⁶ or distribution system⁷ to which a connection is being maintained by him unless the distributor gives not less than seven working days⁸ notice of his intention to disconnect the premises or distribution system:

- 2371 (a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;
- 2372 (b) where the connection is to another distribution system, to the person who is authorised by a licence⁹ or exemption¹⁰ to run that system¹¹.

Without prejudice to the generality of heads (1) to (3) above, an electricity distributor is not required to make a connection if:

- 2373 (i) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred by any specified statutory provision¹²;
- 2374 (ii) the distributor's licence does not provide for that provision to have effect in relation to him; and
- 2375 (iii) any necessary consent has not, at the time the request is made, been given¹³.

Statutory powers may in certain circumstances be conferred on the Secretary of State in relation to the supply of electricity in an emergency¹⁴.

1 Ie nothing in the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante.

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 For the meaning of references to making a connection see PARA 1094 note 2 ante.

4 Ie regulations made under the Electricity Act 1989 s 29 (as amended): see PARA 1152 post.

- 5 Ibid s 17(1) (s 17 substituted by the Utilities Act 2000 s 44).
- 6 For the meaning of 'premises' see PARA 1041 note 5 ante.
- 7 For the meaning of 'distribution system' see PARA 1041 note 5 ante.
- 8 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971: Electricity Act 1989 s 64(1).
- 9 For the meaning of 'licence' see PARA 1041 note 12 ante.
- 10 For the meaning of 'exemption' see PARA 1046 note 7 ante.
- 11 Electricity Act 1989 s 17(3) (as substituted: see note 5 supra).
- 12 ie by any provision of ibid Sch 3 or Sch 4 (as amended): see PARAS 1284-1284, 1287 et seq post.
- 13 Ibid s 17(2) (as substituted: see note 5 supra).
- 14 See PARA 772 ante.

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1096. Power to recover expenditure.

Where any electric line¹ or electrical plant² is provided³ by an electricity distributor⁴, the distributor may require any expenses reasonably⁵ incurred in providing it to be defrayed by the person requiring the connection⁶ to such extent as is reasonable in all the circumstances⁷.

The Secretary of State⁸ may, after consultation with the Gas and Electricity Markets Authority ('GEMA')⁹, make provision by regulations for entitling an electricity distributor to require a person requiring a connection¹⁰ to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if:

- 2376 (1) the connection is required within the prescribed period¹¹ after the provision of the line or plant; and
- 2377 (2) a person ('the initial contributor') has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the purpose of making a connection to any premises or distribution system as required by that person¹².

Regulations made in pursuance of these provisions may require an electricity distributor who has recovered¹³ any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant:

- 2378 (a) to exercise his rights under the regulations in respect of those expenses¹⁴; and
- 2379 (b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations¹⁵.

Whenever an electricity distributor intends to use any electric line or electrical plant for the purpose of making a further connection in any circumstances where he is obliged to exercise his rights in accordance with head (a) above¹⁶, he must inform any eligible persons¹⁷ of that fact and must also give them the following information:

- 2380 (i) the amount which the electricity distributor calculates would be recoverable¹⁸; and
- 2381 (ii) the estimated amount of his administrative expenses¹⁹.

An electricity distributor must maintain in relation to the provision of any electric line or electrical plant made on or after 1 June 2003 such records as are necessary to enable him to discharge the obligations imposed on him by the relevant²⁰ regulations²¹.

1 For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

3 le in pursuance of the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante. For the meaning of references to the provision of any electric line or electrical plant for these purposes see PARA 1094 note 10 ante.

4 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

5 Any reference for these purposes to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it: Electricity Act 1989 s 19(4) (amended by the Utilities Act 2000 s 46(1), (5)).

6 For the meaning of references to requiring a connection for these purposes see PARA 1094 note 5 ante.

7 Electricity Act 1989 s 19(1) (amended by the Utilities Act 2000 s 46(1), (2)). See also *R v Director General of Electricity Supply, ex p London Electricity plc* [2000] All ER (D) 660, (2000) Times, 13 June (decided under the Electricity Act 1989 s 19(1) (as originally enacted) (reinforcement works necessitated by collective night storage heating project; individual residents liable to pay proportionate share of expenses). For the prescribed standards as to the time within which the distributor must give an estimate of any connection charges see PARA 1117 post.

8 As to the Secretary of State see PARA 601 note 1 ante.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 le in pursuance of the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante.

11 'Prescribed' means prescribed by regulations made, unless the context otherwise requires, by the Secretary of State: *ibid* s 64(1) (definition amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (6)). The prescribed period is five years after the provision of any electric line or electrical plant for the purpose of making a connection to the premises or distribution system of an initial contributor: Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 4.

12 Electricity Act 1989 s 19(2) (substituted by the Utilities Act 2000 s 46(1), (3)). For the prescribed standards as to the time within which the distributor must give an estimate of any connection charges see PARA 1117 post.

13 le in pursuance of the Electricity Act 1989 s 19 (as amended) or of the regulations.

14 *Ibid* s 19(3)(a) (s 19(3) amended by the Utilities Act 2000 s 46(1), (4)). Subject to the Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 6 (as amended), an electricity distributor may require a person requiring a connection under the Electricity Act 1989 s 16(1) (as substituted) at any time after 11 February 2002 to pay to the electricity distributor such an amount in respect of the relevant expenses as may be reasonable in all the circumstances if (1) the connection is required within the prescribed period; (2) an initial contributor has made a payment to the electricity distributor or a public electricity supplier in respect of the relevant expenses; (3) the electricity distributor or the public electricity supplier as the case may be has not recovered the relevant expenses in full; and (3) the electricity distributor has made available to the person requesting the connection such information (if any) as may have been reasonably requested by that person for the purpose of ascertaining (a) the amount of the relevant expenses; (b) the date of the first provision of the electric line or electrical plant; and (c) the amounts paid in respect of the relevant expenses by the initial contributor or by persons previously required to make a payment under the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended) or under the Electricity (Connection Charges) Regulations 1990, SI 1990/527 (revoked): Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 5. Subject to reg 6(2)-(5) (as amended), an electricity distributor must exercise his rights under reg 5 if within the prescribed period (i) any electric line or electrical plant first provided for the purpose of making a connection to premises is subsequently used for the purpose of making a further connection to premises; and (ii) the relevant expenses have been wholly or mainly defrayed by the initial contributor or by that contributor and any other person previously required to make a payment in accordance with the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended) or the Electricity (Connection Charges) Regulations 1990, SI 1990/527 (revoked): Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 6(1) (reg 6(1), (2), (4) amended, and reg 6(5) added, by SI 2002/3232).

Subject to the Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 6(3), (4) (as so amended), the electricity distributor must exercise his rights under reg 5 in the manner which he considers is best calculated to secure the recovery of an amount which is not more than the proportion of the relevant expenses which is appropriate having regard to the maximum capacity required by the person requiring the further connection: reg 6(2) (as so amended). Where the electricity distributor exercises his rights under reg 5 in discharge of the obligation imposed on him by reg 6 (as amended), reg 5 is to be read and construed as if reg 5(c) (see head (3) supra) had been omitted: reg 6(3). The obligation imposed by reg 6 (as amended) does not apply in any case where: (A) the amount which would be applied in making payments to eligible persons in accordance with reg 7

(as amended) (see note 15 *infra*), after deduction in accordance with that regulation of the administrative expenses of the electricity distributor, is insufficient to provide a payment of £300 or more to at least one eligible person; or (B) at the relevant time there are no eligible persons: reg 6(4) (as so amended). Nor does the obligation so imposed apply in the case of any electric line or electrical plant which was provided before 1 June 2003 for the purpose of making a connection to the premises of an initial contributor where those premises were not used wholly or mainly for domestic purposes: reg 6(5) (as so added).

For the prescribed period see note 11 *supra*. 'Eligible person' means any person who at the relevant time owns or occupies the relevant premises, and is either an initial contributor, a person who has been required to make a contribution to an electricity distributor or a public electricity supplier in accordance with the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended) or the Electricity (Connection Charges) Regulations 1990, SI 1990/527 (revoked), or a person to whom any right to receive a payment in accordance with those regulations has been legally assigned: Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 3(1). For these purposes, 'relevant premises' means the premises owned or occupied by a person at the time when he became either an initial contributor or a person required to make a contribution to an electricity distributor or a public electricity supplier in accordance with the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended) or the Electricity (Connection Charges) Regulations 1990, SI 1990/527 (revoked), in respect of the connection to those premises: Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 3(2) (amended by SI 2002/3232). 'Initial contributor' means a person in relation to whose premises or distribution system any electric line or electrical plant was first provided for the purpose of making a connection and who made a payment in respect of the relevant expenses; 'relevant expenses' means any expenses reasonably incurred by an electricity distributor or a public electricity supplier in first providing any electric line or electrical plant which is subsequently used for the purpose of making a connection to the premises or distribution system of any person other than the initial contributor, and the reference in this definition to any expenses reasonably incurred in providing any electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it; and 'relevant time' means the time at which a person requires a connection to be made in pursuance of the Electricity Act 1989 s 16(1) (as substituted) where compliance with that requirement involves the use of any electric line or electrical plant which has already been provided for the purpose of making a connection in pursuance of s 16(1) (as substituted): Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 2(1). 'Public electricity supplier' means a person who was authorised by a licence under the Electricity Act 1989 s 6(1)(c) (as originally enacted) prior to 1 October 2001: Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 2(1).

15 Electricity Act 1989 s 19(3)(b) (as amended: see note 14 *supra*). Where an electricity distributor has in discharge of the obligation imposed on him by the Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 6 (as amended) (see note 14 *supra*) recovered an amount, that amount must, subject to reg 7(2)-(4), be applied in making payments to eligible persons: reg 7(1). The electricity distributor may deduct his administrative expenses from the amount mentioned in reg 7(1) before he makes any payments to eligible persons: reg 7(2). Where payments fall to be made to two or more eligible persons in respect of the same relevant expenses in accordance with reg 7(1), each of those payments must bear the same proportion to the aggregate of those payments as the proportion which each payment made by or in relation to each such eligible person bears to the aggregate of the payments made by or in respect of those eligible persons: reg 7(3). Payments to eligible persons in accordance with reg 7 (as amended) must be made as soon as practicable after the electricity distributor has recovered the amount out of which those payments are to be made: reg 7(5). The electricity distributor is not, however, required by reg 7 (as amended) to make a payment to an eligible person if the amount of that payment would otherwise be less than £300: reg 7(4) (amended by SI 2002/3232). 'Administrative expenses' means the expenses reasonably incurred by an electricity distributor in discharging his obligations under the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended): reg 2(1).

16 *Ie* in any circumstances where *ibid* reg 6 (as amended) applies: see note 14 *supra*.

17 As to eligible persons see note 14 *supra*.

18 *Ie* in accordance with the Electricity (Connection Charges) Regulations 2002, SI 2002/93, reg 6 (as amended).

19 *Ibid* reg 8.

20 *Ie* by the Electricity (Connection Charges) Regulations 2002, SI 2002/93 (as amended): see notes 14-15 *supra*; and the text and notes 16-19 *supra*.

21 *Ibid* reg 8A (added by SI 2002/3232).

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1097. Power to require security.

Subject to the following provisions, an electricity distributor¹ may require any person who requires a connection² to give him reasonable security for the payment to him of reasonable expenses³ in respect of the provision of any electric line⁴ or electrical plant⁵. If a person fails to give any security so required, or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit:

- 2382 (1) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
- 2383 (2) if the connection is being maintained, disconnect the premises⁶ or distribution system⁷ in question⁸.

Where any money is deposited with an electricity distributor by way of security in pursuance of these provisions, the distributor must pay interest, at such rate as may from time to time be fixed by the distributor with the approval of the Gas and Electricity Markets Authority ('GEMA')⁹, on every sum of 50 pence so deposited for every three months during which it remains in the hands of the distributor¹⁰.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 Ie in pursuance of the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante. For the meaning of references to requiring a connection for these purposes see PARA 1094 note 5 ante.

3 Ie the payment under *ibid* s 19 (as amended): see PARA 1096 ante.

4 For the meaning of 'electric line' see PARA 1041 note 5 ante; and for the meaning of references to the provision of any electric line for these purposes see PARA 1094 note 10 ante.

5 Electricity Act 1989 s 20(1) (s 20(1) substituted, and s 20(1A) added, by the Utilities Act 2000 s 47(1), (2)). For the meaning of 'electrical plant' see PARA 1041 note 5 ante; and for the meaning of references to the provision of any electrical plant for these purposes see PARA 1094 note 10 ante.

6 For the meaning of 'premises' see PARA 1041 note 5 ante.

7 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

8 Electricity Act 1989 s 20(1A) (as added: see note 5 *supra*).

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Electricity Act 1989 s 20(3) (amended by the Utilities Act 2000 s 47(1), (3); and by virtue of s 3(2)).

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1098. Additional terms of connection.

An electricity distributor¹ may require any person who requires a connection² to accept in respect of the making of the connection³:

- 2384 (1) any restrictions which must be imposed for the purpose of enabling the distributor to comply with supply and safety regulations⁴;
- 2385 (2) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- 2386 (3) without prejudice to the generality of head (2) above, any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept⁵.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 I.e. in pursuance of the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante. For the meaning of references to requiring a connection for these purposes see PARA 1094 note 5 ante.

3 For the meaning of references to making a connection for these purposes see PARA 1094 note 2 ante.

4 I.e. regulations under the Electricity Act 1989 s 29 (as amended): see PARA 1152 post.

5 Ibid s 21(a)-(c) (substituted by the Utilities Act 2000 s 48). It is reasonable under head (3) in the text to restrict liability for economic loss resulting from the interruption or variation of a supply of electricity, but not economic loss resulting from a fire caused by the provision of faulty electrical plant: see *AE Beckett & Sons (Lyndons) Ltd v Midlands Electricity plc* [2001] 1 WLR 281, [2000] All ER (D) 2192, CA (decided under the Electricity Act 1989 s 21(b) (as originally enacted), which enabled a public electricity supplier to restrict liability in similar terms to those now set out in the Electricity Act 1989 s 21(c) (as so substituted)). See also *Spartan Steel and Alloys Ltd v Martin and Co (Contractors) Ltd* [1973] QB 27 at 37-38, [1972] 3 All ER 557 at 563, CA, per Lord Denning MR; *SCM Ltd v WJ Whittall and Son Ltd* [1971] 1 QB 337, [1970] 3 All ER 245, CA. As to liability in negligence for pure economic loss at common law see NEGLIGENCE vol 78 (2010) PARA 13.

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1099. Special agreements with respect to connection.

Notwithstanding anything in the statutory provisions regarding the duty to connect¹, a person who requires a connection² may enter into an agreement with the electricity distributor³ (a 'special connection agreement') for the making of the connection⁴ on such terms as may be agreed by the parties⁵.

So long as a special connection agreement is effective, the rights and liabilities of the parties are to be those arising under the agreement and not those provided for by the statutory provisions mentioned above⁶; but nothing in this provision prevents the giving of a notice⁷ requiring a connection to be made as from the time when a special connection agreement ceases to be effective⁸.

1 le notwithstanding anything in the Electricity Act 1989 ss 16-21 (as amended): see PARAS 1094-1098 ante.

2 le in pursuance of the Electricity Act 1989 s 16(1) (as substituted): see PARA 1094 ante. For the meaning of references to requiring a connection for these purposes see PARA 1094 note 5 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

4 For the meaning of references to requiring a connection for these purposes see PARA 1094 note 2 ante.

5 Electricity Act 1989 s 22(1) (s 22 substituted by the Utilities Act 2000 s 49); and see the Electricity Act 1989 s 64(1) definition added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 38(1), (7)).

6 Electricity Act 1989 s 22(2) (as substituted: see note 5 supra).

7 le under *ibid* s 16A(1) (as added): see PARA 1094 ante.

8 Ibid s 22(3) (as substituted: see note 5 supra).

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1100. Determination of disputes.

The following provisions apply¹ to any dispute arising under the statutory provisions regarding the duty to connect² between an electricity distributor³ and a person requiring a connection⁴. Such a dispute may be referred to the Gas and Electricity Markets Authority ('GEMA')⁵ by either party, or, with the agreement of either party, by the Gas and Electricity Consumer Council⁶. On such a reference, the dispute must be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator appointed by the Authority⁷.

The practice and procedure to be followed in connection with any such determination is to be such as the Authority may consider appropriate⁸; but no dispute arising as mentioned above which relates to the making of a connection⁹ between any premises¹⁰ and a distribution system¹¹ may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made¹².

Where a dispute so arising between an electricity distributor and a person requiring a connection falls to be determined under these provisions, the Authority may give directions¹³ as to the circumstances in which, and the terms on which, the distributor is to make or, as the case may be, to maintain a connection pending the determination of the dispute¹⁴; and this power also enables the Authority to require the giving of a supply¹⁵ of electricity pending such a determination¹⁶. Where any dispute arising under the statutory power to require security¹⁷ falls to be determined under these provisions, the Authority may give directions as to the security, if any, to be given pending the determination of the dispute¹⁸.

A person making an order under these provisions must include in the order his reasons for reaching his decision with respect to the dispute¹⁹. Such an order may include such incidental, supplemental and consequential provision, including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order, as that person considers appropriate²⁰. In including in such an order any such provision as to costs or expenses, the person making the order must have regard to the conduct and means of the parties and any other relevant circumstances²¹. The order is to be final and is enforceable in England and Wales, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court²².

1 Ie in addition to any disputes to which they apply by virtue of any other provision of the Electricity Act 1989. As to the application of s 23 (as amended) to the determination of disputes other than those arising in relation to the duty to connect see ss 24, 31, Sch 6 para 1(2), Sch 7 paras 1(7)-(9), 10(2A) (as amended); and PARAS 1102, 1180, 1188 post.

2 Ie arising under *ibid* ss 16-21 (as amended): see PARAS 1094-1098 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

4 Electricity Act 1989 s 23(1) (s 23(1), (1A), (2) substituted, and s 23(1B), (1C) added, by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 26(1), (2)). For the meaning of references to requiring a connection for these purposes see PARA 1094 note 5 ante. The payment of connection charges does not prevent the person who has paid them from referring their reasonableness for determination under s 23 (as amended): *R v Director General of Electricity Supply, ex p Redrow Homes (Northern) Ltd* (1995) Times, 21 February (decided under the Electricity Act 1989 s 23(1) prior to such substitution).

- 5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 6 Electricity Act 1989 s 23(1A)(a) (as substituted: see note 4 supra). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.
- 7 Ibid s 23(1A)(b) (as substituted: see note 4 supra).
- 8 Ibid s 23(1B) (as added: see note 4 supra).
- 9 Ibid s 16(4)(a) (as substituted) (see PARA 1094 note 2 ante) does not apply to the references in s 23 (as amended) to making a connection: s 23(7) (added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 26(1), (4)).
- 10 For the meaning of 'premises' see PARA 1041 note 5 ante.
- 11 For the meaning of 'distribution system' see PARA 1041 note 5 ante.
- 12 Electricity Act 1989 s 23(1C) (as added: see note 4 supra).
- 13 Directions under ibid s 23(2) (as substituted) or s 23(3) (as amended) may apply either in cases of particular descriptions or in particular cases: s 23(4). As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post; and as to the framing of descriptions see PARA 1068 note 17 ante.
- 14 Ibid s 23(2) (as substituted: see note 4 supra).
- 15 For the meaning of 'supply' see PARA 1041 note 10 ante.
- 16 See the Competition and Service (Utilities) Act 1992 s 25(1) (amended by virtue of the Utilities Act 2000 s 3(2)).
- 17 Ie under the Electricity Act 1989 s 20(1) (as substituted): see PARA 1097 ante.
- 18 Ibid s 23(3) (amended by virtue of the Utilities Act 2000 s 3(2)). See also note 13 supra.
- 19 Ibid s 23(4A) (added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 26(1), (3)).
- 20 Ibid s 23(5)(a).
- 21 Ibid s 23(6).
- 22 Ibid s 23(5)(b)(i).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(ii) The Electricity Code/1101. Introduction.

(ii) The Electricity Code

1101. Introduction.

The electricity code, which is set out in Schedule 6 to the Electricity Act 1989¹, makes provision relating to the distribution² and supply³ of electricity⁴. In contrast to the gas code⁵, however, general provisions relating to the taking of a supply of electricity through a meter are not included in the electricity code, but are set out elsewhere in the 1989 Act⁶. The supply of meters to disabled persons and the use of prepayment meters where suppliers' charges have not been paid, are, however, dealt with by provisions in the code⁷.

1 See the Electricity Act 1989 s 24 (as amended), Sch 6 (as substituted); and PARA 1102 et seq post.

2 For the meaning of 'distribution' see PARA 1041 note 5 ante.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 See the Electricity Act 1989 s 24 (amended by the Utilities Act 2000 s 51(1)).

5 As to the gas code see PARA 856 et seq ante.

6 See the Electricity Act 1989 s 31, Sch 7 (as amended); and PARA 1180 et seq post.

7 See *ibid* Sch 6 paras 1, 2 (as substituted); and PARAS 1102-1103 post.

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1102. Suppliers' charges relating to meters for disabled persons.

Where an electricity supplier¹, for the purpose of meeting the needs of a disabled person:

- 2387 (1) alters the position of any electricity meter provided by him for a customer of his; or
- 2388 (2) replaces such a meter with one which has been specially adapted,

the supplier must not charge the customer for the alteration or replacement².

Any dispute arising under these provisions may be referred to the Gas and Electricity Markets Authority ('GEMA')³ by either party or, with the agreement of either party, by the Gas and Electricity Consumer Council⁴ for determination⁵.

¹ For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

² Electricity Act 1989 s 24 (as amended), Sch 6 para 1(1) (substituted by the Utilities Act 2000 s 51(2), Sch 4).

³ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

⁴ As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

⁵ See the Electricity Act 1989 s 23(1A)(a) (as substituted); and PARA 1100 ante (applied by Sch 6 para 1(2) (as substituted: see note 2 supra)). Section 23 (as amended) (see PARA 1100 ante) applies to any such dispute: Sch 6 para 1(2) (as so substituted).

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1103. Non-payment of suppliers' charges.

Where a customer has not, within the requisite period¹, paid all charges due from him to an electricity supplier² in respect of the supply³ of electricity to any premises⁴ or the provision of an electricity meter, the supplier may either install a prepayment meter on the premises or may disconnect the premises; and the supplier may recover any expenses incurred in so doing from the customer⁵.

This power may not be exercised:

- 2389 (1) as respects any amount which is genuinely in dispute⁶; and
- 2390 (2) unless not less than seven working days⁷ notice has been given⁸ to the occupier of the premises, or the owner of the premises if they are unoccupied, of the supplier's intention to exercise it⁹.

1 For these purposes, the 'requisite period' means the period of 28 days after the making by the supplier of a demand in writing for payment of the charges due: Electricity Act 1989 s 24 (as amended), Sch 6 para 2(3) (Sch 6 para 2 substituted by the Utilities Act 2000 s 51(2), Sch 4).

2 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 Electricity Act 1989 Sch 6 para 2(1) (as substituted: see note 1 supra).

6 Ie disregarding for this purpose a dispute under *ibid* s 39 (as amended) or regulations made under it (standards of performance in individual cases: see PARA 1110 post). As to what constitutes a genuine dispute see *Joseph v East Ham Corp* [1936] 1 KB 367, CA (held that a bona fide dispute was to be taken to mean that the appellant was not, under cover of disputing the amount of the bill for electricity, attempting to evade his liability to pay what was properly due, but was bona fide disputing the amount which was due).

7 For the meaning of 'working day' see PARA 1095 note 8 ante.

8 For the meaning of 'notice' see PARA 1047 note 11 ante; and as to the giving of notices see PARA 1307 post.

9 Electricity Act 1989 Sch 6 para 2(2) (as substituted: see note 1 supra).

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1104. Deemed contracts in certain cases.

Where:

- 2391 (1) an electricity supplier¹ supplies electricity to any premises² otherwise than in pursuance of a contract, the supplier is to be deemed to have contracted with the occupier³, or the owner if the premises are unoccupied, for the supply of electricity as from the time ('the relevant time') when he began so to supply electricity⁴;
- 2392 (2) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor⁵, that supply is not made by an authorised supplier⁶ and a supply of electricity so conveyed has been previously made by an electricity supplier, the owner or occupier is to be deemed to have contracted with the appropriate supplier⁷ for the supply of electricity as from the time ('the relevant time') when he began to take such a supply⁸;

but nothing in head (2) above is to be taken to afford a defence in any criminal proceedings⁹.

The express terms and conditions of a contract which, by virtue of head (1) or head (2) above, is deemed to have been made must be provided for by a scheme made under the following provisions¹⁰. Each electricity supplier must make, and may from time to time revise, a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of head (1) or head (2) above, are to be deemed to have been made¹¹. The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with:

- 2393 (a) the time when the meter is first read after the relevant time; or
- 2394 (b) the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,

whichever is the earlier¹².

Such a scheme may¹³ make different provision for different cases or classes¹⁴ of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme¹⁵. As soon as practicable after an electricity supplier makes such a scheme, or a revision of such a scheme, he must:

- 2395 (i) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice¹⁶ stating the effect of the scheme or revision;
- 2396 (ii) send a copy of the scheme or revision to the Gas and Electricity Markets Authority ('GEMA') and to the Gas and Electricity Consumer Council¹⁷; and

2397 (iii) if so requested by any other person, send such a copy to that person without charge to him¹⁸.

1 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante; and for the meaning of 'premises' see PARA 1041 note 5 ante.

3 There is no statutory definition of 'occupier' for these purposes; but see PARA 1094 note 6 ante.

4 Electricity Act 1989 s 24 (as amended), Sch 6 para 3(1) (Sch 6 para 3 substituted by the Utilities Act 2000 s 51(2), Sch 4).

5 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

6 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

7 The Gas and Electricity Markets Authority ('GEMA') must publish a document containing provision for determining the 'appropriate supplier' for these purposes: Electricity Act 1989 Sch 6 para 3(4) (as substituted: see note 4 supra). The Authority may revise the current document so published; and where it does so it must publish the revised document: Sch 6 para 3(5) (as so substituted). As to publication by the Authority see PARA 1045 note 6 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Ibid Sch 6 para 3(2) (as substituted: see note 4 supra).

9 Ibid Sch 6 para 3(3) (as substituted: see note 4 supra).

10 Ibid Sch 6 para 3(6) (as substituted: see note 4 supra).

11 Ibid Sch 6 para 3(7) (as substituted: see note 4 supra).

12 Ibid Sch 6 para 3(8) (as substituted: see note 4 supra).

13 Ie subject to ibid s 7B (as added), which relates to Scotland only.

14 As to the framing of classes see PARA 1051 note 4 ante.

15 Electricity Act 1989 Sch 6 para 3(9) (as substituted: see note 4 supra).

16 For the meaning of 'notice' see PARA 1047 note 11 ante.

17 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

18 Electricity Act 1989 Sch 6 para 3(10) (as substituted: see note 4 supra).

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1105. Supplies of electricity illegally taken; restoration of connection without consent.

Where:

- 2398 (1) any person takes a supply¹ of electricity which is in the course of being conveyed by an electricity distributor², the distributor is entitled to recover from that person the value³ of the electricity so taken⁴;
- 2399 (2) any person at premises⁵ at which a connection has been restored in contravention⁶ of the prohibition set out below⁷ takes a supply of electricity which has been conveyed to those premises by an electricity distributor and the supply is taken otherwise than in pursuance of a contract made with an authorised supplier⁸, or of a contract deemed to have been made⁹ with an electricity supplier¹⁰, the distributor is entitled to recover from that person the value of the electricity so taken¹¹.

Each electricity distributor must make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the quantity of electricity taken in such circumstances as are mentioned in head (1) or head (2) above is to be determined for the purposes of the above provisions¹². Such a scheme may¹³ make different provision for different cases or classes¹⁴ of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme¹⁵. As soon as practicable after an electricity distributor makes such a scheme, or a revision of such a scheme, he must:

- 2400 (a) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice¹⁶ stating the effect of the scheme or revision;
- 2401 (b) send a copy of the scheme or revision to the Gas and Electricity Markets Authority ('GEMA')¹⁷ and to the Gas and Electricity Consumer Council¹⁸; and
- 2402 (c) if so requested by any other person, send such a copy to that person without charge to him¹⁹.

Where, otherwise than in the exercise of a power conferred by supply and safety regulations²⁰, premises have been disconnected by an electricity supplier or an electricity distributor, no person must, without the consent of the supplier or, as the case may be, the distributor, restore the connection²¹. A person who acts in contravention of this prohibition is liable on summary conviction to a fine not exceeding level 3 on the standard scale²². A connection restored in contravention of this prohibition may be disconnected by the distributor to whose distribution system²³ the connection is made or, if the original disconnection was carried out by an electricity supplier, by that supplier²⁴.

1 For the meaning of 'supply' see PARA 1041 note 10 ante.

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 For these purposes, 'value', in relation to any electricity taken in such circumstances as are mentioned in head (1) or head (2) in the text, means the amount which, if the electricity had been taken in such circumstances as are mentioned in the Electricity Act 1989 s 24 (as amended), Sch 6 para 3(2) (as substituted) (see PARA 1104 ante), could reasonably be expected to have been payable in respect of the electricity under a contract deemed to have been made by virtue of that provision: Sch 6 para 4(5) (Sch 6 paras 4, 5 substituted by the Utilities Act 2000 s 51(2), Sch 4).

4 Electricity Act 1989 Sch 6 para 4(1) (as substituted: see note 3 supra).

5 For the meaning of 'premises' see PARA 1041 note 5 ante.

6 For the meaning of 'contravention' see PARA 1070 note 20 ante.

7 Ie in contravention of the Electricity Act 1989 Sch 6 para 5(1) (as substituted): see the text and notes 20-21 infra.

8 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

9 Ie by virtue of the Electricity Act 1989 Sch 6 para 3 (as substituted) (see PARA 1104 ante) or of the Utilities Act 2000 Sch 7 para 23 (former tariff customers).

10 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

11 Electricity Act 1989 Sch 6 para 4(2) (as substituted: see note 3 supra).

12 Ibid Sch 6 para 4(3) (as substituted: see note 3 supra).

13 Ie subject to ibid s 7B (as added), which relates to Scotland only.

14 As to the framing of classes see PARA 1051 note 4 ante.

15 Electricity Act 1989 Sch 6 para 3(9) (as substituted), applied by Sch 6 para 4(4) (as substituted: see note 3 supra).

16 For the meaning of 'notice' see PARA 1047 note 11 ante.

17 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

18 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

19 Electricity Act 1989 Sch 6 para 3(10) (as substituted), applied by Sch 6 para 4(4) (as substituted: see note 3 supra).

20 Ie regulations under ibid s 29 (as amended): see PARA 1152 post.

21 Ibid Sch 6 para 5(1) (as substituted: see note 3 supra).

22 Ibid Sch 6 para 5(2) (as substituted: see note 3 supra). As to the standard scale see PARA 613 note 11 ante.

23 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

24 Electricity Act 1989 Sch 6 para 5(3) (as substituted: see note 3 supra).

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1106. Damage to electrical plant etc.

A person who intentionally or by culpable negligence damages or allows to be damaged:

- 2403 (1) any electric line¹ or electrical plant² provided by an electricity distributor³;
or
2404 (2) any electricity meter provided by an electricity supplier⁴,

is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁵.

Where such an offence has been committed⁶ by the occupier of any premises⁷, or by the owner of the premises if they are unoccupied when the offence is committed, in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises⁸; and where such an offence has been committed, in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier, or by the owner of the premises if they are unoccupied when the offence is committed, the supplier may disconnect the premises and may remove the meter⁹. A meter so removed must be kept safely by the supplier until the Gas and Electricity Markets Authority ('GEMA')¹⁰ authorises its destruction or disposal¹¹.

The distributor or supplier is not to be under any obligation to reconnect, and in the case of a supplier to restore the supply to, any premises disconnected under the above provisions until:

- 2405 (a) the offender is no longer the occupier or, as the case may be, the owner of the premises; or
2406 (b) the matter in consequence of which the premises were disconnected has been remedied¹².

1 For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

4 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

5 Electricity Act 1989 s 24 (as amended), Sch 6 para 6(1) (Sch 6 para 6 substituted by the Utilities Act 2000 s 51(2), Sch 4).

6 As to the meaning of 'where an offence has been committed' see *R v Director General of Gas Supply and British Gas plc, ex p Alison and Clifford Smith* (31 July 1989, unreported), QBD (CO/1398/88), where Pill J took a similar expression in the Gas Act 1986 s 15, Sch 5 para 10(2) (now repealed) to mean that conviction of an offence under Sch 5 para 10(1) (repealed) was not a precondition to the exercise by British Gas plc of its power to discontinue supplies to the person offending; it was sufficient to establish that it was more likely than not that an offence had been committed, taking into account the seriousness of the charge. As to the higher standard of proof required in criminal cases see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1372.

7 For the meaning of 'premises' see PARA 1041 note 5 ante; and as to the meaning of 'occupier' see PARA 1094 note 6 ante.

8 Electricity Act 1989 Sch 6 para 6(2) (as substituted: see note 5 supra).

9 Ibid Sch 6 para 6(3) (as substituted: see note 5 supra).

10 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

11 Electricity Act 1989 Sch 6 para 6(4) (as substituted: see note 5 supra).

12 Ibid Sch 6 para 6(5) (as substituted: see note 5 supra).

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1107. Powers of entry under the electricity code.

Any officer or other person authorised¹ by an electricity distributor² may at all reasonable times, on the production of some duly authenticated document showing his authority³, enter any premises⁴ to which the distributor is maintaining a connection, for the purpose of inspecting any electric line⁵ or electrical plant⁶ provided by him⁷.

Any officer or other person authorised by an electricity supplier⁸ may at all reasonable times, on the production of some duly authenticated document showing his authority⁹, enter any premises to which electricity is being supplied¹⁰ by him for the purpose of ascertaining the register of any electricity meter and, in the case of a prepayment meter, removing any money or tokens belonging to the supplier, and for the purpose of removing, inspecting or reinstalling any electricity meter or installing any substitute meter¹¹. The supplier must provide a substitute meter while a meter is removed under this power¹². Where an electricity supplier is authorised¹³ to install a prepayment meter on any premises, any officer or other person authorised by the supplier may at all reasonable times enter the premises for the purpose of installing such a meter¹⁴. A power of entry for the purpose of removing or installing an electricity meter may not be exercised unless at least two working days' notice¹⁵ has been given to the occupier, or the owner of the premises if they are unoccupied¹⁶.

Where an electricity supplier or an electricity distributor is authorised by the specified statutory provisions¹⁷ to disconnect any premises or to remove an electricity meter, any officer or other person authorised by the supplier or distributor may at all reasonable times, on the production of some duly authenticated document showing his authority¹⁸, enter the premises for the purpose of disconnecting the premises or removing the meter¹⁹. Where:

- 2407 (1) an electricity distributor is authorised by any other provision of the Electricity Act 1989 or of regulations made under it²⁰ to disconnect any premises;
- 2408 (2) a person occupying premises which are connected to a distribution system²¹ of an electricity distributor ceases to require a connection; or
- 2409 (3) a person entering into occupation of any premises connected to a distribution system of an electricity distributor does not require such a connection,

any officer or other person authorised by the distributor may at all reasonable times, on the production of some duly authenticated document showing his authority²², enter the premises for the purpose of disconnecting the premises or removing any electrical plant or electric line provided by the distributor²³. Similarly, where:

- 2410 (a) an electricity supplier is authorised by any other provision of the Electricity Act 1989 or of regulations made under it²⁴ to disconnect any premises or to discontinue the supply to any premises;
- 2411 (b) a person occupying premises which are supplied with electricity by an electricity supplier ceases to require such a supply; or
- 2412 (c) a person entering into occupation of any premises previously supplied with electricity by an electricity supplier does not require such a supply,

any officer or other person authorised by the supplier may at all reasonable times, on the production of some duly authenticated document showing his authority²⁵, enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by the supplier²⁶. A power of entry under heads (1) to (3) or heads (a) to (c) above may not be exercised unless at least two working day's notice has been given to the occupier, or to the owner of the premises if they are unoccupied²⁷.

Any officer or other person authorised by an electricity distributor may at all reasonable times, on the production of some duly authenticated document showing his authority²⁸, enter any premises for the purpose of placing a new electric line or any new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed, or repairing or altering any such existing line or plant²⁹. Such a power of entry may not be exercised unless at least five working days' notice has been given to the occupier of any premises, or to the owner of the premises if they are unoccupied³⁰. However, in the case of emergency arising from faults in an electric line or any electrical plant, entry may be made under the above power without the notice so required, but notice must then be given as soon as possible after the occurrence of the emergency³¹.

Where in pursuance of any power of entry conferred by the electricity code³², entry is made on any premises by a person authorised to do so:

- 2413 (i) that person must ensure that the premises are left no less secure by reason of the entry; and
- 2414 (ii) the supplier or distributor must make good, or pay compensation for, any damage caused by that person, or by any other person accompanying him³³, in entering the premises, in taking any action on the premises or in making them secure³⁴.

Any person exercising a power of entry so conferred may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made or for the purposes of head (i) or head (ii) above³⁵.

A person who intentionally obstructs a person exercising powers of entry conferred by the electricity code is liable on summary conviction to a fine not exceeding level 3 on the standard scale³⁶.

The Rights of Entry (Gas and Electricity Boards) Act 1954, which restricts rights of entry to premises, except in a case of emergency, so that either the occupier's consent or a justice's warrant is required³⁷, applies in relation to any of the above powers of entry³⁸.

1 Any reference in the Electricity Act 1989 s 24 (as amended), Sch 6 (as substituted) (the electricity code: see PARAS 1102-909 ante; the text and notes 2-38 infra; and PARA 1108 post) to an officer or other person authorised by an electricity supplier or an electricity distributor includes a reference to a person who, in accordance with a written authority given by the supplier or distributor to an agent of the supplier or distributor, is authorised by the agent on behalf of the supplier or distributor: Sch 6 para 10(2) (Sch 6 paras 7-10 substituted by the Utilities Act 2000 s 51(2), Sch 4).

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 See the Electricity Act 1989 Sch 6 para 10(4) (as substituted: see note 1 supra). This does not mean that the right of entry can only be exercised if there is some person to whom the authority can be produced: see *Grove v Eastern Gas Board* [1952] 1 KB 77, [1951] 2 All ER 1051, CA.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 For the meaning of 'electric line' see PARA 1041 note 5 ante.

6 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

- 7 Electricity Act 1989 Sch 6 para 7(1) (as substituted: see note 1 supra).
- 8 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.
- 9 See note 3 supra.
- 10 For the meaning of 'supply' see PARA 1041 note 10 ante.
- 11 Electricity Act 1989 Sch 6 para 7(2) (as substituted: see note 1 supra).
- 12 Ibid Sch 6 para 7(3) (as substituted: see note 1 supra).
- 13 Ie by ibid Sch 6 para 2(1) (as substituted): see PARA 1103 ante.
- 14 Ibid Sch 6 para 7(4) (as substituted: see note 1 supra).
- 15 For the meaning of 'working day' see PARA 1095 note 8 ante; and for the meaning of 'notice' see PARA 1047 note 11 ante.
- 16 Electricity Act 1989 Sch 6 para 7(5) (as substituted: see note 1 supra).
- 17 Ie by ibid Sch 6 para 6(2) or (3) (as substituted) (see PARA 1106 ante) or Sch 7 para 11(3) (see PARA 1189 post).
- 18 See note 3 supra.
- 19 Electricity Act 1989 Sch 6 para 8(1) (as substituted: see note 1 supra).
- 20 Ie authorised by any such provision other than one mentioned in ibid Sch 6 para 8(1) (as substituted): see note 17 supra.
- 21 For the meaning of 'distribution system' see PARA 1041 note 5 ante.
- 22 See note 3 supra.
- 23 Electricity Act 1989 Sch 6 para 8(2) (as substituted: see note 1 supra).
- 24 See note 20 supra.
- 25 See note 3 supra.
- 26 Electricity Act 1989 Sch 6 para 8(3) (as substituted: see note 1 supra).
- 27 Ibid Sch 6 para 8(4) (as substituted: see note 1 supra).
- 28 See note 3 supra.
- 29 Electricity Act 1989 Sch 6 para 9(1) (as substituted: see note 1 supra).
- 30 Ibid Sch 6 para 9(2) (as substituted: see note 1 supra).
- 31 Ibid Sch 6 para 9(3) (as substituted: see note 1 supra).
- 32 Ie conferred by ibid Sch 6 (as substituted).
- 33 Ie under ibid Sch 6 para 10(5): see the text and note 35 infra.
- 34 Ibid Sch 6 para 10(3) (as substituted: see note 1 supra).
- 35 Ibid Sch 6 para 10(5) (as substituted: see note 1 supra).
- 36 Ibid Sch 6 para 10(6) (as substituted: see note 1 supra). As to the standard scale see PARA 613 note 11 ante. See, however, the Rights of Entry (Gas and Electricity Boards) Act 1954 s 1(3); and PARA 773 ante.
- 37 See PARAS 773-774 ante.
- 38 See the Electricity Act 1989 Sch 6 para 10(1) (as substituted: see note 1 supra).

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1108. Electrical plant etc not to be subject to distress.

Any electric line¹, electrical plant² or electricity meter belonging to or provided by an electricity distributor³ or electricity supplier⁴ which is marked or impressed with a sufficient mark or brand indicating an electricity supplier or electricity distributor as the owner or provider of it:

2415 (1) is to be deemed not to be landlord's fixtures⁵, notwithstanding that it may be fixed or fastened to any part of any premises⁶; and

2416 (2) is not to be subject to distress or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession it may be⁷.

1 For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 8 ante.

4 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

5 As to landlord's fixtures see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173.

6 For the meaning of 'premises' see PARA 1041 note 5 ante.

7 Electricity Act 1989 s 24 (as amended), Sch 6 para 11(1), (2) (substituted by the Utilities Act 2000 s 51(2), Sch 4).

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(iii) Consumer Protection

A. STANDARDS OF PERFORMANCE; SERVICE STANDARDS AND REMUNERATION

(A) PROCEDURES FOR PRESCRIBING OR DETERMINING STANDARDS OF PERFORMANCE

1109. Procedures to be followed by the Gas and Electricity Markets Authority.

Before prescribing standards of performance in regulations with regard to individual cases¹, or determining overall standards of performance², the Gas and Electricity Markets Authority ('GEMA')³ must:

- 2417 (1) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
- 2418 (2) publish a notice⁴ of its proposals and consider any representations which are duly made in respect of those proposals; and
- 2419 (3) consult the Gas and Electricity Consumer Council⁵ and the following persons or bodies⁶, namely:
 - 207 303. (a) electricity suppliers⁷, in the case of standards of performance relating to them⁸, or electricity distributors⁹ and electricity suppliers, in the case of standards of performance relating to electricity distributors¹⁰; and
 - 304. (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination¹¹.
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The notice required by head (2) above is a notice:

- 2420 (i) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
- 2421 (ii) stating the reasons why it proposes to prescribe or determine those standards of performance; and
- 2422 (iii) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations with respect to the proposals may be made¹².

A notice so required must be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals¹³.

The Authority must make arrangements for securing that such notices and relevant regulations¹⁴ and determinations¹⁵ are made available to the public by whatever means it considers appropriate¹⁶.

1 le regulations under the Electricity Act 1989 s 39 (as amended) (see PARA 1110 post) or s 39A (as added) (see PARA 1111 post).

2 le under ibid s 40 (as amended) or s 40A (as added): see PARAS 1134-1135 post.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 le in accordance with the Electricity Act 1989 s 40B(2)-(3) (as added): see the text and notes 12-13 infra. For the meaning of 'notice' see PARA 1047 note 11 ante; and as to publication by the Authority see PARA 1045 note 6 ante.

5 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

6 Electricity Act 1989 s 40B(1) (s 40B added by the Utilities Act 2000 s 56).

7 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

8 le in the case of standards of performance under the Electricity Act 1989 s 39 (as amended) (see PARA 1110 post) or s 40 (as amended) (see PARA 1134 post).

9 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

10 le in the case of standards of performance under the Electricity Act 1989 s 39A (as added) (see PARA 1111 post) or s 40A (as added) (see PARA 1135 post).

11 Ibid s 40B(4) (as added: see note 6 supra).

12 Ibid s 40B(2) (as added: see note 6 supra).

13 Ibid s 40B(3) (as added: see note 6 supra).

14 See note 1 supra.

15 See note 2 supra.

16 Electricity Act 1989 s 40B(5) (as added: see note 6 supra).

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(B) STANDARDS OF PERFORMANCE IN INDIVIDUAL CASES

(a) Powers to Prescribe Standards

1110. Power to prescribe standards of performance in individual cases in relation to electricity suppliers.

The Gas and Electricity Markets Authority ('GEMA')¹ may, with the consent of the Secretary of State², make regulations prescribing such standards of performance in connection with the activities of electricity suppliers³, so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases⁴. Such regulations may:

- 2423 (1) prescribe circumstances in which electricity suppliers are to inform persons of their rights under these provisions, or their rights under the statutory provisions⁵ relating to standards of performance in individual cases with regard to electricity distributors⁶;
- 2424 (2) prescribe such standards of performance in relation to any duty arising under head (1) above as, in the Authority's opinion, ought to be achieved in all cases;
- 2425 (3) prescribe circumstances in which electricity suppliers are to be exempted from any requirements of the regulations or of these provisions; and
- 2426 (4) if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers, make different provision for different electricity suppliers⁷.

If an electricity supplier fails to meet a prescribed⁸ standard, he must make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations⁹. The making of compensation under these provisions in respect of any failure by an electricity supplier to meet a prescribed standard does not, however, prejudice any other remedy which may be available in respect of the act or omission which constituted that failure¹⁰.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

² As to the Secretary of State see PARA 601 note 1 ante.

³ For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

⁴ Electricity Act 1989 s 39(1) (substituted by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 32(a)).

⁵ ie their rights under the Electricity Act 1989 s 39A (as added): see PARA 1111 post.

⁶ For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

7 Electricity Act 1989 s 39(2) (amended by the Utilities Act 2000 ss 54(1)(a), 108, Sch 6 Pt II paras 24, 32(b), (c); and by virtue of s 3(2)).

8 For these purposes, 'prescribed' means prescribed by regulations under the Electricity Act 1989 s 39 (as amended): s 39(7).

9 Ibid s 39(3) (s 39(3), (4) amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 32(d)).

10 Electricity Act 1989 s 39(4) (as amended: see note 9 *supra*). As to the Authority's power to impose penalties for failure to meet the prescribed standards see *PARA 1212 et seq post*.

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1111. Power to prescribe standards of performance in individual cases in relation to electricity distributors.

The Gas and Electricity Markets Authority ('GEMA')¹ may, with the consent of the Secretary of State², make regulations prescribing such standards of performance in connection with the activities of electricity distributors³, so far as affecting customers or potential customers of electricity suppliers⁴, as in the Authority's opinion ought to be achieved in individual cases⁵. The regulations may:

- 2427 (1) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under these provisions;
- 2428 (2) prescribe such standards of performance in relation to any duty arising under head (1) above as, in the Authority's opinion, ought to be achieved in all cases;
- 2429 (3) make provision as to the manner in which compensation under these provisions is to be made;
- 2430 (4) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or of these provisions; and
- 2431 (5) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors, make different provision with respect to different electricity distributors⁶.

If an electricity distributor fails to meet a prescribed⁷ standard, he must make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations⁸. Provision made under head (3) above may:

- 2432 (a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and
- 2433 (b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under these provisions⁹.

The making of compensation under these provisions in respect of any failure to meet a prescribed standard does not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure¹⁰.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

² As to the Secretary of State see PARA 601 note 1 ante.

³ For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

- 4 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.
- 5 Electricity Act 1989 s 39A(1) (s 39A added by the Utilities Act 2000 s 54(2)).
- 6 Electricity Act 1989 s 39A(3) (as added: see note 5 supra).
- 7 For these purposes, 'prescribed' means prescribed by regulations under *ibid* s 39A (as added): s 39A(6) (as added: see note 5 supra).
- 8 *Ibid* s 39A(2) (as added: see note 5 supra).
- 9 *Ibid* s 39A(4) (as added: see note 5 supra).
- 10 *Ibid* s 39A(5) (as added: see note 5 supra). As to the Authority's power to impose penalties for failure to meet the prescribed standards see PARA 1212 et seq post.

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(b) Prescribed Standards for Electricity Distributors

1112. Supply restoration; normal weather conditions.

Where the supply to a customer's¹ premises is interrupted as a result of a failure of, fault in or damage to a relevant electricity distributor's² distribution system³, then except where the prescribed standard relating to the distributor's fuse applies⁴, that distributor must, except in any of the circumstances described in heads (a) and (b) below, pay the prescribed sum⁵ to the customer:

- 2434 (1) where the supply is not restored to the customer's premises within the relevant period⁶; and
- 2435 (2) in respect of each succeeding period of 12 hours upon the expiry of which the supply is not restored⁷.

The circumstances referred to above are:

- 2436 (a) each of the circumstances described in the prescribed exemptions from the normal and severe weather supply restoration standards⁸; and
- 2437 (b) where the supply to the customer's premises is interrupted as a result of a failure of, fault in or damage to the relevant electricity distributor's distribution system resulting from category 1, 2, or 3 severe weather conditions⁹.

For the purposes of calculating and making compensation payments under the above provisions, where supply is interrupted to a customer's premises that are directly connected¹⁰ to the distribution system of a relevant electricity distributor who is not a designated electricity distributor, that interruption is to be deemed to have been caused by the same category of event applicable to the designated electricity distributor in whose distribution services area that relevant electricity distributor operates¹¹.

1 'Customer' means an owner or occupier of premises in Great Britain who is supplied or requires to be supplied with electricity, and includes an electricity supplier where it is acting on behalf of such a person: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1). For the meaning of 'premises' see PARA 1041 note 5 ante; for the meaning of 'electricity supplier' see PARA 1065 note 7 ante; and for the meaning of 'Great Britain' see PARA 602 note 7 ante. Regulation 5 (see the text and notes 2-9 infra) does not, however, apply in the Highlands and Islands of Scotland (reg 5(4)), for which special provision is made by reg 7. Regulation 7 is outside the scope of this work.

For these purposes: (1) where a person is a customer in respect of more than one set of premises, a reference in a regulation to 'customer' is a reference to that person in respect of each of the premises at which he is a customer to which the regulation applies; (2) any reference to a customer (except in relation to the entitlement to any payment due from a relevant operator under the 2005 Regulations) includes any person having apparent authority to represent the customer; and (3) any reference to a customer does not include any person who is supplied otherwise than through an appropriate meter (as prescribed in regulations made under the Electricity Act 1989 Sch 7 para 1(1A) (as added) (see PARA 1180 post): Electricity (Standards of Performance) Regulations

2005, SI 2005/1019, reg 3(4)(b), (d), (e). 'Relevant operator' means the relevant supplier or, as the case may be, the relevant electricity distributor or the electricity distributor and, in regs 17, 18, 19, and 20 (see PARAS 1123-1125, 1127 post) includes any electricity supplier; and 'relevant supplier' means an electricity supplier in whose licence Section D of the standard conditions of electricity supply licences had effect immediately prior to 1 August 2007 but only to the extent that the supplier is undertaking activities within its supply services area: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1) (definition amended by SI 2007/2093). 'Standard conditions of electricity supply licences' means such conditions as may be determined by the Secretary of State for electricity supply licences pursuant to the Utilities Act 2000 s 33(1) (as amended) (see PARA 1069 ante), including any amendment or modification made to those standard conditions in accordance with the Electricity Act 1989, the Utilities Act 2000 or the Energy Act 2004, and a reference in a provision relating to electricity suppliers to a numbered standard condition is a reference to the standard condition bearing that number in the standard conditions of electricity supply licences; and 'supply services area' means, in relation to a relevant supplier, the area specified or described pursuant to standard condition 3 of the standard conditions of electricity supply licences as incorporated in that electricity supplier's licence immediately prior to 1 August 2007: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1) (definition as so amended).

2 For the purposes of *ibid* regs 4-8, 'relevant electricity distributor', in relation to any customer, means: (1) the electricity distributor to whose distribution system that customer's premises are directly connected; or (2) where that distributor is entitled to rely on the exemption described at reg 8(9) (see PARA 1114 post) and has so notified the other electricity distributor to whom that provision refers, that other electricity distributor: reg 4(1) (h). For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

4 *Ie* except where the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 10 applies: see PARA 1116 post.

5 'Prescribed sum' means, where the customer is a domestic customer, the amount in *ibid* Sch 1 Pt I col 3, or where the customer is a non-domestic customer, the amount in column Sch 1 Pt I col 4, in either case opposite the reference to that paragraph or sub-paragraph of the regulation in Sch 1 Pt I col 1: reg 3(1). 'Pay' includes crediting the account of the customer for charges incurred or to be incurred in respect of the supply or in respect of the provision of any electricity meter, electric line or electrical plant, and 'payment' is to be construed accordingly: reg 3(1). 'Domestic customer' means a customer supplied or requiring to be supplied with electricity at domestic premises (but excluding such customer in so far as he is supplied or requires to be supplied at premises other than domestic premises); 'domestic premises' means premises at which a supply is taken or to be taken wholly or mainly for domestic purposes; and 'non-domestic customer' means any customer other than a domestic customer: reg 3(1). See further notes 6, 7 *infra*.

6 For the purposes of *ibid* regs 4-8, 'relevant period' means the prescribed period commencing at the earlier of (1) the first time at which an electricity distributor is informed by a customer that the supply to that customer's premises has been discontinued; or (2) the first time at which an electricity distributor is informed by a person other than that customer or is otherwise made aware by the operation of any automatic system operated by that distributor of circumstances in which reg 5(1) (see the text and notes 1-4 *supra*), reg 6(1), 6(2), or 6(3) (see PARA 1113 post) or reg 7(1) (which applies to the Highlands and Islands of Scotland) applies or may reasonably be expected to apply to premises including the customer's premises; provided that (a) where the interruption of supply to a customer's premises arises from a failure of, fault in, or damage to an underground electric line of a nominal voltage of 20 kilovolts operated by an electricity distributor the prescribed period commences at the time which is 12 hours after the time at which head (1) or head (2) *supra* applies; and (b) with the exception of interruptions of supply occurring anywhere in the Highlands and Islands of Scotland, where any steps necessary to restore the supply to a customer's premises are prevented by ice accretion, flooding, or snow affecting a relevant part of a relevant electricity distributor's distribution system that was being used to distribute electricity to the premises immediately before the supply was interrupted, it means the time at which the effects of the ice accretion, flooding, or snow no longer prevent such steps from being taken: reg 4(1)(i). 'Prescribed period' in relation to any paragraph or sub-paragraph of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, means the period in Sch 1 Pt I col 2 opposite the reference to that paragraph or sub-paragraph in Sch 1 Pt I col 1: reg 3(1).

For the purposes of head (1) in the text, the prescribed period is 18 hours and the prescribed sum is £50 in the case of a domestic customer and £100 in the case of a non-domestic customer: Sch 1 Pt I.

7 *Ibid* reg 5(1), (2). For the purpose of head (2) in the text, the prescribed sum is £25: Sch 1 Pt I.

8 *Ie* each of the circumstances described in *ibid* reg 8: see PARA 1114 post.

9 *Ibid* reg 5(3). For the purposes of regs 4-8: (1) 'category 1 severe weather conditions' means (a) conditions in which eight or more times the daily mean faults on the designated electricity distributor's distribution system at distribution higher voltage caused by weather predominantly related to lightning in a 24 hour period affect less than the category 3 threshold number of customers; or (b) conditions in which eight or more but less than

13 times the daily mean faults on the designated electricity distributor's distribution system at distribution higher voltage caused by weather not predominantly related to lightning in a 24 hour period affect less than the category 3 threshold number of customers; (2) 'category 2 severe weather conditions' means conditions in which 13 or more times the daily mean faults on the designated electricity distributor's distribution system at distribution higher voltage in a 24 hour period caused by weather not predominantly related to lightning affect less than the category 3 threshold number of customers; (3) 'category 3 severe weather conditions' means conditions in which faults on the designated electricity distributor's distribution system caused by weather interrupt a number of customers that is equal to or greater than the category 3 threshold number of customers; (4) 'category 3 threshold number of customers' means, for each designated electricity distributor, the number in Sch 1 Pt III Table, col 4 opposite the reference to that distributor in Sch 1 Pt III Table, col 1; (5) 'distribution higher voltage' means any nominal voltage of more than 1,000 volts up to and including 132 kilovolts in England and Wales and up to but excluding 132 kilovolts in Scotland; (6) 'eight times the daily mean faults at distribution higher voltage' means, for each designated electricity distributor, the number in Sch 1 Pt III Table, col 2 opposite the reference to that distributor in Sch 1 Pt III Table, col 1; (7) '13 times the daily mean faults at distribution higher voltage' means, for each designated electricity distributor, the number in Sch 1 Pt III Table, col 3 opposite the reference to that distributor in Sch 1 Pt III Table, col 1: reg 4(1)(a)-(f), (j).

'Designated electricity distributor' means an electricity distributor in whose licence Section C of the standard conditions of distribution licences is in effect but only to the extent that the electricity distributor is undertaking activities within its distribution services area; 'distribution services area' means, in relation to a designated electricity distributor, the area specified or described pursuant to standard condition 2 of the standard conditions of electricity distribution licences as incorporated in that electricity distributor's licence; and 'standard conditions of electricity distribution licences' means such conditions as may be determined by the Secretary of State for electricity distribution licences pursuant to the Utilities Act 2000 s 33(1) (as amended), including any amendment or modification made to those standard conditions in accordance with the Electricity Act 1989, the Utilities Act 2000, or the Energy Act 2004, and a reference in a provision relating to electricity distributors to a numbered standard condition is a reference to the standard condition bearing that number in the standard conditions of electricity distribution licences: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1).

10 'Directly connected', in relation to premises, means so connected to an electricity distributor's distribution system that the final connection to the premises is from that system: *ibid* reg 3(1).

11 See *ibid* reg 4(2).

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1113. Supply restoration; severe weather conditions.

Where the supply to a customer's¹ premises² is interrupted as a result of a failure of, fault in or damage to a relevant electricity distributor's³ distribution system⁴ resulting from category 1 severe weather conditions⁵, then except where the prescribed standard relating to the distributor's fuse applies⁶, that distributor must, except in each of the circumstances described in the prescribed exemptions from the normal and severe weather supply restoration standards⁷, pay the prescribed sum⁸ to the customer:

2438 (1) where the supply is not restored to the customer's premises within the relevant period⁹; and

2439 (2) in respect of each succeeding period of 12 hours upon the expiry of which the supply is not restored¹⁰,

up to a maximum of £200 per customer¹¹.

Similarly, where the supply to a customer's premises is interrupted as a result of a failure of, fault in or damage to a relevant electricity distributor's distribution system resulting from category 2 severe weather conditions¹², then except where the prescribed standard relating to the distributor's fuse applies¹³, that distributor must, except in each of the circumstances described in the prescribed exemptions from the normal and severe weather supply restoration standards¹⁴, pay the prescribed sum to the customer:

2440 (a) where the supply is not restored to the customer's premises within the relevant period¹⁵; and

2441 (b) in respect of each succeeding period of 12 hours upon the expiry of which the supply is not restored¹⁶,

up to a maximum of £200 per customer¹⁷.

Where the supply to a customer's premises is interrupted as a result of a failure of, fault in or damage to a relevant electricity distributor's distribution system resulting from category 3 severe weather conditions¹⁸, then except where the prescribed standard relating to the distributor's fuse applies¹⁹, that distributor must, except in each of the circumstances described in the prescribed exemptions from the normal and severe weather supply restoration standards²⁰, pay the prescribed sum to the customer:

2442 (i) where the supply is not restored to the customer's premises within the period calculated by the application of the prescribed formula²¹, the result of which is to represent and be expressed as a number of hours²²; and

2443 (ii) in respect of each succeeding period of 12 hours upon the expiry of which the supply is not restored²³,

up to a maximum of £200 per customer²⁴; but this does not apply for any relevant electricity distributor where any designated electricity distributor²⁵ experiences category 3 severe weather conditions in which the total number of customers interrupted²⁶ is equal to or greater than the upper threshold number of customers²⁷ due to the same weather event²⁸.

For the purposes of calculating and making compensation payments under the above provisions, where supply is interrupted to a customer's premises that are directly connected²⁹ to the distribution system of a relevant electricity distributor who is not a designated electricity distributor, that interruption is to be deemed to have been caused by the same category of event applicable to the designated electricity distributor in whose distribution services area that relevant electricity distributor operates; and the application of the formula referred to in head (i) above must be based on the total number of customers interrupted in the designated distributor's distribution service area in which that relevant electricity distributor operates³⁰.

1 For the meaning of 'customer' see PARA 1112 note 1 ante. The Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 6 (see the text and notes 2-28 infra) does not, however, apply in any part of the Highlands and Islands of Scotland (reg 6(7)) for which special provision is made by reg 7. Regulation 7 is outside the scope of this work.

2 For the meaning of 'premises' see PARA 1041 note 5 ante.

3 For the meaning of 'relevant electricity distributor' see PARA 1112 note 2 ante.

4 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

5 For the meaning of 'category 1 severe weather conditions' see PARA 1112 note 9 ante.

6 Ie except where the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 10 applies: see PARA 1116 post.

7 Ie described in ibid reg 8: see PARA 1114 post.

8 For the meanings of 'pay' and 'the prescribed sum' see PARA 1112 note 5 ante.

9 For the meaning of 'the relevant period' see PARA 1112 note 6 ante. For the purposes of head (1) in the text, the prescribed period is 24 hours and the prescribed sum is £25: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 1 Pt I.

10 For the purposes of head (2) in the text, the prescribed sum is £25: ibid Sch 1 Pt I.

11 Ibid reg 6(1), (4).

12 For the meaning of 'category 2 severe weather conditions' see PARA 1112 note 9 ante.

13 See note 6 supra.

14 See note 7 supra.

15 The prescribed period for the purposes of head (a) in the text is 48 hours and the prescribed sum is £25: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 1 Pt I.

16 The prescribed sum for the purposes of head (b) in the text is £25: ibid Sch 1 Pt I.

17 Ibid reg 6(2), (5).

18 For the meaning of 'category 3 severe weather conditions' see PARA 1112 note 9 ante.

19 See note 6 supra.

20 See note 7 supra.

21 For the prescribed formula see the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 6(6)(a).

- 22 The prescribed sum for the purposes of head (i) in the text is £25: *ibid* Sch 1 Pt I.
- 23 The prescribed sum for the purposes of head (ii) in the text is £25: *ibid* Sch 1 Pt I.
- 24 *Ibid* reg 6(3), (6).
- 25 For the meaning of 'designated electricity distributor' see PARA 1112 note 9 ante.
- 26 'Total number of customers interrupted' means, for each designated electricity distributor for the purposes of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 6(6) and 6(8), the total number of customers whose supplies are interrupted by the category 3 weather conditions in that distributor's distribution services area: reg 4(1)(k). For the meaning of 'distribution services area' see PARA 1112 note 9 ante.
- 27 For these purposes, 'upper threshold number of customers' means, for each designated electricity distributor, the number in *ibid* Sch 1 Pt III Table, col 5 opposite the reference to that distributor in Sch 1 Pt III Table, col 1: *ibid* reg 4(1)(l).
- 28 *Ibid* reg 6(8).
- 29 For the meaning of 'directly connected' see PARA 1112 note 10 ante.
- 30 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 4(2).

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1114. Exemptions from the normal and severe weather supply restoration standards.

The following are the general circumstances in which there is no obligation to pay compensation under the prescribed standards¹ for the restoration of supply by electricity distributors²:

- 2444 (1) it was not reasonable in all the circumstances for the relevant electricity distributor³ to be aware that the supply had not been restored⁴;
- 2445 (2) that:
- 209 305. (a) the premises⁵ to which the supply was interrupted are situated on an island;
- 306. (b) the supply to premises on that island is normally provided through an electric line⁶ situated on or under the sea bed;
- 307. (c) the failure, fault or damage occurred in that part of the electric line which is situated below the high water mark of spring tides; and
- 308. (d) no alternative means is normally available to the relevant electricity distributor to supply the premises on that island⁷;
- 210 2446 (3) the relevant electricity distributor to whose network the customer⁸ is connected has not received a claim for compensation from the customer in respect of the specified circumstance⁹ within a period of three months from the date upon which the supply was restored to those premises¹⁰;
- 2447 (4) the customer informs the relevant electricity distributor before the contravention time¹¹ that the customer does not wish that distributor to take any action, or any further action in relation to the matter¹²;
- 2448 (5) the customer agrees with the relevant electricity distributor that the action taken by that distributor before the contravention time is to be treated as the taking by the distributor of the required action and, where the action taken by the distributor includes a promise to perform any action, whether before or after the contravention time, the distributor duly performs that promise¹³;
- 2449 (6) the failure of, fault in, or damage to the relevant electricity distributor's distribution system¹⁴, or that distributor's inability to take the required action in relation to such failure, fault, or damage before the contravention time, was the result of an event for which emergency regulations¹⁵ have been made¹⁶;
- 2450 (7) it was not reasonably practicable for the relevant electricity distributor to take the required action before the contravention time as a result of:
- 211 309. (a) industrial action by the employees of that distributor;
- 310. (b) the act or default of a person other than an officer, employee or agent of the relevant electricity distributor or any other electricity distributor, or of a person acting on behalf of an agent thereof;

311. (c) the inability of that distributor to obtain any necessary access to any premises, which may include its own premises;
312. (d) the existence of circumstances by reason of which that distributor could reasonably expect that if it took the action it would or would be likely to be in breach of an enactment¹⁷; or
313. (e) circumstances of an exceptional nature beyond the control of the relevant electricity distributor, other than severe weather or the effects of severe weather or those circumstances set out in heads (a) to (d) above,
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- 2451 and the relevant electricity distributor had in each case taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect¹⁸;
- 2452 (8) where the interruption of supply to the customer's premises would not have occurred but for a failure of, fault in, or damage to the distribution system of another electricity distributor¹⁹;
- 2453 (9) the relevant electricity distributor reasonably considers that the information given by the customer is frivolous or vexatious²⁰;
- 2454 (10) the customer has committed an offence under the provision of the electricity code which penalises the causing of damage to electric lines, electrical plant or electricity meters²¹ and the action taken or not taken by the relevant electricity distributor was in exercise of its powers under that provision²².

1 Ie under the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, regs 4-6: see PARAS 1112-1113 ante.

2 Ibid reg 8(1). For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 For the meaning of 'relevant electricity distributor' see PARA 1112 note 2 ante. For the purposes of ibid reg 8, each reference to 'distributor' includes (where the case requires) a reference to more than one distributor: reg 8(12)(b).

4 Ibid reg 8(2).

5 For the meaning of 'premises' see PARA 1041 note 5 ante.

6 For the meaning of 'electric line' see PARA 1041 note 5 ante.

7 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 8(3).

8 For the meaning of 'customer' see PARA 1112 note 1 ante.

9 Ie the circumstance referred to in the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 5(1) (see PARA 1112 ante) or reg 6(1), 6(2) or 6(3) (see PARA 1113 ante).

10 Ibid reg 8(4).

11 For these purposes, 'contravention time' means (1) in relation to ibid reg 5, the expiry of the relevant period referred to in reg 5(2)(a) (see PARA 1112 ante at head (1) in the text) and (where applicable) of each period referred to in reg 5(2)(b) (see PARA 1112 ante at head (2) in the text); and (2) in relation to reg 6, the expiry of the relevant periods referred to in reg 6(4)(a), (5)(a) and (6)(a) (see PARA 1113 ante at heads (1), (a) and (i) in the text) and (where applicable) of each period referred to in reg 6(4)(b), (5)(b) and (6)(b) (see PARA 1113 ante at heads (2), (b) and (ii) in the text): reg 8(12)(a).

12 Ibid reg 8(5).

13 Ibid reg 8(6).

14 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

15 Ie regulations under the Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

- 16 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 8(7).
- 17 le including any directions given by the Secretary of State under the Electricity Act 1989 s 96: see PARA
1179 post. As to the Secretary of State see PARA 601 note 1 ante.
- 18 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 8(8).
- 19 Ibid reg 8(9).
- 20 Ibid reg 8(10).
- 21 le under the Electricity Act 1989 s 24 (as amended), Sch 6 para 6 (as substituted): see PARA 1106 ante.
- 22 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 8(11).

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1115. Supply restoration; multiple interruptions.

The following provisions apply to an electricity distributor¹ where the supply to a customer's² premises³ that is directly connected⁴ to that electricity distributor's distribution system⁵ is interrupted for four periods, each of not less than three hours, during a relevant year⁶. For these purposes:

- 2455 (1) where successive interruptions are caused by or arise during actions taken by any electricity distributor to effect temporary or permanent restoration of the supply to those premises or to other premises affected by the event which caused the interruption of supply to the premises, any temporary restoration of supply for a period not exceeding three minutes is to be ignored in calculating the period of the interruption;
- 2456 (2) the period of an interruption is to be deemed to start at the first time at which the distributor is either informed by a customer that the supply to the customer's premises has been interrupted, or is informed by a person other than the customer or is otherwise made aware by the operation of any automatic system operated by the distributor of circumstances in which the supply to the customer's premises has been interrupted or may reasonably be expected to have been interrupted; and
- 2457 (3) an interruption in any of the circumstances described in heads (a) to (h) below is not to be treated as an interruption⁷.

The circumstances referred to in head (3) above are:

- 2458 (a) within the period of three hours after the interruption began:
- 213
- 314. (i) the customer informed the distributor that the customer did not wish the distributor to take any action or any further action; or
 - 315. (ii) the customer agreed with the electricity distributor that the action taken by the distributor before the expiry of that period should be treated as the taking by the distributor of the action required to cause the interruption to cease and, where that action included a promise to perform any action, whether within or after the expiry of that period, the distributor duly performed that promise; or
 - 316. (iii) it was not reasonably practicable for an electricity distributor to take the action required to cause the interruption to cease as a result of the existence of circumstances by reason of which the distributor could reasonably have expected that if it took that action it would have been or would be likely to have been in breach of an enactment⁸;
- 214
- 2459 (b) the distributor had given to the customer prior notice⁹ of its intention or any other electricity distributor's intention to interrupt the supply to the customer's premises;

- 2460 (c) the interruption was a result of a failure of, fault in or damage to either the transmission system¹⁰ to which the electricity distributor's distribution system or another electricity distributor's distribution system was connected or a generating station¹¹ connected to that transmission system;
- 2461 (d) the interruption was a result of a failure of, fault in or damage to a generating station connected to the distributor's distribution system or another electricity distributor's distribution system;
- 2462 (e) the interruption was one where the prescribed standards with regard to supply restoration in normal conditions¹², supply restoration in severe weather conditions¹³ or the distributor's fuse¹⁴ apply;
- 2463 (f) the interruption was a result of the act or default of the electricity supplier to the premises or of the customer;
- 2464 (g) the cause of the interruption resulted in the interruption of supply to more than 500,000 customers in Great Britain¹⁵ as notified by the Gas and Electricity Markets Authority ('GEMA')¹⁶ to the distributor; or
- 2465 (h) the interruption, or the inability of an electricity distributor to take the action required in order to cause the interruption to cease before the expiry of the period of three hours after the interruption began, was the result of an event for which emergency regulations¹⁷ have been made¹⁸.

Where these provisions apply, and except in any of the following circumstances, namely:

- 2466 (A) that the electricity distributor has not received a claim for compensation from the customer within a period of three months after the expiry of the relevant year in which these provisions apply;
- 2467 (B) that the interruptions as a result of which these provisions apply were not all in respect of the supply to the same premises; or
- 2468 (C) that the customer or, where more than one person is the customer, at least one such person, was not the customer of the premises to which the supply was interrupted on the occasion of each of the interruptions as a result of which these provisions apply¹⁹,

the distributor must pay the prescribed sum²⁰ to the customer²¹.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 For the meaning of 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'premises' see PARA 1041 note 5 ante.

4 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

5 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

6 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 9(1). For these purposes, 'relevant year' means a period of 12 months commencing on 1 April: reg 9(6).

7 Ibid reg 9(2).

8 Ie including any directions given by the Secretary of State under the Electricity Act 1989 s 96: see PARA 1179 post. As to the Secretary of State see PARA 601 note 1 ante.

9 Where more than one person is a customer in respect of particular premises, a notice given by a relevant operator to one person who is a customer in respect of those premises is a sufficient notice to any other person who is a customer in respect of those premises at the time at which the notice is given: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(4). For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

- 10 For the meaning of 'transmission system' see PARA 1041 note 6 ante.
- 11 For the meaning of 'generating station' see PARA 1041 note 6 ante.
- 12 Ie where the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 5 applies: see PARA 1112 ante.
- 13 Ie where ibid reg 6 applies: see PARA 1113 ante.
- 14 Ie where ibid reg 10 applies: see PARA 1116 post.
- 15 For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 16 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 17 Ie emergency regulations under the Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 18 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 9(3).
- 19 Ibid reg 9(5).
- 20 For the meanings of 'pay' and 'the prescribed sum' see PARA 1112 note 5 ante.
- 21 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 9(4). The prescribed sum for these purposes is £50: Sch 1 Pt I.

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1116. Distributor's fuse operating so as to disconnect supply.

The following provisions apply to an electricity distributor¹ where that distributor is informed by a telephone call made by a customer² whose premises³ are directly connected⁴ to that distributor's distribution system⁵ that, or of circumstances suggesting that, the distributor's fuse⁶ has operated so as to disconnect the supply to those premises⁷. Where information is received by the distributor outside working hours⁸ it is to be deemed for these purposes to have been received at the commencement of the next following period of working hours⁹.

Where, within the prescribed period¹⁰ from the applicable date¹¹, an appropriate person¹² fails to attend at the premises where the distributor's fuse is situated for the purpose of replacing or reinstating that fuse and restoring the supply, the distributor must, except in any of the circumstances described in heads (1) to (3) below, pay to the customer the prescribed sum¹³. The circumstances referred to are:

- 2469 (1) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹⁴;
- 2470 (2) that the customer requested the distributor not to restore the supply; and
- 2471 (3) that the distributor's fuse had not operated so as to disconnect the supply¹⁵.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 For the meaning of 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'premises' see PARA 1041 note 5 ante.

4 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

5 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

6 'Distributor's fuse' means the fusible cut-out or automatic switching device of the electricity distributor for disconnecting the supply to the customer's premises situated nearest to the appropriate meter for the customer's premises and on the distributor's side thereof: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1). For the meaning of 'appropriate meter' see PARA 1180 note 3 post (definition applied by the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1).

7 Ibid reg 10(1).

8 'Working hours' means the period between 7 am and 7 pm on each working day and 9 am and 5 pm on any other day: ibid reg 3(1), Sch 1 Pt II. For the meaning of 'working day' see PARA 1095 note 8 ante.

9 Ibid reg 10(2).

10 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is three hours on a working day and four hours on any other day: ibid Sch 1 Pt I.

11 In the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended), unless the context otherwise requires, 'applicable date' means, in relation to each occasion on which a regulation applies,

the day on which that regulation first applies, or, where a prescribed period in a paragraph of a regulation is expressed in hours, the time on that day when that regulation first applies: reg 3(1).

12 For these purposes, 'appropriate person' means a person employed or authorised by the distributor to restore the supply where the distributor's fuse has operated: *ibid* reg 10(5).

13 *Ibid* reg 10(3). For the meanings of 'pay' and 'the prescribed sum' see *PARA 1112* note 5 *ante*. The prescribed sum for these purposes is £20: *Sch 1 Pt I*.

14 *Ie* described in *ibid* reg 20: see *PARA 1125* *post*.

15 *Ibid* reg 10(4).

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1117. Estimate of charges for connection.

Where:

- 2472 (1) a customer¹ gives a notice requesting a connection², including a notice modifying any previous notice, and requests that an electricity distributor³ provides an estimate⁴;
- 2473 (2) the connection to which the notice relates is to enable a supply to be provided at distribution low voltage⁵; and
- 2474 (3) the distributor receives from the customer the information relating to the provision of the connection which is or could reasonably be expected to be within the knowledge of the customer and which the distributor reasonably requires to enable it to provide the estimate,

the following provisions apply⁶. Where it is reasonable for the distributor to believe that it will not be necessary to carry out any significant work other than the provision of a service line⁷ and a distributor's fuse⁸ to enable the connection to be given⁹, and the distributor fails to dispatch an estimate to the customer within the prescribed period¹⁰ from the applicable date¹¹, the distributor must, except in any of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹², pay to the customer the prescribed sum¹³. Where, however, it is not reasonable for the distributor to believe as described above¹⁴ and the distributor fails to dispatch an estimate to the customer within the prescribed period¹⁵ from the applicable date, the distributor must, except in any of the circumstances described in heads (a) and (b) below, pay to the customer the prescribed sum¹⁶. The circumstances referred to are:

- 2475 (a) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹⁷; and
- 2476 (b) that the distributor reasonably believes that the premises referred to in the notice form or will form part of a development scheme comprising five or more premises¹⁸.

In providing an estimate, the distributor:

- 2477 (i) may reserve the right to vary the amount stated in the estimate having regard to its actual costs incurred in carrying out the work, but, if it does so, the estimate must include a reference to any matters which the distributor considers may cause the amount to be varied significantly; and
- 2478 (ii) must state the terms for payment of the amount in the estimate and for any variation of that amount¹⁹.

1 For the meaning of 'customer' see PARA 1112 note 1 ante.

2 Ie a notice under the Electricity Act 1989 s 16A(1) (as added): see PARA 1094 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

4 For these purposes, 'estimate' means a statement in writing of the amount which the distributor reasonably expects it will require the customer to pay under the Electricity Act 1989 s 19(1) (as amended) (see PARA 1096 ante) or under regulations made under s 19(2) (as substituted) (see PARA 1096 ante) having regard to the information which is known or ought reasonably to be known by the distributor in relation to the carrying out of that work: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 11(7).

5 'Distribution low voltage' means a nominal voltage not exceeding 1,000 volts: *ibid* reg 3(1).

6 *Ibid* reg 11(1). Where the requirements of reg 11(1) are satisfied after 4 pm on a working day or at any time on any other day, they are to be deemed to have been satisfied on the next following working day: reg 21. For the meaning of 'working day' see PARA 1095 note 9 ante.

7 For these purposes, 'service line' means a distribution low voltage electric line or any part of the line which will, at the time it is provided, be used only for supplying a single customer, excluding any part of the line which, at the time that it is provided, is intended by the distributor to be used to enable it to provide a connection to premises (other than the customer's premises) in respect of which the distributor has received or would reasonably expect within the following 12 months to receive a notice under the Electricity Act 1989 s 16A (as added) (see PARA 1094 ante): Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 11(7). For the meaning of 'premises' see PARA 1041 note 5 ante.

8 For the meaning of 'distributor's fuse' see PARA 1116 note 6 ante.

9 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 11(4).

10 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is five working days: *ibid* Sch 1 Pt I. For the meaning of 'working day' see PARA 1095 note 8 ante.

11 For the meaning of 'applicable date' see PARA 1116 note 11 ante.

12 *Ie* described in the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 20: see PARA 1125 post.

13 *Ibid* reg 11(2). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £40: *ibid* Sch 1 Pt I.

14 *Ie* where *ibid* reg 11(4) (see the text and notes 7-9 *supra*) does not apply.

15 The prescribed period for these purposes is 15 working days: *ibid* Sch 1 Pt I.

16 *Ibid* reg 11(4). The prescribed sum for these purposes is £40: *ibid* Sch 1 Pt I.

17 See note 12 *supra*.

18 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 11(5).

19 *Ibid* reg 11(6).

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1118. Notice of supply interruption.

Where, for an authorised purpose¹, an electricity distributor² interrupts the supply³ to a customer's⁴ premises⁵ that are directly connected⁶:

- 2479 (1) to its distribution system⁷, and the distributor:
- 215
317. (a) has failed to give to the customer prior notice⁸ of not less than the prescribed period⁹, stating the day on which the supply is or is expected to be interrupted; or
318. (b) interrupts the supply on a day other than a day stated in the notice,
- 216
- 2480 the distributor must, except in any of the circumstances described in heads (i) and (ii) below, pay to the customer the prescribed sum¹⁰;
- 2481 (2) to the distribution system of another electricity distributor, and the distributor:
- 217
319. (a) has failed to give the other electricity distributor prior notice of not less than the prescribed period¹¹, stating the day upon which the supply is or is expected to be interrupted, for onward transmission to the customer; or
320. (b) interrupts the supply on a day other than a day stated in the notice,
- 218
- 2482 the distributor must, except in any of the circumstances described in heads (i) and (ii) below, pay to the customer the prescribed sum¹².

Where an electricity distributor has received notice from another electricity distributor within the prescribed period under head (2) above that supplies to a customer's premises that are directly connected to its distribution system will be interrupted or are expected to be interrupted for an authorised purpose by another electricity distributor, and the distributor has failed to give the customer prior notice of not less than the prescribed period¹³, stating the day on which supply is expected to be interrupted, the distributor must, except in any of the circumstances described in heads (i) and (ii) below, pay to the customer the prescribed sum¹⁴.

The circumstances referred to above are:

- 2483 (i) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹⁵; and
- 2484 (ii) that the distributor to whose distribution system the customer's premises are directly connected has not received a claim for compensation from the customer in respect of the failure or failures referred to above¹⁶ within a period of one month from the applicable date¹⁷.

1 For these purposes, 'authorised purpose', in relation to an electricity distributor, means testing or any other purpose connected with the carrying on of the activities which the distributor is authorised by its licence to carry on in relation to its electric lines and electrical plant (other than the distributor's fuse): Electricity

(Standards of Performance) Regulations 2005, SI 2005/1019, reg 12(8). For the meanings of 'electric line' and 'electrical plant' see PARA 1041 note 5 ante; and for the meaning of 'distributor's fuse' see PARA 1116 note 6 ante.

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 For the meaning of 'customer' see PARA 1112 note 1 ante.

5 For the meaning of 'premises' see PARA 1041 note 5 ante.

6 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

7 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

8 As to the giving of notice where there is more than one customer in respect of particular premises see PARA 1115 note 9 ante.

9 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is two days: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 1 Pt I.

10 Ibid reg 12(1), (4). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £20: Sch 1 Pt I.

11 The prescribed period for these purposes is five days: *ibid* Sch 1 Pt I.

12 Ibid reg 12(2), (5). The prescribed sum for these purposes is £20: Sch 1 Pt I.

13 The prescribed period for these purposes is two days: *ibid* Sch 1 Pt I.

14 Ibid reg 12(3), (6). The prescribed sum for these purposes is £20: Sch 1 Pt I.

15 *Ie* described in *ibid* reg 20: see PARA 1125 post.

16 *Ie* referred to in *ibid* reg 12(4)-(6): see the text and notes 1-14 *supra*.

17 Ibid reg 12(7). For the meaning of 'applicable date' see PARA 1116 note 11 ante.

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1119. Voltage complaint.

Where an electricity distributor¹ is notified by a customer² whose premises³ are directly connected⁴ to its distribution system⁵ that:

- 2485 (1) the customer believes that the supply to the premises is being or has been given at a voltage outside the limits of the permitted variations⁶; or
- 2486 (2) an event has occurred in relation to the supply and a distributor might reasonably expect the cause of the event to have been a supply given at a voltage outside the limits of the permitted variations⁷,

then where the distributor is reasonably satisfied that it is unable to provide an explanation of the probable reason for the matter so notified without visiting the customer's premises⁸, and the distributor fails within the prescribed period⁹ from the applicable date¹⁰ to offer to the customer to visit the customer's premises to investigate the matter during a specified time¹¹, the distributor must, except in any of the circumstances described below¹², pay to the customer the prescribed sum¹³.

Where the distributor is notified as described in heads (1) and (2) above and the distributor:

- 2487 (a) where it is reasonably satisfied that it is unable to provide an explanation of the probable reason for the matter so notified without visiting the customer's premises¹⁴, fails to visit the customer's premises during the specified time, it must pay to the customer the prescribed sum¹⁵; or
- 2488 (b) where it is not so satisfied, fails to dispatch to the customer an explanation¹⁶ of the probable reason for the matter notified under heads (1) and (2) above within the prescribed period¹⁷ from the receipt of the notification, it must pay to the customer the prescribed sum¹⁸,

except in either case in any of the circumstances described below¹⁹.

The circumstances referred to above are each of the circumstances described in the general statutory exemptions from the requirement to pay compensation²⁰, provided that, where it was not reasonably practicable for the distributor to take the required action before the contravention time as a result of the specified matters²¹, the distributor gave the customer not less than one working day's prior warning, whether or not in writing, that it would be unable to visit during the specified time or the circumstances in which that exemption applied occurred at a time when it was not reasonably practicable to give such a warning²².

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 For the meaning of 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'premises' see PARA 1041 note 5 ante.

4 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

5 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

6 For these purposes, 'permitted variations' has the same meaning as in regulations made under the Electricity Act 1989 s 29 (as amended) (see PARA 1152 et seq post): Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 13(6).

7 See *ibid* reg 13(1). Where the requirements of reg 13(1) are satisfied after 4 pm on a working day or at any time on any other day, they are to be deemed to have been satisfied on the next following working day: reg 21. For the meaning of 'working day' see PARA 1095 note 9 ante.

8 *Ie* where *ibid* reg 13(3) applies.

9 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. the prescribed period for these purposes is seven working days: *ibid* Sch 1 Pt I.

10 For the meaning of 'applicable date' see PARA 1116 note 11 ante.

11 For the purposes of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended), unless the context otherwise requires, 'specified time' means (1) unless head (2) *infra* applies, a part (which has been specified by the relevant operator) of a day (which has also been so specified by the relevant operator) within the prescribed period from the applicable date, being either a part which falls either wholly before one o'clock in the afternoon or wholly after noon, or a part not exceeding two hours; or (2) such part of a day (whether or not within that period) as is requested by the customer and agreed with the relevant operator, such agreement not to be unreasonably withheld, provided that (a) a part of a day may be a specified time for the purpose of a regulation notwithstanding that it was requested, agreed or specified prior to the time at which that regulation first applied; and (b) the relevant operator is not to be obliged to agree a part of a day that is less than two hours: reg 3(1). For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

12 *Ie* described in *ibid* reg 13(5): see the text and notes 19-22 *infra*.

13 *Ibid* reg 13(2), (3). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £20: Sch 1 Pt I.

14 *Ie* where *ibid* reg 13(3) applies: see the text and note 8 *supra*.

15 *Ibid* reg 13(4)(a). The prescribed sum for these purposes is £20: Sch 1 Pt I.

16 Any reference to the dispatch by a relevant operator of an explanation or reply within a particular period does not require that the explanation or reply (if in writing) is received by the customer within that period and is satisfied if the relevant operator provides the explanation or reply orally to the customer within that period: *ibid* reg 3(4)(c).

17 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is five working days: *ibid* Sch 1 Pt I. For the meaning of 'working day' see PARA 1095 note 8 ante.

18 *Ibid* reg 13(4)(b). The prescribed sum for these purposes is £20: Sch 1 Pt I.

19 *Ibid* reg 13(4).

20 *Ie* *ibid* reg 20: see PARA 1125 post.

21 *Ie* in relation to *ibid* reg 20(6): see PARA 1125 post at head (4) in the text.

22 *Ibid* reg 13(5).

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(c) Prescribed Standards for Electricity Suppliers

1120. Charges and payments; standard for relevant suppliers.

Where a customer¹ informs a relevant supplier²:

- 2489 (1) that the customer requests a change in the method by which he makes payment to the relevant supplier in respect of the supply; or
- 2490 (2) of a query as to:
- 219 321. (a) the correctness of an account relating to the supply presented to the customer by the relevant supplier, other than in circumstances in which the prescribed standard with regard to meter disputes³ applies; or
- 322. (b) whether, in relation to the matter or matters described by the customer, any payment ought to be made to the customer and the matter is one to which the regulations prescribing standards of performance⁴ apply or appear to apply⁵,
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then the relevant supplier must, except in any of the circumstances described in heads (A) and (B) below, pay to the customer the prescribed sum⁶ if the relevant supplier fails:

- 2491 (i) in the case of a request under head (1) above and where the relevant supplier does not expect to be able to approve the request, to dispatch a substantive reply to the customer⁷ within the prescribed period⁸ from the date of receipt of the information⁹;
- 2492 (ii) in the case of a query under head (2) above, to dispatch a substantive reply to the customer within the prescribed period from the date of receipt of the information¹⁰; or
- 2493 (iii) in the case of a query under head (2)(a) above to which the relevant supplier's reply states that the customer is entitled to a payment from the relevant supplier, to make payment by cash, cheque, bank transfer or postal order to the customer of the amount due within the prescribed period from the date of dispatch of the relevant supplier's reply¹¹.

The circumstances referred to above are:

- 2494 (A) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹²;
- 2495 (B) in respect of a query under head (2)(b) above, that the relevant supplier has previously made a payment¹³ to the customer relating to the matter¹⁴.

¹ For the meaning of 'customer' see PARA 1112 note 1 ante.

- 2 For the meaning of 'relevant supplier' see PARA 1112 note 1 ante.
- 3 Ie ibid reg 15: see PARA 1121 post.
- 4 Ie the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended): see PARA 1112 et seq ante, PARA 1122 et seq post.
- 5 See ibid reg 14(1). Where the requirements of reg 14(1) are satisfied after 4 pm on a working day or at any time on any other day, they are to be deemed to have been satisfied on the next following working day: reg 21. For the meaning of 'working day' see PARA 1095 note 9 ante.
- 6 For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante.
- 7 As to receipt of the reply see PARA 1119 note 16 ante.
- 8 For the meaning of 'prescribed period' see PARA 1112 note 6 ante.
- 9 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 14(2)(a). The prescribed period for these purposes is five working days and the prescribed sum is £20: Sch 1 Pt I.
- 10 Ibid reg 14(2)(b). The prescribed period for these purposes is five working days and the prescribed sum is £20: Sch 1 Pt I.
- 11 Ibid reg 14(2)(c). The prescribed period for these purposes is five working days and the prescribed sum is £20: Sch 1 Pt I.
- 12 Ie described in ibid reg 20: see PARA 1125 post.
- 13 Ie under ibid reg 19(6): see PARA 1124 post.
- 14 Ibid reg 14(3).

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1121. Meter disputes.

Where an electricity supplier¹ is notified by a domestic customer²:

- 2496 (1) that the customer considers that an appropriate meter³ is or may have been operating outside the margins of error⁴; or
- 2497 (2) that circumstances exist which an electricity supplier might reasonably expect to have been caused by the meter operating outside the margins of error⁵,

then where the electricity supplier is reasonably satisfied that it is unable to provide an explanation to the customer of the probable reason for the matters so notified without visiting the customer's premises⁶, and the electricity supplier fails within the prescribed period⁷ from the applicable date⁸ to offer to visit the customer's premises to investigate the matter during a specified time⁹, the electricity supplier must, except in any of the circumstances described below¹⁰, pay to the customer the prescribed sum¹¹.

Where the electricity supplier is notified as described in heads (1) and (2) above and:

- 2498 (a) where the electricity supplier is reasonably satisfied that it is unable to provide an explanation to the customer of the probable reason for the matters so notified without visiting the customer's premises¹², it fails to visit the customer's premises during the specified time, it must pay to the customer the prescribed sum¹³; or
- 2499 (b) where it is not so satisfied, the electricity supplier fails to dispatch to the customer an explanation¹⁴ of the probable reason for the matter notified under head (1) or head (2) above within the prescribed period from the receipt of the notification, it must pay to the customer the prescribed sum¹⁵,

except in either case in any of the circumstances described below¹⁶.

The circumstances referred to above are each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹⁷, provided that, where it was not reasonably practicable for the relevant operator to take the required action before the contravention time as a result of the specified matters¹⁸, the distributor gave the customer not less than one working day's prior warning, whether or not in writing, that it would be unable to visit during the specified time or the circumstances in which that exemption applied occurred at a time when it was not reasonably practicable to give such a warning¹⁹.

1 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

2 For the meaning of 'domestic customer' see PARA 1112 note 5 ante.

3 For the meaning of 'appropriate meter' see PARA 1180 note 3 post (definition applied by the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1)).

4 'Margins of error' means the prescribed margins of error or the agreed margins of error as defined in the Electricity Act 1989 Sch 7 para 13 (see PARAS 1182 note 7, 1185 post): Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 3(1).

5 See *ibid* reg 15(1). Where the requirements of reg 15(1) are satisfied after 4 pm on a working day or at any time on any other day, they are to be deemed to have been satisfied on the next following working day: reg 21. For the meaning of 'working day' see PARA 1095 note 9 ante.

6 *Ie* where *ibid* reg 15(3) applies. For the meaning of 'premises' see PARA 1041 note 5 ante.

7 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is seven working days: *ibid* Sch 1 Pt I. For the meaning of 'working day' see PARA 1095 note 8 ante.

8 For the meaning of 'applicable date' see PARA 1116 note 11 ante.

9 For the meaning of 'specified time' see PARA 1119 note 11 ante.

10 *Ie* the circumstances described in the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 15(5): see the text and notes 17-19 *infra*.

11 *Ibid* reg 15(2), (3). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £20: Sch 1 Pt I.

12 *Ie* where *ibid* reg 15(3) applies: see the text and note 6 *supra*.

13 *Ibid* reg 15(4)(a). The prescribed sum for these purposes is £20: Sch 1 Pt I.

14 As to the receipt of such an explanation see PARA 1119 note 16 ante.

15 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 15(4)(b). The prescribed period for these purposes is five working days and the prescribed sum is £20: Sch 1 Pt I.

16 *Ibid* reg 15(4).

17 *Ie* described in *ibid* reg 20: see PARA 1125 post.

18 *Ie* in relation to *ibid* reg 20(6): see PARA 1125 post at head (4) in the text.

19 *Ibid* reg 15(5).

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1122. Prepayment meters.

Where an electricity supplier¹ is informed², other than by post, by a domestic customer³ who takes his supply through a prepayment meter either that the prepayment meter is not operating so as to permit a supply to be given to the customer's premises⁴ in the manner for which that meter was designed, or of circumstances suggesting that it is not so operating, then where, within the prescribed period⁵ from the applicable date⁶, an appropriate person⁷ fails to attend at the premises where the prepayment meter is installed in order to repair or replace it so as to permit a supply to be given to those premises in the manner for which that meter was designed, the electricity supplier must, except in any of the circumstances described in heads (1) to (4) below, pay to the customer the prescribed sum⁸.

The circumstances referred to above are:

- 2500 (1) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation⁹;
- 2501 (2) that the customer requested the electricity supplier not to attend the premises;
- 2502 (3) that the customer requested the electricity supplier not to restore the supply; and
- 2503 (4) that the prepayment meter was found to be operating in the manner for which it was designed¹⁰.

1 For the meaning of 'electricity supplier' see PARA 1065 note 9 ante.

2 For these purposes, where information is received by an electricity supplier outside working hours it is to be deemed to have been received at the commencement of the next following period of working hours: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 16(2). For the meaning of 'working hours' see PARA 1116 note 8 ante.

3 For the meaning of 'domestic customer' see PARA 1112 note 5 ante.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 For the meaning of 'prescribed period' see PARA 1112 note 6 ante. The prescribed period for these purposes is three hours on a working day, and four hours on any other day: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 1 Pt I. For the meaning of 'working day' see PARA 1095 note 8 ante.

6 For the meaning of 'applicable date' see PARA 1116 note 11 ante.

7 For these purposes, 'appropriate person' means a person employed or authorised by an electricity supplier to repair and replace prepayment meters: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 16(5).

8 Ibid reg 16(1), (3). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £20: Sch 1 Pt I.

9 Ie described in ibid reg 20: see PARA 1125 post.

10 Ibid reg 16(4).

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(d) Common Obligations

1123. Appointments.

Where:

- 2504 (1) the customer¹ informs the relevant operator² that the customer wishes the relevant operator to visit the customer's premises³; or
- 2505 (2) the relevant operator informs the customer that the relevant operator wishes to visit the customer's premises,

being in either case a visit in connection with the activities which the relevant operator is required or authorised to carry on under its licence⁴ and which requires access to be afforded to its representative or for which it would otherwise be reasonable to expect the customer to be present⁵, then where the relevant operator:

- 2506 (a) fails within a reasonable period from the applicable date⁶ to offer a timed appointment⁷, the relevant operator must, except in any of the circumstances described in heads (i) to (iii) below, pay to the customer the prescribed sum⁸;
- 2507 (b) fails to keep a timed appointment, the relevant operator must, except in any of the circumstances described in heads (i) to (iii) below, pay to the customer the prescribed sum⁹.

Where a timed appointment is made for more than one purpose, the relevant operator is not, however, to be required to pay more than one prescribed sum under heads (a) and (b) above in respect of that timed appointment¹⁰.

The circumstances referred to above are:

- 2508 (i) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation¹¹, provided that, where it was not reasonably practicable for the relevant operator to take the required action before the contravention time as a result of the specified matters¹², the distributor gave the customer not less than one working day's prior warning¹³, whether or not in writing, that it would be unable to visit during the specified time or the circumstances in which that exemption applied occurred at a time when it was not reasonably practicable to give such a warning;
- 2509 (ii) that the visit is for the purpose of responding to information received under the regulations prescribing standards with regard to the distributor's fuse¹⁴, voltage complaints¹⁵, meter disputes¹⁶ or the functioning of prepayment meters¹⁷; and
- 2510 (iii) that the visit is wholly or mainly in connection with disconnecting the premises in exercise of the statutory power to do so under the electricity code¹⁸ for non-payment of suppliers' charges¹⁹.

- 1 For the meaning of 'customer' see PARA 1112 note 1 ante.
- 2 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.
- 3 For the meaning of 'premises' see PARA 1041 note 5 ante.
- 4 For the meaning of 'licence' see PARA 1041 note 12 ante.
- 5 See the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 17(1).
- 6 For the meaning of 'applicable date' see PARA 1116 note 11 ante.
- 7 For these purposes, 'timed appointment' means an appointment to make a visit to a customer's premises commencing (1) unless head (2) infra applies, during a part (which has been specified by the relevant operator) of a day (which has also been so specified) within a reasonable period from the applicable date, having regard to the purpose of the visit, being either a part which falls either wholly before one o'clock in the afternoon or wholly after noon, or a part not exceeding two hours; or (2) during such part of a day as is requested by the customer and agreed with the relevant operator, such agreement not to be unreasonably withheld, provided that the relevant operator is not to be obliged to agree a part of a day that is less than two hours: Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 17(6).
- 8 Ibid reg 17(2). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante. The prescribed sum for these purposes is £20: Sch 1 Pt I.
- 9 Ibid reg 17(3). The prescribed sum for these purposes is £20: Sch 1 Pt I.
- 10 Ibid reg 17(4).
- 11 Ie described in ibid reg 20: see PARA 1125 post.
- 12 Ie in relation to ibid reg 20(6): see PARA 1125 post at head (4) in the text.
- 13 For the meaning of 'working day' see PARA 1095 note 8 ante.
- 14 Ie the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 10: see PARA 1116 ante.
- 15 Ie ibid reg 13: see PARA 1119 ante.
- 16 Ie ibid reg 15: see PARA 1121 ante.
- 17 Ie ibid reg 16: see PARA 1122 ante.
- 18 Ie the power contained in the Electricity Act 1989 s 24 (as amended), Sch 6 para 2(1) (as substituted): see PARA 1103 ante.
- 19 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 17(5).

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1124. Payments.

Where an electricity distributor¹:

- 2511 (1) is obliged under any of the regulations prescribing standards for supply restoration in normal or severe weather conditions and for giving notice of supply interruptions² to make a payment to a customer³ whose premises⁴ are directly connected⁵ to the distribution system⁶ of another electricity distributor, and the distributor fails to make the payment to the customer or to the other distributor for onward transmission to the customer of the sum to which he is entitled⁷, the distributor must, except in any of the circumstances described in heads (A) and (B) below, pay the prescribed sum⁸ to the customer or that other distributor for onward transmission to the customer⁹;
- 2512 (2) either:
- 221 323. (a) is obliged to make a payment to a customer whose premises are directly connected to its distribution system under any of the regulations prescribing standards for supply restoration in normal or severe weather conditions¹⁰, standards for supply restoration where there are multiple interruptions and other individual standards of performance for electricity distributors¹¹ and standards with regard to appointments¹²; or
324. (b) receives a payment from another electricity distributor for onward transmission to a customer whose premises are directly connected to its network,
- 222 2513 and the distributor fails to make the payment to the customer or the customer's electricity supplier¹³ for onward transmission to the customer of the sum to which he is entitled¹⁴ the distributor must, except in any of the circumstances described in heads (A) and (B) below, pay the prescribed sum to the customer¹⁵.

Where:

- 2514 (i) a relevant supplier¹⁶ or electricity supplier is obliged to make a payment to a customer under any of the regulations prescribing individual standards of performance for electricity suppliers¹⁷ and standards with regard to appointments¹⁸;
- 2515 (ii) an electricity supplier receives a payment from an electricity distributor for onward transmission to the electricity supplier's customer,

and the supplier fails within the prescribed period¹⁹ from the applicable date to make the payment to the customer of the sum to which he is entitled, the supplier must, except in any of the circumstances described in heads (A) and (B) below, pay the prescribed sum to the customer²⁰.

The circumstances referred to above are:

- 2516 (A) each of the circumstances described in the general statutory exemptions from the requirement to pay compensation²¹; and
- 2517 (B) that there is a genuine dispute between the relevant operator²² and the customer as to whether the relevant operator is obliged to make the payment²³.

Where a relevant operator is required to make a payment under the Electricity (Standards of Performance) Regulations 2005²⁴, the following provisions apply²⁵. In relation to any premises of which more than one person is a customer, a payment to any one or more of the customers in respect of those premises is to be a complete discharge of the obligation of the relevant operator to make the payment to all the customers of those premises²⁶. Nothing in, or done by a relevant operator in consequence of, those regulations determines who is beneficially entitled to any payment made in pursuance of those regulations²⁷ and nothing in those regulations permits a relevant operator to make a payment other than by means of either a cheque or cash or a credit to the account of the customer for charges incurred or to be incurred in respect of the supply or the provision of any electricity meter, electric line²⁸ or electrical plant²⁹.

Where all or part of the prescribed sum is paid by an electricity distributor to a customer under the 2005 Regulations, such a payment does not prejudice that distributor from recovering that payment, or part of that payment, from another electricity distributor where that other distributor is found to be wholly or partly responsible for the liability arising under those regulations³⁰.

1 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

2 Ie under any of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, regs 5-7 (inclusive) and reg 12: see PARAS 1112-1113, 1118 ante.

3 For the meaning of 'customer' see PARA 1112 note 1 ante.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

6 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

7 Ie in either case as soon as is reasonably practicable in relation to the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 6 (see PARA 1113 ante) and within the prescribed period from the applicable date in relation to any other regulations: reg 19(4). For the meaning of 'prescribed period' see PARA 1112 note 6 ante; and for the meaning of 'applicable date' see PARA 1116 note 11 ante. The prescribed period for these purposes is ten working days: Sch 1 Pt I. For the meaning of 'working day' see PARA 1095 note 8 ante.

8 For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante.

9 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 19(1), (4). The prescribed sum for these purposes is £20: Sch 1 Pt I.

10 Ie under any of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, regs 5-7 (inclusive).

11 Ie under any of ibid regs 9-13 (inclusive): see PARAS 1115-1119 ante.

12 Ie under ibid reg 17: see PARA 1123 ante.

13 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

14 Ie in either case as soon as is reasonably practicable in relation to the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 6 (see PARA 1113 ante) and within the prescribed period from the applicable date in relation to any other regulations: reg 19(5). The prescribed period for these purposes is ten working days: Sch 1 Pt I.

15 Ibid reg 19(2), (5). The prescribed sum for these purpose is £20: Sch 1 Pt I.

- 16 For the meaning of 'relevant supplier' see PARA 1112 note 1 ante.
- 17 Ie under any of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, regs 14-16 (inclusive): see PARAS 1120-1122 ante.
- 18 Ie under ibid reg 17: see PARA 1123 ante.
- 19 The prescribed period for these purposes is ten working days: Sch 1 Pt I.
- 20 Ibid reg 19(3), (6). The prescribed sum for these purpose is £20: Sch 1 Pt I.
- 21 Ie described in ibid reg 20: see PARA 1125 post.
- 22 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.
- 23 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 19(7).
- 24 Ie under the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended): see PARA 1112 et seq ante, PARAS 1125-1126 post.
- 25 See ibid reg 19(8).
- 26 Ibid reg 19(8)(a).
- 27 Ibid reg 19(8)(b).
- 28 For the meaning of 'electric line' see PARA 1041 note 5 ante.
- 29 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18(8)(c). For the meaning of 'electrical plant' see PARA 1041 note 5 ante.
- 30 Ibid reg 19(9).

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1125. Exemptions.

The following are the general circumstances in which there is no obligation to pay compensation under the Electricity (Standards of Performance) Regulations 2005¹:

- 2518 (1) the customer² informs the relevant operator³ before the contravention time⁴ that the customer does not wish the relevant operator to take any action, or any further action, in relation to the matter⁵;
- 2519 (2) the customer agrees with the relevant operator that the action taken by the relevant operator before the contravention time is to be treated as the taking by the relevant operator of the required action and, where the action taken by the relevant operator includes a promise to perform any action, whether before or after the contravention time, the relevant operator duly performs that promise⁶;
- 2520 (3) where information is, or is required to be, provided by the customer to the relevant operator, the information is provided to an address or by use of a telephone number other than the address or telephone number which the relevant operator has advised the customer⁷ is appropriate for receipt of information of that type or, in the case of information given by telephone for the specified purposes⁸, was given outside such reasonable hours as the relevant operator has advised the customer are the hours during which the telephone number will be available for the receipt of information of that type⁹;
- 2521 (4) it was not reasonably practicable for the relevant operator to take the required action before the contravention time as a result of:
 - 223
 - 325. (a) severe weather conditions;
 - 326. (b) industrial action by the employees of the relevant operator;
 - 327. (c) the act or default of a person other than an officer, employee or agent of the relevant operator or of a person acting on behalf of an agent of that operator;
 - 328. (d) the inability of the relevant operator to obtain any necessary access to any premises, which may include its own premises;
 - 329. (e) the existence of circumstances by reason of which the relevant operator could reasonably expect that if it took the action it would or would be likely to be in breach of an enactment¹⁰;
 - 330. (f) the effects of an event for which emergency regulations have been made under Part 2 of the Civil Contingencies Act 2004¹¹; or
 - 331. (g) other circumstances of an exceptional nature beyond the control of the relevant operator,
- 224
- 2522 and the relevant operator had in each case taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect¹²;
- 2523 (5) the relevant operator reasonably considers that the information given by the customer is frivolous or vexatious¹³;
- 2524 (6) the customer has:
- 225

332. (a) committed an offence of damaging electrical plant¹⁴ or interfering with a meter¹⁵; or
333. (b) failed to pay any charges due to the relevant operator after receiving a notice the supplier is to install a prepayment meter to recover charges that are due or is to cut off the supply for non-payment¹⁶,
- 226
- 2525 and the action taken or not taken by the relevant operator was in exercise of its powers under the relevant¹⁷ statutory provisions¹⁸.

1 Ie the circumstances described in the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 20: reg 20(1).

2 For the meaning of 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

4 For these purposes, 'contravention time' means: (1) in relation to the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 12 (see PARA 1118 ante), the time at which the supply was interrupted; and (2) in relation to any other regulation, the time at which, if reg 20 did not apply, the relevant operator would become liable to pay the prescribed sum to the customer: reg 20(9)(b), (c). For the meanings of 'pay' and 'prescribed sum' see PARA 1112 note 5 ante.

5 Ibid reg 20(2).

6 Ibid reg 20(3).

7 For these purposes, the relevant operator may advise the customer by publishing the address, the telephone number, or the hours in such a manner as may be appropriate for the purpose of bringing the advice to the attention of customers likely to be affected by it: ibid reg 20(5).

8 Ie for the purposes of ibid regs 13(1), 14(1) or 15(1): see PARAS 1119-1121 ante.

9 Ibid reg 20(4); and see note 7 supra.

10 Ie including any directions given by the Secretary of State under the Electricity Act 1989 s 96: see PARA 1179 post. As to the Secretary of State see PARA 601 note 1 ante.

11 Ie under the Civil Contingencies Act 2004 Pt 2 (ss 19-31): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 20(6).

13 Ibid reg 20(7).

14 Ie under the Electricity Act 1989 s 24 (as amended), Sch 6 para 6 (as substituted): see PARA 1106 ante.

15 Ie under ibid Sch 7 para 11 (as amended): see PARA 1189 post.

16 Ie a notice under ibid Sch 6 para 2(2) (as substituted): see PARA 1103 ante.

17 Ie its powers under the provisions referred to in notes 14-16 supra.

18 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 20(8).

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1126. Notice of rights.

In respect of the rights prescribed for the benefit of customers¹ under the regulations setting out individual standards of performance for electricity distributors² and common obligations for electricity distributors and suppliers³, an electricity distributor must prepare and from time to time revise a statement describing those rights and the effect of the specified statutory provision preserving other remedies⁴ in a form which is standardised with that of other distributors and has a content which the distributor could reasonably expect would be within the understanding of customers to whom the statement relates⁵. The distributor must:

- 2526 (1) give a copy of the statement, and of any revision of the statement, to the Gas and Electricity Markets Authority ('GEMA')⁶ and to the Gas and Electricity Consumer Council⁷, before it sends it to the electricity suppliers referred to in head (2) below;
- 2527 (2) at least once in any period of 12 months dispatch to each electricity supplier which supplies electricity to premises⁸ that are directly connected⁹ to the distributor's distribution system¹⁰ for onward transmission to the electricity supplier's customers a copy of the statement, in the form current at the time that it is provided;
- 2528 (3) make a copy of the statement, in its current form, available on its website and for inspection by any person at any premises of or occupied by the distributor open to the public in the normal course of the distributor's business during the normal opening hours of the premises; and
- 2529 (4) dispatch a copy of the statement, in its current form, to any person who requests it¹¹.

In respect of the rights prescribed for the benefit of customers under the regulations setting out individual standards of performance for relevant suppliers¹² and electricity suppliers¹³ and prescribing common obligations for electricity distributors and suppliers¹⁴, a relevant supplier and, in respect of such of those rights as are applicable¹⁵, an electricity supplier, must prepare and from time to time revise a statement describing the rights prescribed for the benefit of customers under those regulations and the effect of the specified statutory provision preserving other remedies¹⁶ in a form and having a content which a relevant supplier or an electricity supplier, as the case may be, could reasonably expect would be within the understanding of customers to whom the statement relates¹⁷. The supplier must:

- 2530 (a) give a copy of the statement, and of any revision of the statement, to the Authority and to the Council, before it makes it available to customers;
- 2531 (b) at least once in any period of 12 months dispatch to each domestic customer¹⁸ of the relevant supplier or, as the case may be, of the electricity supplier a copy of the statement, in the form current at the time it is provided, provided that, where in relation to any premises more than one person is a domestic customer, the obligation is to be satisfied by dispatching a copy of each such statement to any one of them;

- 2532 (c) make a copy of the statement, in its current form, available for inspection by any person at any premises of or occupied by the supplier open to the public in the normal course of the supplier's business during the normal opening hours of the premises; and
- 2533 (d) dispatch a copy of the statement, in its current form, to any person who requests it¹⁹.

A relevant operator²⁰ may prepare a separate statement for domestic and non-domestic customers²¹; and a relevant supplier or an electricity supplier, as the case may be, may satisfy its obligation under head (b) or head (d) above by dispatching the statement that it has prepared to the class of customer to which the statement relates²².

An electricity supplier must at least once in any period of 12 months dispatch to each of its domestic customers the information in any statement sent to it by an electricity distributor pursuant to head (2) above, provided that where in relation to any premises more than one person is a domestic customer, the obligation is to be satisfied by dispatching such information to any one of them²³.

1 For the meaning of 'customer' see PARA 1112 note 1 ante.

2 Ie under the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, regs 5-13 (inclusive): see PARAS 1112-1119 ante. For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 Ie under ibid regs 17-21 (inclusive): see PARAS 1123-1125 ante, PARA 1127 post. For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

4 Ie the effect of the Electricity Act 1989 39A(5) (as added): see PARA 1111 ante.

5 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 22(1).

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and As to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

8 For the meaning of 'premises' see PARA 1041 note 5 ante.

9 For the meaning of 'directly connected' see PARA 1112 note 10 ante.

10 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

11 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 22(1)(a)-(d).

12 Ie under ibid regs 14-16 (inclusive): see PARAS 1120-1122 ante. For the meaning of 'relevant supplier' see PARA 1112 note 1 ante.

13 Ie under ibid regs 15-16 (inclusive): see PARAS 1121-1122 ante.

14 Ie under ibid regs 17-21 (inclusive): see PARAS 1123-1125 ante, PARA 1127 post.

15 Ie in respect of rights under ibid regs 15-21 (inclusive).

16 Ie the effect of the Electricity Act 1989 s 39(4) (as amended): see PARA 1110 ante.

17 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 22(2).

18 For the meaning of 'domestic customer' see PARA 1112 note 5 ante.

19 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 22(2)(a)-(d).

- 20 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.
- 21 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 22(3).
- 22 Ibid reg 22(4).
- 23 Ibid reg 22(5).

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(e) Disputes relating to Standards of Performance

1127. Reference of disputes to the Gas and Electricity Markets Authority.

Any dispute arising under the statutory powers to prescribe standards of performance in individual cases¹ or regulations made thereunder² may be referred to the Gas and Electricity Markets Authority ('GEMA')³ by either party or, with the agreement of either party, by the Gas and Electricity Consumer Council⁴. On such a reference, the dispute must be determined by order made by the Authority or, if it thinks fit, by such person, other than the Council, as may be prescribed⁵. A person making such an order must include in the order his reasons for reaching his decision with respect to the dispute⁶. Such an order is final and is enforceable as if it were a judgment of a county court⁷.

The practice and procedure to be followed in connection with any such determination is to be such as may be prescribed⁸.

¹ I.e. under the Electricity Act 1989 s 39 (as amended) (see PARA 1110 ante) or s 39A (as added) (see PARA 1111 ante).

² I.e. regulations made under the Electricity Act 1989 (as amended) or s 39A (as added). See the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended): see PARA 1112 et seq ante, PARA 1128 et seq post.

³ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

⁴ Electricity Act 1989 s 39B(1)(a) (s 39B added by the Utilities Act 2000 s 54(2)). As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

⁵ Electricity Act 1989 s 39B(1)(b) (as added: see note 4 supra). For these purposes, 'prescribed' means prescribed by regulations made by the Authority with the consent of the Secretary of State: s 39B(5) (as so added). For the relevant regulations see the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2; and PARA 1128 et seq post.

⁶ Electricity Act 1989 s 39B(2) (as added: see note 4 supra).

⁷ Ibid s 39B(4)(a) (as added: see note 4 supra).

⁸ Ibid s 39B(3) (as added: see note 4 supra). For the prescribed procedure see the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2; and PARA 1128 et seq post.

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1128. Procedure for determination of disputes; in general.

Where a dispute under any provision of the relevant regulations¹ is referred to the Gas and Electricity Markets Authority ('GEMA')² for determination³, the dispute must be determined in accordance with the practice and procedure set out⁴ in the following provisions⁵.

Where such a dispute has arisen between a relevant operator⁶ and a customer⁷, or between relevant operators, it may be referred to the Authority by any party or, with the agreement of any party, by the Gas and Electricity Consumer Council⁸ and it must, on such reference, be determined by order made by the Authority⁹. In making such an order, the Authority must include in the order the reasons for reaching its decision with respect to a dispute¹⁰.

¹ I.e. a dispute under any provision of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019 (as amended); see PARA 1112 et seq ante.

² As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

³ I.e. under the Electricity Act 1989 s 39B (as added); see PARA 1127 ante.

⁴ I.e. set out in the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2: see the text and notes 6-10 infra; and PARA 1129 et seq post.

⁵ Ibid reg 18.

⁶ For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

⁷ For the meaning of 'customer' see PARA 1112 note 1 ante.

⁸ As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

⁹ Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 1(1), (2).

¹⁰ Ibid Sch 2 para 1(3).

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1129. Determination of individual disputes.

The Gas and Electricity Markets Authority ('GEMA')¹ must determine a dispute between a relevant operator and a customer or between relevant operators² before the end of 80 working days³ from the date when the dispute was referred to it⁴; but if the Authority is satisfied that there are good reasons for departing from that requirement, the period in which a dispute may be determined may be extended with the consent of the referring party or parties⁵.

Where an individual dispute is referred to the Authority, the Authority must, at the outset, send to the parties a notice of procedure for the determination of individual disputes⁶. Upon receipt of such a notice, the parties to the dispute must provide the Authority with any specific information that the Authority is requesting as part of the written statement prepared in accordance with the prescribed procedure⁷ and with any other information that they consider relevant to the dispute⁸. If the Authority decides it is necessary to obtain third party advice in relation to technical issues or any other issues that may arise during the determination, it must request it and inform the parties to the dispute of that request and indicate in writing how that request will affect the timetable outlined in the notice of procedure which it has⁹ issued¹⁰.

At any time after receiving a written statement¹¹ the Authority may, if it considers it appropriate to do so, request¹² an oral hearing¹³. If the Authority is satisfied that it has sufficient information to determine a dispute, it must prepare a draft determination statement containing the submissions of the parties and then send that statement to the parties for comment¹⁴. When the Authority has received comments from the parties, and is satisfied that it has sufficient information to make the determination decision, it must prepare and then issue to the parties a final determination statement¹⁵.

The parties must, within one week of receiving a final determination statement, notify the Authority of any issue or information within that statement that should be excluded because such issue or information is of a confidential nature¹⁶. The Authority must, upon receipt of any such notification, make the necessary adjustments to the final determination statement and then publish¹⁷ that statement on its website¹⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 I.e. a dispute to which the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2 applies: see PARA 1128 ante. For the meanings of 'relevant operator' and 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'working day' see PARA 1095 note 8 ante.

4 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 2(1).

5 Ibid Sch 2 para 2(2).

6 Ibid Sch 2 para 3(1). That notice must: (1) set out a timetable by which each part of the procedure for the determination of individual disputes under Sch 2 is to take place; (2) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically

classed as confidential by the party to whom it belongs before the date expressly stated in the notice; (3) inform the parties of any specific information that the Authority is requesting as part of the written statement prepared in accordance with Sch 2 para 7 (see PARA 1131 post); and (4) explain the manner in which the Authority intends to publish the determination decision: Sch 2 para 3(2).

7 Ie the information specified in ibid Sch 2 para 3(2)(c): see note 6 head (3) supra.

8 Ibid Sch 2 para 3(3).

9 Ie the notice issued under ibid Sch 2 para 3(1): see the text and note 6 supra.

10 Ibid Sch 2 para 3(4).

11 As to written statements see ibid Sch 2 para 7; and PARA 1131 post.

12 Ie in accordance with ibid Sch 2 para 9: see PARA 1132 post.

13 Ibid Sch 2 para 3(5).

14 Ibid Sch 2 para 3(6).

15 Ibid Sch 2 para 3(7).

16 Ibid Sch 2 para 3(8).

17 Ie in accordance with ibid Sch 2 para 3(2)(d): see note 6 head (4) supra.

18 Ibid Sch 2 para 3(9). As to publication by the Authority see PARA 1045 note 6 ante.

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1130. Determination of multiple disputes.

The Gas and Electricity Markets Authority ('GEMA')¹ may, if it considers it appropriate to do so, consolidate into one or more categories (in each case a 'consolidated group') similar or related disputes² for the purposes of determining those disputes³. A determination made by the Authority for one or more consolidated groups is to apply, in respect of each consolidated group, to each individual dispute in that group⁴. When determining disputes falling within a consolidated group, the Authority must determine those disputes before the end of six months from the date when they were so consolidated into that group by the Authority⁵. If, however, the Authority is satisfied that there are good reasons for departing from this requirement, the period in which disputes falling within a consolidated group may be determined may be extended by notice to the nominated representatives⁶ of any such group⁷.

Where the Authority considers it appropriate to consolidate disputes, the Authority must send to the parties a notice of procedure for the determination of those disputes⁸. Upon receipt of such a notice, the parties to the dispute must provide the Authority with any specific information that the Authority is requesting⁹ and with any other information that they consider relevant to the dispute¹⁰. Upon receipt of the information so provided, the Authority may, if it considers it fitting to do so, prepare a list of consolidated groups and then consult as to whether those consolidated groups are appropriate¹¹. When so consulting, the Authority must publish¹² and explain its proposals in a manner which it believes will bring them to the attention of persons most likely to be affected and must invite those persons to comment to the Authority within a period from the publication of the proposals that is specified therein¹³. Upon receipt of responses to that consultation, the Authority must have regard to those responses before finalising the consolidated groups¹⁴.

When the Authority has decided on the consolidated groups for the purpose of determining multiple disputes, it must appoint¹⁵ customer representatives¹⁶. Following the appointment of the customer representatives for the consolidated groups, those customer representatives and the relevant operators¹⁷ must prepare a written statement¹⁸. Upon receipt of the written statements, the Authority may decide that it is necessary to obtain third party advice in relation to technical issues or any other issues that may arise during the determination; and if third party advice is requested, then the Authority must inform the customer representatives and the relevant operators of that request and must indicate in writing how that request will affect the timetable outlined in the notice it has¹⁹ issued²⁰.

At any time after receiving the written statement, the Authority may request²¹ an oral hearing²². If the Authority is satisfied that it has the necessary information, it must prepare a draft determination statement containing the submissions of the customer representatives and the relevant operators and then send that statement to the customer representatives and the relevant operators for comment²³. When the Authority has received comments from the customer representatives and the relevant operators, and is satisfied that it has sufficient information to make the determination decision, it must issue a final determination statement for a consolidated group, or for each consolidated group where there is more than one²⁴. The customer representatives and the relevant operators must within one week of receiving a final determination statement notify the Authority of any issue or information within that statement

that should be excluded because such issue or information is of a confidential nature²⁵. The Authority must, upon receipt of any such notification, make the necessary adjustments to the final determination statement and then publish²⁶ that statement on its website²⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie disputes to which the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2 applies: see PARA 1128 ante.

3 Ibid Sch 2 para 4(1).

4 Ibid Sch 2 para 4(2).

5 Ibid Sch 2 para 5(1).

6 Ie the representatives nominated under ibid Sch 2 para 10. Where disputes are consolidated into categories under Sch 2 para 4, the Authority must nominate one or more customers to be representatives of each consolidated group: Sch 2 para 10(1). A customer so nominated to be a representative of a consolidated group is only to become a representative if he consents to do so: Sch 2 para 10(2). For the meaning of 'customer' see PARA 1112 note 1 ante.

7 Ibid Sch 2 para 5(2).

8 Ibid Sch 2 para 6(1). Those notices must (1) set out a timetable by which each part of the procedure for the determination of multiple disputes under Sch 2 is to take place; (2) provide a list of any documentation or other evidence that the Authority has received in connection with the dispute and inform the parties that such documentation or other evidence may be disclosed to other parties to the dispute unless it is specifically classed as confidential by the party to whom it belongs before the date expressly stated in the notice; (3) inform the parties of any specific information that the Authority is requesting in accordance with Sch 2 para 11 (see PARA 1131 post); and (4) explain the manner in which the Authority intends to publish the determination decision: Sch 2 para 6(2).

9 Ie the information specified in ibid Sch 2 para 6(2)(c): see note 8 head (3) supra.

10 Ibid Sch 2 para 6(3).

11 Ibid Sch 2 para 6(4).

12 As to publication by the Authority see PARA 1045 note 6 ante.

13 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 6(5).

14 Ibid Sch 2 para 6(6).

15 Ie under ibid Sch 2 para 10: see note 6 supra.

16 Ibid Sch 2 para 6(7).

17 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

18 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 6(8).

19 Ie the notice issued under ibid Sch 2 para 6(1).

20 Ibid Sch 2 para 6(9).

21 Ie in accordance with ibid Sch 2 para 9: see PARA 1132 post.

22 Ibid Sch 2 para 6(10).

23 Ibid Sch 2 para 6(11).

24 Ibid Sch 2 para 6(12).

25 Ibid Sch 2 para 6(13).

26 le in accordance with *ibid* Sch 2 para 6(2)(d); see note 8 head (4) *supra*.

27 *Ibid* Sch 2 para 6(14).

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1131. Written statements; documents, evidence and information.

The Gas and Electricity Markets Authority ('GEMA')¹ may, by notice:

- 2534 (1) ask any party to a dispute² to produce a written statement with respect to a matter specified in the notice³; and this power includes power to specify the time and place at which the statement is to be produced⁴;
- 2535 (2) ask a party to a dispute to produce such documentation, including other evidence, in such form and at such time as it directs, as the Authority may reasonably require to enable it to make the determination decision⁵; and this power to ask for the production of a document is a power to ask for its production at the time and place specified in the notice and in a legible form⁶;
- 2536 (3) ask any customer⁷ who is a party to a dispute falling within a consolidated group⁸ to produce such information with respect to a matter specified in the notice as the Authority may reasonably require to enable it to make the determination decision⁹; and this power to require the production of information includes the power to specify the time and place at which it is to be produced¹⁰.

No person is, however, to be compelled under the above provisions to produce a written statement or to give information with respect to any matter about which he could not be compelled to give evidence in civil proceedings in the High Court¹¹ nor to produce a document that he could not be compelled to produce in civil proceedings in the High Court¹².

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 I.e a dispute to which the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2 applies: see PARA 1128 ante.

3 Ibid Sch 2 para 7(1).

4 Ibid Sch 2 para 7(2). The Authority may make copies of a document produced to it under Sch 2 para 7: Sch 2 para 7(4).

5 Ibid Sch 2 para 8(1).

6 Ibid Sch 2 para 8(2). The Authority may make copies of a document produced to it under Sch 2 para 8: Sch 2 para 8(4).

7 For the meaning of 'customer' see PARA 1112 note 1 ante.

8 As to consolidated groups see PARA 1130 ante.

9 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 11(1).

10 Ibid Sch 2 para 11(2).

11 Ibid Sch 2 paras 7(3), 11(3).

12 Ibid Sch 2 para 8(3).

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1132. Oral hearings.

An oral hearing may be held¹, and evidence may be heard at such a hearing from any party to a dispute². The Gas and Electricity Markets Authority ('GEMA')³ may, by notice, request any party to a dispute:

- 2537 (1) to attend at a time and place specified in the notice; and
- 2538 (2) at that time and place, to give evidence to any person appointed by the Authority to conduct the oral hearing⁴.

At any oral hearing, the Authority may request the customer or a person attending the hearing as a representative of the relevant operator⁵ to give evidence or make representations or observations⁶; and if any party fails to attend a hearing to be subjected to such a requirement, the Authority may determine the dispute without hearing his evidence, representations, or observations⁷.

No person is, however, to be compelled under these provisions to give evidence which he could not be compelled to give in civil proceedings in the High Court⁸.

1 le for the purposes of the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2: see PARA 1128 et seq ante, PARA 1133 post.

2 Ibid Sch 2 para 9(1).

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 9(2).

5 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

6 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 9(3).

7 Ibid Sch 2 para 9(4).

8 Ibid Sch 2 para 9(5).

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1133. Payments to customers; set-off and costs.

An order determining a dispute¹ does not, where there is more than one customer² at the premises, determine who is beneficially entitled to any payment³ required to be made by the order⁴.

Where a dispute is determined by an order requiring a relevant operator⁵ to make a payment to the customer and the relevant operator fails to make that payment, the customer may set off the amount so ordered to be paid against any charges that are owed by the customer to the relevant operator⁶.

An order determining a dispute may include a provision requiring the relevant operator or the customer to pay a sum in respect of the costs or expenses incurred by the Gas and Electricity Markets Authority ('GEMA')⁷. In including in such an order any such provision as to costs, the Authority must have regard to the conduct and means of the parties and any other relevant circumstances⁸.

1 I.e. an order determining a dispute to which the Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 18, Sch 2 applies: see PARA 1128 ante.

2 For the meaning of 'customer' see PARA 1112 note 1 ante.

3 For the meaning of 'payment' see PARA 1112 note 5 ante.

4 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 12.

5 For the meaning of 'relevant operator' see PARA 1112 note 1 ante.

6 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, Sch 2 para 13.

7 Ibid Sch 2 para 14(1). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Ibid Sch 2 para 14(2).

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(C) OVERALL STANDARDS OF PERFORMANCE

1134. Overall standards of performance relating to electricity suppliers.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time determine such standards of overall performance in connection with the provision of electricity supply² services as, in its opinion, ought to be achieved by electricity suppliers³ and may arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined⁴. Different standards may be determined for different electricity suppliers if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers⁵.

It is the duty of every electricity supplier to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under these provisions⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

3 Electricity Act 1989 s 40(1)(a) (amended by the Competition and Service (Utilities) Act 1992 ss 20(2), 56(7), Sch 2; the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 33(a); and by virtue of s 3(2)). For the meaning of 'electricity supplier' see PARA 1065 note 7 ante. As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

4 Electricity Act 1989 s 40(1)(b). As to publication by the Authority see PARA 1045 note 6 ante. As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

5 Ibid s 40(2) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 33(b), (c)). As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

6 Electricity Act 1989 s 40(3) (added by the Competition and Service (Utilities) Act 1992 s 24; amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 33(d)). As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

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1135. Overall standards of performance relating to electricity distributors.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time determine such standards of overall performance in connection with the activities of electricity distributors² as, in its opinion, ought to be achieved by them³ and may arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined⁴. Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors⁵.

It is the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under these provisions⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 Electricity Act 1989 s 40A(1)(a) (s 40A added by the Utilities Act 2000 s 55). As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

4 Electricity Act 1989 s 40A(1)(b) (as added: see note 3 supra). As to publication by the Authority see PARA 1045 note 6 ante. As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

5 Ibid s 40A(2) (as added: see note 3 supra). As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

6 Ibid s 40A(3) (as added: see note 3 supra). As to the enforcement of the requirements so imposed see PARA 1207 et seq post; and as to penalties for the contravention of such requirements see PARA 1211 et seq post.

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1136. Information to be given to customers about overall performance.

The Gas and Electricity Markets Authority ('GEMA')¹ may make regulations requiring such information as may be specified or described in the regulations about:

- 2539 (1) the standards of overall performance determined in relation to electricity suppliers and electricity distributors²; and
- 2540 (2) the levels of performance achieved as respects those standards,

to be given by electricity suppliers or electricity distributors to customers or potential customers of electricity suppliers³. Such regulations may include provision:

- 2541 (a) specifying the form and manner in which and the frequency with which information is to be given; and
- 2542 (b) requiring information about the matters mentioned in head (1) or head (2) above and relating to electricity distributors to be given by electricity distributors to electricity suppliers and by electricity suppliers to their customers or potential customers⁴.

In respect of the overall standards of performance determined by the Authority in relation to electricity suppliers⁵, a relevant supplier⁶ must prepare and from time to time revise a statement describing those standards and the levels of performance achieved as respects those standards in a form and having a content which a relevant supplier could reasonably expect would be within the understanding of customers⁷ to which the statement relates and must:

- 2543 (i) give a copy of the statement, and of any revision of the statement, to the Authority and to the Gas and Electricity Consumer Council⁸ before it makes it available to customers;
- 2544 (ii) at least once in any period of 12 months dispatch to each domestic customer⁹ of the supplier a copy of the statement, in the form current at the time it is provided, provided that, where in relation to any premises¹⁰ more than one person is a domestic customer, the obligation is to be satisfied by dispatching a copy of each such statement to any one of them;
- 2545 (iii) make a copy of the statement, in its current form, available for inspection by any person at any premises of or occupied by the supplier open to customers in the normal course of the supplier's business during the normal opening hours of the premises; and
- 2546 (iv) dispatch a copy of the statement, in its current form, to any person who requests it¹¹.

A relevant supplier may prepare a separate statement for domestic and non-domestic¹² customers¹³; and may satisfy its obligation under head (ii) or head (iv) above by dispatching the statement it has prepared to the class of customer to whom it relates¹⁴.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ie the standards determined under the Electricity Act 1989 s 40 (as amended) (see PARA 1134 ante) or s 40A (as added) (see PARA 1135 ante). For the meaning of 'electricity supplier' see PARA 1065 note 7 ante; and for the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 Ibid s 42A(1) (s 42A added by the Competition and Service (Utilities) Act 1992 s 21; substituted by the Utilities Act 2000 s 58).

4 Electricity Act 1989 s 42A(2) (as substituted: see note 3 supra).

5 Ie the standards determined under ibid s 40 (as amended): see PARA 1134 ante.

6 For the meaning of 'relevant supplier' see PARA 1112 note 1 ante.

7 For the meaning of 'customer' see PARA 1112 note 1 ante.

8 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

9 For the meaning of 'domestic customer' see PARA 1112 note 5 ante.

10 For the meaning of 'premises' see PARA 1041 note 5 ante.

11 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 23(1).

12 For the meaning of 'non-domestic customer' see PARA 1112 note 5 ante.

13 Electricity (Standards of Performance) Regulations 2005, SI 2005/1019, reg 23(2).

14 Ibid reg 23(3).

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(D) CARBON EMISSIONS REDUCTION TARGETS

1137. Promotion of reductions in carbon emissions; electricity distributors and electricity suppliers.

The Secretary of State¹ may by order impose on each electricity distributor², or each electricity distributor of a specified description³, and on each electricity supplier⁴, or each electricity supplier of a specified description, an obligation to achieve, within a specified period and in accordance with the order, the carbon emissions reduction target to be determined by the Gas and Electricity Markets Authority ('GEMA')⁵ under the order for that distributor or supplier (and that obligation is referred to as a 'carbon emissions reduction obligation')⁶. Before making such an order the Secretary of State must consult the Authority, the Gas and Electricity Consumer Council⁷, electricity distributors and electricity suppliers and such other persons as he considers appropriate⁸; and no such order may be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament⁹.

For these purposes, 'carbon emissions reduction target' means a target for the promotion of any of the following:

- 2547 (1) measures for improving energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order;
- 2548 (2) if the order so provides:
- 227
- 334. (a) measures for increasing the amount of electricity generated, or heat produced, by microgeneration¹⁰;
- 335. (b) any other measures of a description specified in the order for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies¹¹;
- 336. (c) measures for reducing the consumption of such energy as is mentioned in head (1) above¹².
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An order under these provisions may specify criteria by reference to which the Authority is to determine carbon emissions reduction targets for the electricity distributors or electricity suppliers on whom obligations are imposed by the order¹³. The order:

- 2549 (i) may make provision generally in relation to the carbon emissions reduction obligations which it imposes, including in particular provision:
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- 337. (A) as to the treatment of persons who become electricity distributors or electricity suppliers after the beginning of the period to which the order relates;
- 338. (B) as to the action which qualifies for the purpose of meeting the whole or any part of a carbon emissions reduction target;

339. (c) as to the method by which improvements in energy efficiency, increases in the amount of electricity generated, or heat produced, by microgeneration or otherwise using low-emissions sources or technologies or reductions in energy consumption attributable to any qualifying action are to be assessed;
340. (D) requiring distributors and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their carbon emissions reduction obligations¹⁴;
341. (E) requiring the Authority to determine whether any proposed action qualifies for the purpose of achieving the whole or any part of a person's carbon emissions reduction target and, if so, what improvement in energy efficiency, increase in the amount of electricity generated, or heat produced, by microgeneration or otherwise using low-emissions sources or technologies or reduction in energy consumption is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and
342. (F) requiring distributors or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their carbon emissions reduction obligations¹⁵;
- 230
- 2550 (ii) may make provision authorising the Authority to require a distributor or supplier to provide it with specified information, or information of a specified nature, relating to his proposals for complying with his carbon emissions reduction obligation or the question whether he has complied with that obligation¹⁶;
- 2551 (iii) may make provision as to circumstances in which:
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343. (A) a person's carbon emissions reduction target may be altered during the period to which the order relates;
344. (B) the whole or any part of a person's carbon emissions reduction target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
345. (C) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
346. (D) the whole or any part of a person's carbon emissions reduction target may be transferred to another electricity distributor or electricity supplier or to a gas transporter or gas supplier¹⁷; or
347. (E) a person may carry forward the whole or any part of his carbon emissions reduction target for the period to which the order relates to a subsequent period¹⁸;
- 232
- 2552 (iv) may:
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348. (A) provide for exceptions from any requirement of the order;
349. (B) provide that any specified requirement contained in it is to be treated as a relevant requirement¹⁹ for the purposes of Part I of the Electricity Act 1989²⁰;
350. (C) make supplementary, incidental and transitional provision; and
351. (D) make different provision²¹ for different cases, including different provision in relation to different distributors or suppliers²²;
- 234
- 2553 (v) may include provision for treating the promotion of the supply to premises²³ of:
- 235
352. (A) electricity generated by a generating station²⁴ which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
353. (B) heat produced in association with electricity or steam produced from, or air or water heated by, such heat;
354. (C) any gas or liquid subjected to a cooling effect produced in association with electricity,

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2554 as promotion of energy efficiency²⁵.

The Secretary of State and the Authority must carry out their respective functions under these provisions in the manner he or it considers is best calculated to ensure that no electricity distributor is unduly disadvantaged in competing with other electricity distributors and no electricity supplier is unduly disadvantaged in competing with other electricity suppliers²⁶.

Prior to 28 February 2007²⁷, the above provisions referred to 'energy efficiency obligations' and 'energy efficiency targets'²⁸. The orders setting out such obligations and targets are discussed in an earlier part of this title²⁹, as is the Secretary of State's power to specify an overall target for the promotion of the above-mentioned measures³⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

3 As to the framing of descriptions see PARA 1068 note 17 ante.

4 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Electricity Act 1989 s 41A(1) (s 41A added by the Utilities Act 2000 s 70; the Electricity Act 1989 s 41A(1), (3), (5)-(7) amended by the Climate Change and Sustainable Energy Act 2006 s 17, Schedule paras 4, 5).

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

8 Electricity Act 1989 s 41A(11) (as added: see note 6 supra).

9 Ibid s 41A(12) (as added: see note 6 supra).

10 For these purposes, 'microgeneration' has the same meaning as in the Climate Change and Sustainable Energy Act 2006 (see PARA 619 note 2 ante): Electricity Act 1989 s 41A(13) (s 41A(13), (14) added by the Climate Change and Sustainable Energy Act 2006 s 16(1), (5)).

11 For the purposes of the Electricity Act 1989 s 14A(2)(b)(ii) (as substituted) (see head (2)(b) in the text), electricity is generated, or heat is produced, using low-emissions sources or technologies if it is generated, or produced, by plant which relies wholly or mainly on a source of energy or a technology mentioned in the Climate Change and Sustainable Energy Act 2006 s 26(2) (see PARA 619 note 2 ante): Electricity Act 1989 s 41A(14) (as added: see note 10 supra). 'Plant' includes any equipment, apparatus or appliance: s 41A(13) (as so added).

12 Ibid s 41A(2) (substituted by the Climate Change and Sustainable Energy Act 2006 s 16(1), (3)).

13 Electricity Act 1989 s 41A(3) (as added and amended: see note 6 supra).

14 No person is, however, to be required by virtue of ibid s 41A (as added and amended) to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court: s 41A(10) (as added: see note 6 supra). For the meaning of 'information' see PARA 1044 note 10 ante.

15 Ibid s 41A(5) (as added and amended: see note 6 supra).

16 Ibid s 41A(6) (as added and amended: see note 6 supra). See also note 14 supra.

17 I.e. a gas transporter or gas supplier within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 789 et seq ante. For the meaning of 'gas transporter' see PARA 805 ante; and for the meaning of 'gas supplier' see PARA 807 ante.

18 Electricity Act 1989 s 41A(7) (as added and amended: see note 6 supra).

- 19 For the meaning of 'relevant requirement' see *ibid* s 25(8) (as amended); and PARA 1207 note 5 post.
- 20 *Ie* for the purposes of *ibid* Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq ante*, PARA 1138 *et seq post*.
- 21 *Ie* subject to *ibid* s 41A(4) (as added): see the text and note 26 *infra*.
- 22 *Ibid* s 41A(8) (as added: see note 6 *supra*).
- 23 For the meaning of 'premises' see PARA 1041 note 5 *ante*.
- 24 For the meaning of 'generating station' see PARA 1041 note 6 *ante*; and for the meaning of 'generate' see PARA 1041 note 7 *ante*.
- 25 Electricity Act 1989 s 41A(9) (as added: see note 6 *supra*).
- 26 *Ibid* s 41A(4) (as added: see note 6 *supra*).
- 27 *Ie* prior to the coming into force of the Climate Change and Sustainable Energy Act 2006 s 16.
- 28 See the Electricity Act 1989 s 41A (as added (see note 6 *supra*), but without the amendments made by the Climate Change and Sustainable Energy Act 2006 s 16.
- 29 See the Electricity and Gas (Energy Efficiency Obligations) Order 2001, SI 2001/4011 (amended by SI 2003/1180); the Electricity and Gas (Energy Efficiency Obligations) Order 2004, SI 2004/3392; and PARA 765 *ante*.
- 30 See the Utilities Act 2000 s 103 (as amended); and PARA 765 *ante*.

UPDATE

1137 Promotion of reductions in carbon emissions; electricity distributors and electricity suppliers

TEXT AND NOTES--See Electricity and Gas (Carbon Emissions Reduction) Order 2008, SI 2008/188 (amended by SI 2009/1904, SI 2009/1905); Electricity and Gas (Community Energy Saving Programme) Order 2009, SI 2009/1905.

TEXT AND NOTES 1-28--The power to make orders under the Electricity Act 1989 s 41A may be exercised so as to impose more than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent: s 41A(1A) (added by the Climate Change Act 2008 Sch 8 para 3(3)). Electricity Act 1989 s 41A amended in order to refer to electricity generators as well as electricity distributors or suppliers: Climate Change Act 2008 Sch 8 para 3(2), (4), (5), (7)-(10).

TEXT AND NOTES 14, 15--Add head (G) requiring the whole or any part of a carbon emissions reductions target to be met by action relating to persons of a specified description, specified areas or areas of a specified description or persons of a specified description in specified areas or areas of a specified description added: Electricity Act 1989 s 41A(5) (amended by the Climate Change Act 2008 Sch 8 para 3(6)). 'Specified' means specified in the order: Electricity Act 1989 s 41A(13) (amended by the Climate Change Act 2008 Sch 8 para 3(11)).

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(E) INFORMATION AND PUBLICITY ABOUT STANDARDS AND TARGETS

1138. Information with respect to levels of performance.

The Gas and Electricity Markets Authority ('GEMA')¹ must from time to time collect information with respect to:

- 2555 (1) the compensation made by electricity suppliers² under the standards of performance for individual cases³;
- 2556 (2) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services⁴;
- 2557 (3) the compensation made by electricity distributors⁵ under the standards of performance for individual cases⁶;
- 2558 (4) the levels of overall performance achieved by electricity distributors⁷.

At such times as may be specified in a direction⁸ given by the Authority, each electricity supplier must furnish to the Authority the following information, namely:

- 2559 (a) as respects each prescribed standard for individual cases⁹, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- 2560 (b) as respects each standard determined¹⁰ in relation to overall performance, such information with respect to the level of performance achieved by the supplier as may be so specified¹¹.

Similarly, at such times as may be specified in a direction given by the Authority, each electricity distributor must furnish to the Authority the following information, namely:

- 2561 (i) as respects each prescribed standard for individual cases¹², the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- 2562 (ii) as respects each standard determined¹³ in relation to overall performance, such information with respect to the level of performance achieved by the distributor as may be so specified¹⁴.

The provision of information about overall performance by electricity suppliers and electricity distributors to customers or potential customers of electricity suppliers has already been discussed¹⁵.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 le under the Electricity Act 1989 s 39 (as amended): see PARA 1110 ante. For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

3 Ibid s 42(1)(a) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 34(a); and by virtue of s 3(2)).

4 Electricity Act 1989 s 42(1)(b) (amended by the Utilities Act 2000 ss 57(1), (2), 108 Sch 8; and by virtue of s 3(2)).

5 le under the Electricity Act 1989 s 39A (as added): see PARA 1111 ante. For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

6 Ibid s 42(1A)(a) (s 42(1A) added by the Utilities Act 2000 s 57(1), (3)).

7 Electricity Act 1989 s 42(1A)(b) (as added: see note 6 supra).

8 As to directions generally see *ibid* s 107; and PARA 1306 post.

9 le each standard prescribed by regulations under *ibid* s 39 (as amended). As to such prescribed standards see PARA 1120 et seq ante.

10 le determined under *ibid* s 40 (as amended): see PARA 1134 ante.

11 Ibid s 42(2) (amended by the Utilities Act 2000 ss 57(1), (4), 108, Sch 6 Pt II paras 24, 34(b)).

12 le each standard prescribed by regulations under the Electricity Act 1989 s 39A (as added). As to such prescribed standards see PARA 1112 et seq ante.

13 le determined under *ibid* s 40A (as added): see PARA 1135 ante.

14 Ibid s 42(2A) (added by the Utilities Act 2000 s 57(1), (5)).

15 See the Electricity Act 1989 s 42A (as substituted); and PARA 1136 ante.

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1139. Publication of statistical information about standards of performance etc.

It is the duty of the Gas and Electricity Consumer Council¹ to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to:

- 2563 (1) the levels of performance achieved by electricity suppliers² and electricity distributors³ in respect of:
 - 237 355. (a) standards of performance prescribed or determined under the relevant statutory provisions⁴; and
 - 356. (b) carbon emissions reduction obligations imposed by order under the relevant statutory provision⁵; and
- 238 2564 (2) complaints⁶ made by consumers about any matter relating to the activities of such suppliers or distributors and the handling of such complaints⁷.

The general restrictions on the disclosure of information which are contained in the Utilities Act 2000⁸ are not to be construed as limiting any matters which may be published under the above provisions⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

3 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

4 Ie under the Electricity Act 1989 s 39 (as amended) (see PARA 1110 ante), s 39A (as added) (see PARA 1111 ante), s 40 (as amended) (see PARA 1134 ante) and s 40A (as added) (see PARA 1135 ante).

5 Ie under ibid s 41A (as added and amended): see PARA 1137 ante.

6 For these purposes, 'complaints' includes complaints made directly to electricity suppliers and electricity distributors (or anyone carrying on activities on their behalf) and complaints to the Gas and Electricity Markets Authority ('GEMA') or the Council: ibid s 42AA(2) (s 42AA added by the Utilities Act 2000 s 20(6)).

7 Electricity Act 1989 s 42AA(1) (as added (see note 6 supra); amended by the Climate Change and Sustainable Energy Act 2006 s 17, Schedule paras 4, 6).

8 Ie the Utilities Act 2000 s 105 (as amended): see PARA 767 ante.

9 See ibid s 105(8); and PARA 767 note 5 ante.

UPDATE

1139 Publication of statistical information about standards of performance etc

TEXT AND NOTES 1-7--Electricity Act 1989 s 42AA amended in order to refer to electricity generators as well as electricity suppliers and distributors: Climate Change Act 2008 Sch 8 para 4.

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(F) SERVICE STANDARDS AND REMUNERATION

1140. Service standards and remuneration of company directors.

The following provisions apply to any company¹ which is authorised by a licence² to carry on activities subject to price regulation³.

As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Gas and Electricity Markets Authority ('GEMA')⁴:

- 2565 (1) disclosing whether or not remuneration⁵ has been paid or become due during that financial year to the directors of the company as a result of arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards⁶ in connection with activities subject to price regulation⁷; and
- 2566 (2) where such remuneration has been paid or become due, describing the arrangements and the remuneration⁸.

A description under head (2) above must include in particular:

- 2567 (a) a statement of when the arrangements were made;
- 2568 (b) a description of the service standards in question;
- 2569 (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
- 2570 (d) an explanation of how the remuneration was calculated⁹.

The required statement must also state:

- 2571 (i) whether or not there are in force in respect of the financial year during which the statement is made arrangements such as are described in head (1) above¹⁰; or
- 2572 (ii) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements¹¹. Such a description must:

- 2573 (A) include in particular the matters listed in heads (a) to (c) above; and
- 2574 (B) where the arrangements described are different from any arrangements described under head (2) above, state the likely effect of those differences on the remuneration of each director of the company¹².

The required statement must be made to the Authority in such manner as may be required by the Authority¹³. It must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it¹⁴. It may also be published by the Authority in such manner as it may consider appropriate¹⁵.

1 For these purposes, 'company' means a company within the meaning of the Companies Act 1985 or the Companies Act 2006 which is limited by shares: Electricity Act 1989 s 42C(10) (s 42C added by the Utilities Act 2000 s 61); Companies Act 2006 s 1297(5).

2 For the meaning of 'licence' see PARA 1041 note 12 ante.

3 Electricity Act 1989 s 42C(1) (as added: see note 1 supra). 'Activities subject to price regulation', in relation to any company, are activities for which (1) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or (2) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue, is determined by or under the licence granted under Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1141 et seq post): s 42C(10) (as added: see note 1 supra).

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 'Remuneration' in relation to a director of a company: (1) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and (2) includes remuneration in respect of any of his services while a director of the company: Electricity Act 1989 s 42C(10) (as added: see note 1 supra). The duty of a company under s 42C (as added) applies in respect of any person who has at any time been a director of the company: s 42C(9) (as so added).

6 'Service standards' in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are (1) set by or under any conditions included in a licence granted under ibid Pt I (as amended); (2) prescribed by the Authority in regulations made under s 39 (as amended) (see PARA 1110 ante) or 39A (as added) (see PARA 1111 ante); (4) determined by the Authority under s 40 (as amended) (see PARA 1134 ante) or 40A (as added) (see PARA 1135 ante); or (4) set or agreed to by the company: s 42C(10) (as added: see note 1 supra).

7 le arrangements falling within ibid s 42C(3) (as added: see note 1 supra).

8 Ibid s 42C(2), (3) (as added: see note 1 supra).

9 Ibid s 42C(4) (as added: see note 1 supra).

10 See note 7 supra.

11 Electricity Act 1989 s 42C(5) (as added: see note 1 supra).

12 Ibid s 42C(6) (as added: see note 1 supra).

13 Ibid s 42C(7) (as added: see note 1 supra).

14 Ibid s 42C(8)(a) (as added: see note 1 supra).

15 Ibid s 42C(8)(b) (as added: see note 1 supra).

UPDATE

1140 Service standards and remuneration of company directors

NOTE 1--'Company' means a company, as defined in the Companies Act 2006 s 1(1) (see COMPANIES vol 14 (2009) PARA 24), that is limited by shares, and has its registered office in Great Britain: Electricity Act 1989 s 42C(10) (amended by SI 2009/1941).

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B. COMPETITION PROVISIONS

1141. Functions with respect to competition.

Certain functions of the Office of Fair Trading (the 'OFT')¹ under Part 4 of the Enterprise Act 2002², so far as relating to commercial activities connected with the generation³, transmission⁴ or supply⁵ of electricity or the use of electricity interconnectors⁶, are concurrent functions of the Gas and Electricity Markets Authority ('GEMA')⁷ and the OFT⁸. Before the OFT or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of the above provisions, it must consult the other⁹; and neither the OFT nor the Authority must exercise in relation to any matter functions which are exercisable concurrently by virtue of the above provisions if functions which are so exercisable have been exercised in relation to that matter by the other¹⁰.

It is the duty of the Authority, for the purpose of assisting the Competition Commission¹¹ in carrying out an investigation on a reference made to the Commission by the Authority by virtue of the above provisions, to give to the Commission:

- 2575 (1) any information¹² which is in its possession and which relates to matters falling within the scope of the investigation and is either requested by the Commission for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- 2576 (2) any other assistance which the Commission may require and which it is within the Authority's power to give, in relation to any such matters,

and the Commission must, for the purposes of carrying out any such investigation, take into account any information so given to it for that purpose¹³.

The Authority is also entitled to exercise, concurrently with the OFT, certain functions of the OFT under Part I of the Competition Act 1998¹⁴ so far as relating to:

- 2577 (a) agreements, decisions or concerted practices preventing, restricting or distorting competition¹⁵;
- 2578 (b) conduct of a kind which amounts to the abuse of a dominant position in a market¹⁶;
- 2579 (c) agreements, decisions or concerted practices preventing, restricting or distorting competition which contravene European Community law¹⁷; or
- 2580 (d) conduct which amounts to abuse of a dominant position of a kind which contravenes European Community law¹⁸,

which relate to commercial activities connected with the generation, transmission or supply of electricity or the use of electricity interconnectors¹⁹.

1 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

2 le functions under the Enterprise Act 2002 Pt 4 (ss 131-184) (as amended) (market investigations), other than functions under s 166 (register of undertakings and orders) and s 171 (advice and information): see COMPETITION vol 18 (2009) PARA 311.

3 For the meaning of 'generation' see PARA 1041 note 7 ante.

4 For the meaning of 'transmission' see PARA 1041 note 6 ante.

5 For the meaning of 'supply' see PARA 1041 note 10 ante.

6 For the meaning of 'electricity interconnector' see PARA 1041 note 11 ante.

7 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Electricity Act 1989 s 43(2), (2A) (respectively substituted and added by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 18(1), (2); the Electricity Act 1989 s 43(2A) amended by the Energy Act 2004 s 147(1), (5)). So far as necessary for the purposes of, or in connection with, the Electricity Act 1989 s 43(2) (as so substituted) and s 43(2A) (as so added and amended), references in the Enterprise Act 2002 Pt 4 (as amended) to the OFT (including references in provisions of that Act applied by that Part) are to be construed as including references to the Authority (except in ss 166 and 171 and in any other provision of that Act where the context otherwise requires): Electricity Act 1989 s 43(2B) (as so added).

If any question arises in any particular case as to the jurisdiction of the Authority under any of the provisions mentioned in s 43(2A) (as added and amended) or s 42(3) (as substituted and amended) (see the text and notes 14-19 infra), that question must be referred to and determined by the Secretary of State; and no objection is to be taken to anything done under the Enterprise Act 2002 Pt 4 (as amended) or the Competition Act 1998 Pt I (ss 1-60) (as amended), other than ss 31D(1)-(6), 38(1)-(6) and 51 (as amended) by or in relation to the Authority on the ground that it should have been done by or in relation to the OFT: Electricity Act 1989 s 43(6) (amended by the Deregulation and Contracting Out Act 1994 ss 12(7), 81, Sch 4 para 3(b), Sch 17; the Competition Act 1998 s 54(2), Sch 10 para 4(8); the Enterprise Act 2002 s 168(9), 278(1), (2), Sch 9 Pt 2 para 18(1), (4), Sch 25 para 20(1), (7)(d), Sch 26; the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 3(1), (2)(c); and by virtue of the Utilities Act 2000 s 3(2)).

The Enterprise Act 2002 s 117 (as amended) (offences of supplying false or misleading information) as applied by s 180 (as amended) has effect so far as relating to functions exercisable by the Authority by virtue of the Electricity Act 1989 s 43(2) (as so substituted) as if the references in the Enterprise Act 2002 s 117(1)(a) (as amended) and s 117(2) to the Office of Fair Trading included references to the Authority: Electricity Act 1989 s 43(6A) (added by the Competition Act 1998 s 54(3), Sch 10 para 12(6); substituted by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 18(1), (5); amended by virtue of the Utilities Act 2000 s 3(2)).

9 Electricity Act 1989 s 43(4) (s 43(4) substituted, and s 43(4A) added, by the Enterprise Act 2002 s 168(9), Sch 9 Pt 2 para 18(1), (3)).

10 Electricity Act 1989 s 43(4A) (as added: see note 9 supra).

11 As to the Competition Commission see COMPETITION vol 18 (2009) PARAS 9-12; and as to the appointment of specialist members of the Commission to exercise functions relating to modification references under the Electricity Act 1989 s 12 (as amended) (see PARAS 1081-1082 ante), s 14A (as added and amended) (power to veto modification following report: see PARA 1085 ante) or s 56C (as added and amended) (references regarding licensable activities: see PARAS 1089-1090 ante) see the Utilities Act 2000 s 104 (as amended); and PARA 766 ante.

12 For the meaning of 'information' see PARA 1044 note 10 ante.

13 Electricity Act 1989 s 43(5) (amended by the Competition Act 1998, ss 54(2), 74(3), Sch 10, PARA 4(7), Sch 14, Pt I; the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506, art 24(b); and by virtue of the Utilities Act 2000 s 3(2)).

14 le functions under the Competition Act 1998 Pt I (ss 1-60) (as amended) (see COMPETITION vol 18 (2009) PARA 115 et seq), other than functions under s 31D(1)-(6) (as added) (guidance by the OFT), 38(1)-(6) (as amended) (the appropriate level of a penalty) and s 51 (as amended) (OFT's rules)).

15 le agreements, decisions or concerted practices of the kind mentioned in ibid s 2(1): see COMPETITION vol 18 (2009) PARA 116.

16 le conduct of the kind mentioned in ibid s 18(1): see COMPETITION vol 18 (2009) PARA 125.

17 le agreements, decisions or concerted practices of the kind mentioned in the EC treaty art 81(1).

18 le conduct which amounts to abuse of the kind mentioned in the EC Treaty art 82.

19 See the Electricity Act 1989 s 43(3) (substituted by the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 3(1), (2)(a); amended by the Energy Act 2004 s 147(1), (5)). See also note 8 supra. So far as necessary for the purposes of, or in connection with, the provisions of the Electricity Act 1989 s 43(3) (as so substituted), references in the Competition Act 1998 Pt I (as amended) to the OFT are to be read as including a reference to the Authority, except in s 31D(1)-(6) (as added), s 38(1)-(6), (as amended), s 51 (as amended), 52(6), (8) (as amended) (advice and information) and s 54 (as amended) (regulators) and in any other provision of that Act where the context otherwise requires: Electricity Act 1989 s 43(3A) (added by the Competition Act 1998 s 54(2), Sch 10 para 4(5); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (7)(c); the Competition Act 1998 and other enactments (Amendment) Regulations 2004, SI 2004/1261, reg 5, Sch 2 para 3(1), (2)(b); and by virtue of the Utilities Act 2000 s 3(2)).

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Maximum prices for reselling electricity.

C. CHARGES FOR ELECTRICITY

1142. Maximum prices for reselling electricity.

The Gas and Electricity Markets Authority ('GEMA')¹ may from time to time direct² that the maximum prices at which electricity supplied by authorised suppliers³ may be resold:

- 2581 (1) are to be such as may be specified in the direction; or
- 2582 (2) are to be calculated by such method and by reference to such matters as may be so specified⁴.

The authority must publish such directions in such manner as in its opinion will secure adequate publicity for them⁵.

A direction under these provisions may:

- 2583 (a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
- 2584 (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale is to be such as may be specified in the direction, or is to be reduced by such amount or such percentage as may be so specified⁶.

Different directions may be given under these provisions as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances⁷.

If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under such a direction and applicable to the resale, the amount of the excess and, if the direction so provides, interest on that amount at a rate specified or described in the direction, is to be recoverable by the person to whom the electricity was resold⁸.

¹ As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

² As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

³ For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

⁴ Electricity Act 1989 s 44(1)(a), (b) (s 44 substituted by the Utilities Act 2000 s 73(1)).

⁵ Electricity Act 1989 s 44(1) (as substituted: see note 4 supra). As to publication by the authority see PARA 1045 note 6 ante.

⁶ Ibid s 44(2) (as substituted: see note 4 supra).

⁷ Ibid s 44(3) (as substituted: see note 4 supra). As to the framing of classes generally see PARA 1051 note 4 ante.

8 Ibid s 44(4) (as substituted: see note 4 supra).

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Adjustment of charges to help disadvantaged groups of customers.

1143. Adjustment of charges to help disadvantaged groups of customers.

If the Secretary of State¹ considers that members of any group (a 'disadvantaged group') of customers² of authorised suppliers³ are treated less favourably than other customers of theirs as respects charges for electricity, he may make an order containing a scheme for the adjustment of charges for electricity with a view to eliminating or reducing the less favourable treatment⁴. The scheme may include:

- 2585 (1) provision for the adjustment of charges by authorised distributors⁵ or authorised transmitters⁶ as well as by suppliers;
- 2586 (2) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group, as well as by persons who are⁷.

The scheme must:

- 2587 (a) describe the disadvantaged group;
- 2588 (b) specify the persons whose charges are covered by the scheme; and
- 2589 (c) set out the basis of the adjustment of the charges⁸;

and if the scheme does not relate to the whole of Great Britain⁹, it must specify the area or areas to which it relates¹⁰.

The scheme may:

- 2590 (i) require authorised suppliers, authorised distributors or authorised transmitters to supply information¹¹ of any specified description, in any specified form, to any other such persons; and
- 2591 (ii) provide for the modification¹² of the conditions of licences¹³,

for the purpose of facilitating the implementation of the scheme¹⁴.

Before making such an order, the Secretary of State must give notice¹⁵:

- 2592 (A) stating that he proposes to make an order and setting out its effect;
- 2593 (B) stating the reasons why he proposes to make the order; and
- 2594 (C) specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections with respect to the proposed order may be made,

and must consider any representations or objections which are duly made and not withdrawn¹⁶. The notice must be given by serving a copy of it on the persons whose charges are covered by the proposed order and by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed order to the attention of other persons likely to be affected by it¹⁷. An order may not be made under these provisions unless a draft of the

statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament¹⁸. The Secretary of State may by order require authorised suppliers, authorised distributors or authorised transmitters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of such an order¹⁹.

Such an order is to continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period²⁰.

The authority must monitor the effect of such orders and report its findings to the Secretary of State whenever he directs it to do so²¹. It may require authorised suppliers, authorised distributors or authorised transmitters to supply to the authority, in any specified form, such information as it requires for carrying out that duty²².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, references to customers do not include customers of a description excluded by an order made by the Secretary of State: Electricity Act 1989 s 43B(6) (ss 43A, 43B added by the Utilities Act 2000 s 69).

3 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

4 Electricity Act 1989 s 43A(1) (as added: see note 2 supra).

5 For the meaning of 'authorised distributor' see PARA 1094 note 8 ante.

6 For these purposes, 'authorised transmitter' means a person authorised by a licence or exemption to participate in the transmission of electricity: Electricity Act 1989 s 43B(7) (as added (see note 2 supra); amended by the Energy Act 2004 s 143(1), Sch 19 paras 3, 13). For the meaning of 'licence' see PARA 1041 note 12 ante; for the meaning of 'exemption' see PARA 1046 note 7 ante; and for the meaning of references to participating in the transmission of electricity see PARA 1050 ante.

7 Electricity Act 1989 s 43A(2) (as added: see note 2 supra).

8 Ibid s 43A(3) (as added: see note 2 supra).

9 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

10 Electricity Act 1989 s 43A(4) (as added: see note 2 supra).

11 For the meaning of 'information' see PARA 1044 note 10 ante.

12 For the meaning of 'modification' see PARA 1035 note 3 ante.

13 As to licence conditions and their modification see PARA 1068 et seq ante.

14 Electricity Act 1989 s 43A(5) (as added: see note 2 supra).

15 For the meaning of 'notice' see PARA 1047 note 11 ante.

16 Electricity Act 1989 s 43B(1) (as added: see note 2 supra).

17 Ibid s 43B(2) (as added: see note 2 supra). As to the service of notices see PARA 1307 post.

18 Ibid s 43A(6) (as added: see note 2 supra).

19 Ibid s 43B(4) (as added: see note 2 supra).

20 Ibid s 43B(3) (as added: see note 2 supra).

21 Ibid s 43B(5)(a) (as added: see note 2 supra).

22 Ibid s 43B(5)(b) (as added: see note 2 supra).

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D. BILLING DISPUTES AND INVESTIGATION OF COMPLAINTS

1144. Billing disputes.

Power is prospectively conferred on the Secretary of State¹ to make provision by regulations² for billing disputes³ to be referred to the Gas and Electricity Markets Authority ('GEMA')⁴ for determination in accordance with the regulations⁵. Such regulations may only be made after consulting the Authority and persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by those regulations⁶.

Such regulations may provide:

- 2595 (1) that, where a billing dispute is referred to the Authority, it may either determine the dispute, or appoint an arbitrator to determine it⁷;
- 2596 (2) that disputes may be referred to the Authority only by prescribed⁸ persons⁹; and
- 2597 (3) for any determination to be final and enforceable in England and Wales as if it were a judgment of a county court¹⁰.

Any person determining any billing dispute in accordance with such regulations must, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute¹¹.

Except in such circumstances, if any, as may be prescribed, the Authority or an arbitrator appointed by the Authority may not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court¹²; and neither party to a billing dispute which has been referred to the Authority for determination in accordance with such regulations may commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations¹³.

As from a day to be appointed¹⁴, no electricity supplier may commence proceedings before any court in respect of any charge in connection with the provision by him of electricity supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner as may be prescribed, of his intention to commence proceedings, of the customer's rights by virtue of the above provisions and of such other matters, if any, as may be prescribed¹⁵.

The Authority's powers to require information¹⁶ or documents in respect of any contravention of a licence condition or a requirement imposed on the holder of a licence¹⁷ are also exercisable for any purpose connected with the determination of any dispute referred to the Authority in accordance with regulations made under the above provisions¹⁸.

¹ le by the Electricity Act 1989 s 44A (added by the Competition and Service (Utilities) Act 1992 s 23 as from a date to be appointed under s 56(3); and subsequently amended (see notes 3, 5, 15 infra)). At the date at which this title states the law, no such day had been appointed and these provisions had not been brought into force. As to the Secretary of State see PARA 601 note 1 ante.

² As to regulations generally see the Electricity Act 1989 ss 60, 106 (as amended); and PARA 1306 post.

3 For these purposes, 'billing dispute' means a dispute between an electricity supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of electricity supply services: Electricity Act 1989 s 44A(2) (as added (see note 1 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 36(1), (2)(a)). For the meaning of 'electricity supplier' see PARA 1065 note 7 ante; and for the meaning of 'supply' see PARA 1041 note 10 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Electricity Act 1989 s 44A(1) (as added (see note 1 supra); s 44A(1), (3), (4), (6), (7), (9) amended by virtue of the Utilities Act 2000 s 3(2)). At the date at which this title states the law, no such regulations had been made.

6 Electricity Act 1989 s 44A(3) (as added and amended: see notes 1, 5 supra).

7 Ibid s 44A(4) (as added and amended: see notes 1, 5 supra).

8 For the meaning of 'prescribed' see PARA 1096 note 11 ante.

9 Electricity Act 1989 s 44A(6)(a) (as added and amended: see notes 1, 5 supra).

10 Ibid s 44A(6)(b)(i) (as added and amended: see notes 1, 5 supra).

11 Ibid s 44A(5) (as added: see note 1 supra).

12 Ibid s 44A(7)(a) (as added and amended: see notes 1, 5 supra).

13 Ibid s 44A(7)(b) (as added and amended: see notes 1, 5 supra).

14 See note 1 supra.

15 Ibid s 44A(8) (as added (see note 1 supra); amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 36(1), (3)).

16 For the meaning of 'information' see PARA 1044 note 10 ante.

17 Ie the Authority's powers under the Electricity Act 1989 s 28 (as amended): see PARA 1214 post. For the meaning of 'licence' see PARA 1041 note 12 ante.

18 Ibid s 44A(9) (as added and amended: see notes 1, 5 supra).

UPDATE

1144 Billing disputes

TEXT AND NOTES--As to 'Article 23 disputes' see PARA 1144A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iii) Consumer Protection/D. BILLING DISPUTES AND INVESTIGATION OF COMPLAINTS/1144A. Article 23 disputes.

1144A. Article 23 disputes.

An Article 23 dispute, other than one which may be referred to the Authority (the Gas and Electricity Markets Authority; see PARA 965) under or by virtue of any other provision of the Electricity Act 1989, may be referred to the Authority under s 44C by the person who is the complainant in relation to the dispute: s 44C(1) (ss 44B-44D added by SI 2009/1349). An Article 23 dispute referred to the Authority under the Electricity Act 1989 s 44C must be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator appointed by the Authority: s 44C(2). The practice and procedure to be followed in connection with an Article 23 dispute referred to the Authority under s 44C are to be such as the Authority may consider appropriate: s 44C(3). An order under s 44C (1) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and (2) will be final: s 44C(4). The provision that may be included in an order under s 44C by virtue of head (1) includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order ('costs provision'): s 44C(5). In including costs provision in an order under s 44C, the person making the order must have regard to the conduct and means of the parties and any other relevant circumstances: s 44C(6). Costs provision included in an order under s 44C is to be enforceable as if it were a judgment of the county court: s 44C(7). Sections 25-28 (see PARAS 1207-1214) are to have effect as if references in those provisions to a relevant requirement, other than the reference in s 25(8) included references to any duty or other requirement imposed on the holder of a licence mentioned in s 44B(1)(b) by an order under s 44C: s 44C(8).

An order determining an Article 23 dispute, whether made under s 44C or made under or by virtue of any other provision of the Electricity Act 1989, must be made within the permitted period: s 44D(1). The permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority: s 44D(2). Where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period by two months, or with the agreement of the complainant, by a longer period: s 44D(3). The person determining a dispute to which s 44D(5) applies (a) may by giving notice to the parties specify a permitted period that is longer than two months; (b) may extend the period specified under head (a), or the period as extended under this head, by giving further notice to the parties: s 44D(5). Section 44D(5) applies to a dispute that relates to connection charges for a generating station, or an extension of a generating station, where the station or extension is being used for the first time and is of a capacity not less than 100 megawatts: s 44D(4). If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice specifying information which it requires in order to assess whether the dispute is an Article 23 dispute, or whether there is a dispute at all, and requesting the person to provide that information, the dispute must be treated for the purposes of s 44D(2) as not referred to the Authority until the information is provided: s 44D(6).

For the purposes of ss 44C, 44D a dispute is an 'Article 23 dispute' if (i) it is wholly or mainly a dispute with respect to an issue mentioned in European Parliament and EC Council Directive 2003/54 (see PARA 653) art 23(1), (2) or (4); and (ii) it arises from a written complaint made against the holder of a transmission licence, a distribution licence, or an interconnector licence, and is a dispute between the complainant and the person complained against: Electricity Act

1989 s 44B(1). The reference in head (ii) to a complaint does not include a reference to a complaint about a modification, or failure to make a modification, of a term or condition of the licence held by the person complained against, or an obligation or right contained in any code or other document and having effect by virtue of such a term or condition, or a complaint made by a person as a household customer or potential household customer: s 44B(2). 'Household customer' has the meaning given by Directive 2003/54 art 2(1); Electricity Act 1989 s 44B(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iii) Consumer Protection/D. BILLING DISPUTES AND INVESTIGATION OF COMPLAINTS/1145. Consumer complaints.

1145. Consumer complaints.

The following provisions apply to a complaint which any customer or potential customer of, or user of electricity supplied¹ by, an authorised supplier² ('the complainant') has in his capacity as such against:

- 2598 (1) the supplier, in respect of any matter connected with the services provided by him in the course of carrying on regulated activities³; or
- 2599 (2) any other person authorised by a licence⁴ or exemption⁵, in respect of any matter affecting those services which is connected with the carrying on by that other person of regulated activities⁶.

Where such a complaint, other than one appearing to it to be frivolous or vexatious, is referred to the Gas and Electricity Consumer Council⁷ by or on behalf of the complainant, the Council must⁸ investigate the complaint for the purpose of determining whether it is appropriate to take⁹ any action¹⁰. Where it appears to the Council that the complaint relates to a matter in respect of which any enforcement function¹¹ is or may be exercisable the Council must, unless it considers that the Gas and Electricity Markets Authority ('GEMA')¹² already has notice of that matter, inform the Authority of the matter¹³; and where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority under any provision of Electricity Act 1989, the Council must inform the complainant that he may have the right to refer the dispute to the Authority¹⁴. The Council is not, however, required by these provisions:

- 2600 (a) to investigate a complaint, until the complainant has taken such steps as appear to the Council to be reasonable for him to take for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with the complaint;
- 2601 (b) to investigate any matter in respect of which any enforcement function is or may be exercisable¹⁵, until the Authority has had a reasonable opportunity to exercise any enforcement function in respect of that matter; and
- 2602 (c) to investigate any matter constituting a dispute which has been referred to the Authority under any provision of the Electricity Act 1989¹⁶.

Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under the above provisions, the Council must make representations on behalf of the complainant to the person against whom the complaint is made about anything to which the complaint relates¹⁷. After investigating a complaint the Council may make a report to the Authority; and such a report may include information about any representations so made by the Council and the response of the person against whom the complaint is made to the complaint or any such representations¹⁸. No such report, or information about a complaint referred to the Council under these provisions from which the complainant may be identified, must be published or disclosed by the Council or the Authority in the exercise of any power under the Utilities Act 2000 or the Electricity Act 1989 without the consent of the complainant¹⁹.

Where a representation made to the Authority about any matter, other than one appearing to it to be frivolous or vexatious, appears to the Authority to be about a matter which is or amounts to a complaint to which the above provisions apply, and to have been made by or on behalf of the complainant, the Authority must refer the complaint to the Council²⁰.

As from a day to be appointed²¹, the provisions set out above are repealed²² and new arrangements for dealing with consumer complaints under the Consumers, Estate Agents and Redress Act 2007 will be introduced²³.

1 For the meaning of 'supply' see PARA 1041 note 10 ante.

2 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

3 For these purposes, 'regulated activities' means activities which are authorised or regulated by a licence or exemption: Electricity Act 1989 s 46(10) (s 46 substituted by the Utilities Act 2000 s 22(2)).

4 For the meaning of 'licence' see PARA 1041 note 12 ante.

5 For the meaning of 'exemption' see PARA 1046 note 7 ante.

6 Electricity Act 1989 s 46(1) (as substituted: see note 3 supra).

7 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

8 Ie subject to the Electricity Act 1989 s 46(5) (as substituted): see the text and notes 15-16 infra.

9 Ie under ibid s 46(6) (as substituted): see the text and note 17 infra.

10 Ibid s 46(2) (as substituted: see note 3 supra).

11 For these purposes, 'enforcement function' means a function under ibid s 25 (as amended) (see PARA 1207 post) or s 27A (as added) (see PARA 1212 post): s 46(10) (as substituted: see note 3 supra).

12 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

13 Electricity Act 1989 s 46(3) (as substituted: see note 3 supra).

14 Ibid s 46(4) (as substituted: see note 3 supra). As to the reference of disputes to the Authority see s 44A (as prospectively added and as amended); and PARA 1144 ante; s 23 (as amended); and PARA 1100 ante.

15 Ie any matter to which ibid s 46(3) (as substituted) applies: see the text and notes 11-13 supra.

16 Ibid s 46(5) (as substituted: see note 3 supra).

17 Ibid s 46(6) (as substituted: see note 3 supra).

18 Ibid s 46(7) (as substituted: see note 3 supra).

19 Ibid s 46(8) (as substituted: see note 3 supra).

20 Ibid s 46(9) (as substituted: see note 3 supra).

21 Ie as from a day to be appointed under the the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.

22 See ibid s 64, Sch 8 (not in force).

23 See ibid Pt 2 (ss 42-52) (not in force). For transitional provisions see s 30(5), Sch 3 para 2 (not in force).

UPDATE

1145 Consumer complaints

TEXT AND NOTES 21-23--Provisions of Consumers, Estate Agents and Redress Act 2007 cited all in force by 1 October 2008: SI 2007/3546, SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iii) Consumer Protection/D. BILLING DISPUTES AND INVESTIGATION OF COMPLAINTS/1146. Power of the Gas and Electricity Consumer Council to investigate other matters.

1146. Power of the Gas and Electricity Consumer Council to investigate other matters.

The Gas and Electricity Consumer Council¹ may investigate any matter, not being a matter which it is its duty to investigate², which appears to it to be a matter relating to the interests of consumers in relation to electricity conveyed by distribution systems³ or transmission systems⁴.

Where the Council has investigated a matter under the above provisions it may make a report on that matter to the Gas and Electricity Markets Authority ('GEMA')⁵, the Secretary of State⁶, the Office of Fair Trading⁷ or any other public authority whose functions appear to the Council to be exercisable in relation to that matter⁸. The Council may⁹ also:

- 2603 (1) send a report on any matter so investigated to any person who appears to the Council to have an interest in that matter; and
- 2604 (2) publish any such report in such manner as the Council thinks appropriate¹⁰.

Information¹¹ which relates to the affairs of any particular individual or body of persons, corporate or unincorporate:

- 2605 (a) must not be included in a report which is to be sent to any person under head (1) above, unless one or more of heads (i) to (iii) below applies; and
- 2606 (b) must be excluded from any such report which is to be published under head (2) above, unless one or more of heads (A) to (c) below applies¹².

Information relating to a particular individual or body may, however, be included in a report to be sent under head (1) above if:

- 2607 (i) that individual or body has consented to the disclosure;
- 2608 (ii) it is information that is available to the public from some other source; or
- 2609 (iii) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body¹³;

and information relating to a particular individual or body may be included in a report to be published under head (2) above if:

- 2610 (A) that individual or body has consented to the publication;
- 2611 (B) it is information that is available to the public from some other source; or
- 2612 (C) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body¹⁴.

Before deciding to include in such a report any information relating to a particular individual or body in pursuance of head (iii) above or head (c) above, the Council must consult that individual or body¹⁵ and must have regard to any opinion expressed by the Authority as to the application of head (iii) above or head (c) above to the information or as to the desirability or otherwise of its inclusion in the report¹⁶.

As from a day to be appointed¹⁷, the provisions set out above are repealed¹⁸ and the National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 will have new investigatory powers¹⁹.

1 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

2 I.e. its duty to investigate under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1152 et seq post. As to the duty to investigate consumer complaints see PARA 1145 ante.

3 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

4 Electricity Act 1989 s 46A(1) (s 46A added by the Utilities Act 2000 s 23(2); the Electricity Act 1989 s 46A(1) amended by the Energy Act 2004 s 179(2), (3)(b)). For the meaning of 'transmission system' see PARA 1041 note 6 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 As to the Office of Fair Trading see COMPETITION vol 18 (2009) PARAS 6-8.

8 Electricity Act 1989 s 46A(2) (as added (see note 4 supra); amended by the Enterprise Act 2002 s 278(1), Sch 25 para 20(1), (8)).

9 I.e. subject to the Electricity Act 1989 s 46A(4) (as added): see the text and notes 11-12 infra.

10 Ibid s 46A(3) (as added: see note 4 supra).

11 For the meaning of 'information' see PARA 1044 note 10 ante.

12 Electricity Act 1989 s 46A(4) (as added: see note 4 supra).

13 Ibid s 46A(5) (as added: see note 4 supra).

14 Ibid s 46A(6) (as added: see note 4 supra).

15 Ibid s 46A(7)(a) (as added: see note 4 supra).

16 Ibid s 46A(7)(b) (as added: see note 4 supra). Section 46A(7)(b) (as so added) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information: s 46A(7) (as so added).

17 I.e. as from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2). At the date at which this title states the law, no such day had been appointed.

18 See *ibid* s 64, Sch 8 (not in force).

19 See *ibid* ss 11-15 (not in force). For transitional provisions see s 30(5), Sch 3 para 2 (not in force).

UPDATE

1146 Power of the Gas and Electricity Consumer Council to investigate other matters

TEXT AND NOTES 17-19--Provisions of Consumers, Estate Agents and Redress Act 2007
cited in force 1 October 2008: SI 2008/2550.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iii) Consumer Protection/E. ELECTRICAL APPLIANCES/1147. Consumer protection; in general.

E. ELECTRICAL APPLIANCES

1147. Consumer protection; in general.

Requirements for the protection of consumers in respect of the supply¹ of electrical appliances are laid down in regulations made by the Secretary of State² under the Consumer Protection Act 1987³. Contravention of the regulations is an offence punishable on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both⁴; and is also a ground for a civil claim⁵. Where such an offence by a body corporate is committed with the consent or connivance of, or is attributable to the neglect of, any director or officer, he, as well as the body corporate, is deemed to be guilty of the offence⁶. Where the commission of such an offence by any person is due to the act or default of another person, that other person will be guilty of an offence and may be proceeded against as well as, or instead of, the first-mentioned person⁷.

Electricity is a 'product' for the purposes of the Consumer Protection Act 1987⁸.

1 As to the meaning of 'supply' in this context see the Consumer Protection Act 1987 ss 45, 46 (as amended); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 523. Safety is not specifically defined but see s 3(1) (safety in relation to a product); s 19(1) (as amended) ('safe' in relation to goods); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 522, 535.

2 See the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260 (as amended); the Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768; and PARA 1148 et seq post. See also the Heating Appliances (Fireguards) (Safety) Regulations 1991, SI 1991/2693 (revoked except with regard to certain secondhand appliances); and PARA 782 ante; and European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) on the harmonisation of the laws of member states relating to electrical equipment designed for use within certain voltage limits.

3 Ie under the Consumer Protection Act 1987 s 11 (as amended). As to the Secretary of State see PARA 601 note 1 ante.

4 See *ibid* s 12. As to the standard scale see PARA 613 note 11 ante.

5 See *ibid* s 41.

6 *Ibid* s 40(2).

7 *Ibid* s 40(1).

8 See *ibid* s 1(2). Liability under Pt I (ss 1-9) (as amended) in respect of a product is strict. See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 518 et seq.

UPDATE

1147 Consumer protection; in general

NOTE 5--Consumer Protection Act 1987 s 41 amended: SI 2008/1277.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iii) Consumer Protection/E. ELECTRICAL APPLIANCES/1148. Safety of low-voltage equipment.

1148. Safety of low-voltage equipment.

Any electrical equipment, including any electrical apparatus or device, to which the following provisions apply¹ and which is designed or adapted for use with voltage of not less than 50 nor more than 1,000 volts in the case of alternating current or with voltage of not less than 75 volts nor more than 1,500 volts in the case of direct current must be safe² and constructed in accordance with principles generally accepted within member states of the European Community as constituting good engineering practice in relation to safety matters³. In particular, it must be designed and constructed to ensure that it is safe when connected to the electricity supply system by providing a level of protection against electric shock⁴ which relies on a combination of insulation and the protective earthing conductor contained within the electricity supply system or which achieves that level of protection by other means⁵. It must also be in conformity with the principal elements of the prescribed safety objectives⁶ for electrical equipment⁷.

The following electrical equipment is taken to satisfy the above requirements:

- 2613 (1) equipment which satisfies the safety provisions of harmonised standards⁸;
- 2614 (2) where there are no relevant harmonised standards, equipment which satisfies international safety provisions⁹;
- 2615 (3) where there are no relevant harmonised standards and no relevant international safety provisions, equipment which has been manufactured in accordance with the national safety provisions¹⁰ applicable to that equipment in a member state with the result that at the time the equipment is supplied in the United Kingdom¹¹ it is at least as safe as it would be if it satisfied the above requirements¹².

Where the conformity of any electrical equipment with the safety requirements¹³ is called into question, whether in any proceedings or otherwise, any report prepared by a notified body¹⁴ may be relied upon for the purpose of establishing that the equipment does in fact satisfy those requirements and due regard must be had to any such report by any person or court by whom or by which the question of conformity falls to be determined¹⁵.

The manufacturer of electrical equipment or his authorised representative¹⁶ must:

- 2616 (a) affix to all electrical equipment to which these provisions apply¹⁷ (or to their packaging, instruction sheet or guarantee certificate) in a visible, easily legible and indelible form the prescribed CE marking¹⁸ by way of confirmation that the electrical equipment conforms with all the safety requirements¹⁹ which relate to it²⁰;
- 2617 (b) draw up in respect of all electrical equipment to which these provisions apply a written declaration of conformity which must comprise the specified²¹ information²².

The manufacturer must also compile the prescribed technical documentation²³ and keep it for a period of at least ten years after manufacture of electrical equipment of that model has ceased, together with the declaration of conformity referred to in head (b) above, available for

inspection by an enforcement authority²⁴ or any of its officers²⁵ and every manufacturer of electrical equipment must ensure that his manufacturing process produces electrical equipment which conforms to the prescribed technical documentation²⁶. Neither these duties nor the duties under heads (a) and (b) above, however, apply in relation to electrical equipment which (i) has previously been supplied to an end user²⁷; or (ii) is supplied solely by virtue of its being hired out, whether in connection with the supply of other goods and services or otherwise, provided that it satisfies the provisions of head (i) above²⁸. Subject to these exclusions, no person must supply any electrical equipment in respect of which the prescribed requirements²⁹ are not satisfied³⁰.

These provisions do not apply to any secondhand electrical equipment which was placed on the market before 1 January 1997 and which complies with the provisions of the Low Voltage Electrical Equipment (Safety) Regulations 1989³¹. The 1989 regulations impose safety requirements with regard to certain low-voltage electrical equipment³², provide for the deemed satisfaction of those requirements³³ and prohibit the supply of electrical equipment in contravention of those requirements³⁴.

1 Ie equipment to which the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, apply by virtue of reg 4: reg 3(1). Those regulations apply to any electrical equipment, including any electrical apparatus or device, designed or adapted for use with the voltages specified in the text: reg 4(1). They do not, however, apply to (1) equipment for use in an explosive atmosphere; (2) equipment for radiology and medical purposes; (3) parts for goods lifts and passenger lifts; (4) electricity supply meters; (5) plugs and socket outlets for domestic use; (6) fence controllers; (7) specialised electrical equipment for use on ships, aircraft or railways, which complies with the safety provisions drawn up by international bodies in which the member states participate: reg 4(2), Sch 2. Nor do they apply to any electrical equipment supplied for export to a place which is not within any member state: reg 4(3). Further, regs 1-4 (as amended), 6, 8-18, Schs 1, 2, Schs 4, 5 are revoked, in relation to radio equipment or telecommunications terminal equipment, or both: see the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000, SI 2000/730, reg 1(3) (amended by SI 2005/281). As to the apparatus to which those 2000 Regulations apply see TELECOMMUNICATIONS vol 97 (2010) PARA 192. For the purposes of the 1994 Regulations, 'member state' means a state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992) ('the EEA Agreement') as adjusted by the Protocol signed at Brussels on 17 March 1993: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1).

2 Ibid regs 4(1), 5(1)(a). 'Safe' has the same meaning as in the Consumer Protection Act 1987 s 19(1) (as amended) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 535) except that for these purposes the references therein to 'risk' are to be construed as including references to any risk of death or injury to domestic animals and damage to property, and as excluding any risk arising from the improper installation or maintenance of the electrical equipment in question or from the use of the equipment in applications for which it is not made: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1).

3 Ibid reg 5(1)(b).

4 Any reference for these purposes to an electric shock is a reference to an electric shock of such severity as to be liable to cause death or personal injury: ibid reg 3(1).

5 Ibid reg 5(1)(b).

6 Ie the principal elements of the safety objectives set out in ibid reg 5(1)(c), Sch 3: reg 5(1)(c). Those elements comprise (1) general conditions (see Sch 3 para 1(a)-(d)); (2) protection against hazards arising from electrical equipment (see Sch 3 para 2(a)-(d)); and (3) protection against hazards which may be caused by external influences on the electrical equipment (see Sch 3 para 3(a)-(c)).

7 Ibid reg 5(1)(c). In determining whether electrical equipment satisfies the requirements of reg 5(1), no regard is to be had to any liability of the equipment to cause radio-electrical interference (reg 5(2)); and in determining whether electrical equipment which (1) has previously been supplied to any end user; and (2) is supplied solely by virtue of its being hired out whether in connection with the supply of other goods and services or otherwise, provided that it satisfies the requirements of head (1) supra, satisfies the requirements of reg 5(1), no regard is to be had to general condition 1(b) (ie Sch 3 para 1(b)) (reg 5(3)). 'End user' means the consumer, which expression includes an industrial and commercial consumer; and 'supply', except in reference to the electricity supply, includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions are to be construed accordingly: reg 3(1).

8 Ibid reg 6. Such equipment is not, however, to be taken to comply with the requirements of reg 5(1) if there are reasonable grounds for suspecting that it does not in fact so comply: reg 6. 'Safety provision' means a provision made for the purpose of ensuring that the equipment in question is safe; and 'harmonised standard' means a standard harmonised in accordance with European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 5): Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1); European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 14, Annex VI.

9 Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 7(1). Such equipment is not, however, to be taken to comply with the requirements of reg 5(1) if there are reasonable grounds for suspecting that it does not in fact so comply: reg 7(1). 'International safety provision' means a safety provision of a standard which has been published by the International Commission on the Rules for the Approval of Electrical Equipment or the International Electrotechnical Commission and which has been published in the Official Journal pursuant to European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 6): Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1); European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 14, Annex VI.

10 'National safety provision' means a safety provision which has the force of law in a member state of the Community or which is contained in a standard published and not withdrawn by a national standards body, not being a safety provision which is to the same effect as a safety provision of a harmonised standard or as an international safety provision: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1). 'The Community' means the European Economic Community and other states in the European Economic Area; and 'national standards body' means a body which has been notified under European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 11 for the purposes of art 5: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 3(1); European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 14, Annex VI.

11 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

12 Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 7(2). Such equipment is not, however, to be taken to comply with the requirements of reg 5(1) if there are reasonable grounds for suspecting that it does not in fact so comply: reg 7(2). For the purposes of reg 7(2), a national safety provision is applicable to equipment in a particular member state if the provision has the force of law in that member state or the national standards body publishing it has its principal office there, and the equipment was not manufactured in any other member state: reg 3(2).

13 Ie the requirements of ibid reg 5(1): see the text and notes 2-7 supra.

14 Ie a body notified in accordance with the procedure set out in European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 11 for the purpose of art 8.2: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 8; European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 14, Annex VI.

15 Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 8.

16 'Authorised representative' means a representative established within the Community appointed by a manufacturer of electrical equipment to act on his behalf in relation to the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260: reg 3(1).

17 See note 1 supra.

18 Ie the CE marking as shown in the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 9(1), Sch 1: reg 9(1). 'CE marking' means the CE conformity marking referred to in reg 9 consisting of the initials 'CE' taking the form of the specimen given in Sch 1: reg 3(1).

19 Ie all the requirements of the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260: reg 9(1).

20 Ibid reg 9(1). Where, however, electrical equipment is subject to other legally binding Community provisions which also provide for the affixing of the CE marking, the latter is to be taken to indicate conformity with the requirements of such provisions: reg 9(3)(a). Where such a Community provision allows the manufacturer, during a transitional period, a choice of arrangements, the CE marking indicates conformity only in respect of those requirements of the provision which are applied by the manufacturer and particulars of the provisions as published in the Official Journal must be given in the documents, notices or instructions which are required by the provisions and accompany the electrical equipment: reg 9(3)(b).

No person must affix to electrical equipment any markings liable to deceive third parties as to the meaning and form of the CE marking affixed in accordance with the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, or which reduces the visibility or legibility of the CE markings so affixed: reg 9(2). Except in the case of electrical equipment which in the opinion of the enforcement authority is likely to jeopardise the safety or health of any person, where an enforcement authority has reasonable grounds for suspecting that the affixing

of the CE marking to electrical equipment to which the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, apply involves a contravention of those regulations or any part of them, it may serve a notice (a 'compliance notice') on the manufacturer of that electrical equipment or his authorised representative established in the Community and in such a case the Consumer Protection Act 1987 ss 13, 14 or 16 (as amended) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 544 et seq) or the Health and Safety at Work etc Act 1974 ss 21 or 22 (as amended) (improvement notices and prohibition notices: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 377, 378) are not to be applied until such a notice has been so served and the person upon whom it has been served has failed to comply with its requirements: Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, regs 3(1), 13(1). For further provisions as to compliance notices see reg 13(2), Sch 5. An 'enforcement authority' means (1) an authority or council on which a duty is imposed by virtue of the Consumer Protection Act 1987 s 27 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 555) (see the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 15); or (2) in relation to electrical equipment designed (a) for use or operation, whether exclusively or not, by persons at work; and (b) for use, otherwise than at work, in non-domestic premises made available to persons at a place where they may use the equipment provided for their use there, the Health and Safety Executive (see reg 17(3), (4)). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

A person who supplies electrical equipment which does not bear the CE marking laid down in reg 9(1) must, on his being required at a reasonable time to give such information, give to an enforcement authority or the Health and Safety Executive all the information he has about the date when the equipment was first supplied in the Community, and the basis on which it does not bear the CE marking and information: reg 18.

21 The specified information comprises: (1) the name and address of the manufacturer or his authorised representative; (2) a description of the electrical equipment; (3) a reference to the harmonised standards; (4) where appropriate, references to the specifications with which conformity is declared; (5) identification of the signatory who has been empowered to enter into commitments on behalf of the manufacturer or his authorised representative; and (6) the last two digits of the year in which the CE marking was affixed: *ibid* reg 10(a)-(f).

22 *Ibid* reg 10.

23 *Ie* the technical documentation listed in *ibid* reg 11(1), Sch 4: reg 11(1).

24 For these purposes, an enforcement authority includes, where appropriate, the Health and Safety Executive: reg 11(1).

25 *Ibid* reg 11(1). Where the manufacturer is not established in the Community, the technical documentation must be kept by the manufacturer's authorised representative (reg 11(2)); and where he is established outside the Community and has no authorised representative in the Community, the technical documentation must be kept by the person who supplied the electrical equipment on the first occasion that it is supplied in the Community (reg 11(3)).

26 *Ibid* reg 11(4).

27 *Ibid* reg 12(a).

28 *Ibid* reg 12(b).

29 *Ie* the requirements of the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, regs 5(1) and 9(1): reg 14(1). For these purposes, a supply includes the provision of electrical equipment by a manufacturer for use in his own premises and where a supply consists solely of such provision reg 14(1) applies to the supply as if the words 'and 9(1)' were omitted: reg 14(2).

30 *Ibid* reg 14(1). Where a contravention of reg 14 arises from the supply of electrical equipment which fails to satisfy the requirements of reg 5(1) or of goods which would cause the relevant equipment to contravene those requirements because there is in each case a risk of death or injury to domestic animals or damage to property, or both, but no risk of the death of a person or of personal injury, the person who contravenes reg 14 is guilty of an offence punishable on summary conviction with imprisonment for not more than three months or with a fine not exceeding level 5 on the standard scale: reg 17(2). As to the standard scale see PARA 613 note 11 ante. Subject to reg 17(2), the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, are to be treated for all purposes as if they were safety regulations within the meaning of the Consumer Protection Act 1987 s 45(1) (as amended): Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 17(1). A person guilty of any other contravention of reg 14 is therefore liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both: reg 17(1) (applying the Consumer Protection Act 1987 s 12(1), (5)). For the application of the regulations to certain electrical equipment used at work or in other non-domestic premises see the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 17(3)-(5).

Where action has been taken by the Health and Safety Executive to prohibit or restrict the supply of any electrical equipment which bears the CE marking, the Executive must forthwith inform the Secretary of State of the action taken and the reason for it: reg 17(6). As to the Secretary of State see PARA 601 note 1 ante.

31 Ibid reg 4(4).

32 See the Low Voltage Electrical Equipment (Safety) Regulations 1989, SI 1989/728, regs 3-5 (revoked except in relation to electrical equipment to which the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, do not apply by virtue of reg 4(4): see the text and note 31 supra).

33 See the Low Voltage Electrical Equipment (Safety) Regulations 1989 regs 6-10 (revoked subject to savings: see note 32 supra).

34 See ibid regs 12-14 (revoked subject to savings: see note 32 supra).

UPDATE

1148 Safety of low-voltage equipment

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1149. Safety of plugs and sockets.

No person may supply, offer for supply, agree to supply, expose for supply or possess for supply an electrical device to which these provisions apply¹ unless it complies with the appropriate safety requirements².

A standard plug must contain or be accompanied by a fuse link which conforms to the prescribed British Standard³. It must be of a type approved by a notified body and in respect of which such approval has not been cancelled⁴. Any other electrical device⁵ must conform to the particular British Standard specified⁶ for such devices⁷; and any fuse link contained in or accompanying a round-pin plug conforming to the prescribed British Standard⁸ must conform to the appropriate standard⁹.

1 The Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, Pt I (regs 4-10) (see the text and notes 2-9 *infra*) applies to (1) any plug, socket or adaptor ordinarily intended for domestic use at a voltage of not less than 200 volts; (2) any fuse link which is suitable for use in any such plug being a standard plug; and (3) any cartridge fuse link which is suitable for use in any other plugs and adaptors: reg 4(1). Part I does not, however, apply to (a) any plug, socket or adaptor which incorporates any other electrical device, other than a fuse link, switch or indicator light; (b) any plug or socket forming part of a ceiling-rose connector designed to hold up overhead electric lighting fittings; (c) any plug or socket forming part of a luminaire comprising a track system for electric lights and their fittings; (d) any non-UK plug supplied loose which is manufactured to comply with the safety provisions of IEC 884-1 (ie the International Electrochemical Commission standard for plugs and socket-outlets for household and similar purposes published in 1987 and amended in June 1988 and November 1991) and which is marked with or accompanied by a warning that it is not suitable for connection to a mains socket in the United Kingdom; (e) any non-rewirable or any moulded-on Europlug conforming with BS EN 50075 (published by the British Standards Institution on 20 December 1991) which is designed for the purpose of connecting to a shaver supply unit conforming to BS 3535 Pt I (published on 31 August 1990) any electrical shaver, toothbrush or similar appliance; or (f) any travel adaptor, ie an adaptor which enables a plug designed for use in the United Kingdom to be connected to a socket used elsewhere: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, regs 3(1), 4(1), Sch 1. For the meaning of 'United Kingdom' see PARA 602 note 7 *ante*.

The Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, Pt I does not apply to any plug or socket inside or forming an integral part of electrical equipment which is so designed that the plug is not capable of being engaged with or disengaged from the socket without something first being done to the equipment, whether or not including that plug or socket, which requires the use of a tool: reg 4(2). Part I applies, in the case of a plug or socket inside or forming an integral part of electrical equipment and required to conform to a British Standard referred to in regs 4(3), 10, Sch 2, only to the extent that it is practicable to do so: reg 4(3).

For these purposes: (i) 'plug' means a device other than a cable connector (ie a device designed to join flexible cables or cords in such a way that they can be joined and separated without the use of a tool) or an appliance coupler (ie a device designed to connect a flexible cable or cord to electrical equipment and consisting of a connector which is integral with, or intended to be attached to, the flexible cable or cord and an inlet which is incorporated in or fixed to the electrical equipment, or intended to be fixed to it), which may be engaged with a socket and which is designed for the purposes of connecting to a socket any electrical equipment to which the device is attached by means of a flexible cable or cord; (ii) 'socket' means a device other than a cable connector, with which a plug may be engaged for the purpose of connecting to an electrical circuit, whether or not by means of a switch, electrical equipment to which a plug is attached; (iii) 'adaptor' means a device which may be engaged with a socket, being a device which is designed to enable a plug having pins, or other forms of contact, of different dimensions or configuration to those of the socket to be engaged with the socket, to enable more than one plug to be engaged with the socket, or to be used for both these purposes; (iv) 'fuse link' means that part of a fuse including the fuse element (ie the part of a fuse designed to melt when an excessive current flows into an electrical circuit) which requires replacement by a new fuse link after the fuse element has melted and before the fuse can be put back into service; (v) 'standard plug' means a plug which carries three pins substantially rectangular in form and is designed for engagement with a socket made to the dimensions

specified in BS 1363 (published on 31 August 1984; amended on 30 April 1985, 31 December 1985, 31 July 1987, 23 December 1987, 30 June 1989 and 28 February 1990); (vi) 'cartridge fuse link' means a cartridge (ie a container which totally encloses a fuse element, consists of insulating material, is tubular in form and the ends of which are enclosed by metallic caps) containing a fuse element; (vii) 'luminaire' means apparatus which distributes, filters or transforms the light transmitted from one or more lamps and which includes all the parts necessary for supporting, fixing and protecting the lamps, together with the means for connecting them to the supply, but not the lamps themselves; and (viii) 'non-UK plug' means any plug which is not suitable without adaptation or modification for connection to a mains socket in the United Kingdom: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 3(1). As to complying with British Standards see note 3 infra.

2 Ibid regs 5, 6(1). The appropriate safety requirements are those of regs 6(1), 8 (see the text and notes 3-5 infra) or reg 10 (see the text and notes 6-9 infra): regs 5, 6(1).

3 Ibid reg 6(2). The prescribed British Standard is BS 1362 (published on 28 February 1973; amended on 29 June 1984 and 30 April 1991): Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, regs 3(1), 6(2). Where any standard is mentioned, that reference is a reference to that standard as it has effect on 5 July 1994, but incorporates subsequent amendments and revisions approved by the Secretary of State: reg 3(2)(a). Where there is a requirement that an electrical device conforms to a British Standard, including where conformity is required for approval by a notified body, that requirement is satisfied if the electrical device conforms to any standard or specification recognised for use in a member state of the European Community or another state within the European Economic Area, provided that conformity to such a standard or specification provides a level of safety equivalent to that which would be provided by conformity to the relevant British Standard, and any reference to such a requirement is to be construed accordingly: reg 3(1), (3). 'Notified body' means any person notified to the EC Commission and member states in accordance with the procedure in European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 11 as being competent to establish marks and certificates in accordance with the provisions of art 10 and any person appointed pursuant to the Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 7: reg 3(1); European Parliament and EC Council Directive 2006/95 (OJ L374, 27.12.2006, p 10) art 14, Annex VI. The Secretary of State may appoint a person as a notified body: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 7(1). The appointment must be in writing subject to such conditions as he may impose, which may include conditions which are to apply on or following the termination or expiry of the appointment: reg 7(2). In exercising this power of appointment, the Secretary of State may have regard to any matter appearing to him to be relevant, and in particular to any standards relating to the accreditation of any bodies appearing to him to be appropriate: reg 7(3). Subject to the withdrawal of such an appointment, the appointment may be for the time being or for a specified period: reg 7(4). As to the Secretary of State see PARA 601 note 1 ante.

4 Ibid reg 8(1). As to the granting of approvals see reg 8(1)-(7); and as to the refusal or cancellation of approvals, or the imposition of conditions, see reg 9.

5 Ie any electrical device other than a standard plug specified in ibid reg 10(1), Sch 2 col 2. Such devices include (1) round-pin plugs (ie plugs carrying pins substantially cylindrical in form) and sockets and adaptors with which they may be engaged; (2) two-pin reversible plugs and shaver sockets; (3) fuse links suitable for use in a standard plug; (4) cartridge fuse links (rated up to 5 amperes) suitable for use in a round-pin plug conforming to BS 546 (published on 16 March 1950; including supplements published on 30 December 1960 and 23 December 1987; and amended in December 1953 and on 28 November 1961, 16 May 1969, 29 July 1977, 31 August 1982, 23 December 1987 and 31 January 1989); and (5) adaptors except those in head (1) supra: Sch 2 col 2.

6 Ie specified in ibid Sch 2 col 3.

7 Ibid reg 10(1).

8 Ie BS 546: see note 5 supra.

9 Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 10(2). The appropriate standard is BS 646 (published on 31 January 1958; amended on 31 January 1991): Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 10(2).

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1150. Safety of other electrical appliances intended for domestic use.

No manufacturer in or importer into the United Kingdom¹ of any appliance to which these provisions apply², and no person on whose behalf such appliances are so manufactured or imported, may supply, offer for supply, agree to supply, expose for supply or possess for supply any such appliance unless that appliance is correctly fitted with a standard plug which complies with the relevant safety requirements³ and is fitted with a fuse link⁴ which conforms to the prescribed British Standard⁵ and is rated in accordance with the appliance manufacturer's instructions⁶. This prohibition does not, however, apply in relation to any such appliance which does not comply with the above requirements but which is correctly fitted with a non-UK plug⁷ which complies with the relevant safety provisions⁸ and is fitted with a conversion plug⁹ which complies with the prescribed requirements¹⁰ and which encloses the fitted non-UK plug and can only be removed by the use of a tool¹¹. Nor does it prohibit any person from possessing for supply at any time before it is supplied, offered for supply or exposed for supply in the United Kingdom for the first time, or before it is agreed for the first time to supply it in the United Kingdom, any appliance which has been imported into the United Kingdom and which does not comply with the above requirements¹².

1 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 The Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, Pt II (regs 11-12) applies to any appliance which is designed to operate at a voltage of not less than 200 volts and at a maximum rated input of not more than 13 amperes and which (1) is either (a) equipment fitted with a flexible cable or cord and designed to be connected to a socket conforming to BS 1363 (published by the British Standards Institution on 31 August 1984 and amended on 30 April 1985, 31 December 1985, 31 July 1987, 23 December 1987, 30 June 1989 and 28 February 1990) by means of that flexible cable or cord and a plug and is ordinarily intended to be so connected directly without the use of a cable connector; or (b) a flexible cable or cord which is (i) connected to a portable socket or sockets and designed to be connected to a socket conforming to BS 1363 by means of a plug; or (ii) designed to be connected to electrical equipment by means of an appliance coupler and to connect that electrical equipment to a socket conforming to BS 1363 by means of a plug; or (iii) designed to be connected by means of a cable connector to a flexible cable or cord fitted to electrical equipment, and which is intended to connect that electrical equipment to a socket conforming to BS 1363 by means of a plug; and (2) is ordinarily intended for domestic use: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 11(1). It does not, however, apply to (A) any fixed luminaire which cannot easily be moved from one place to another, either because it can only be removed with the use of a tool, or because it is intended for use out of easy reach; (B) any ceiling-rose connector designed to hold up overhead electric lighting fittings; (C) any electric light designed and intended to be located within a recess in a wall or ceiling; (D) any appliance which is fitted with a red plug (ie a plug which carries three pins substantially rectangular in form, is designed to be engaged with a socket made to the dimensions specified in BS 1363, and which incorporates an auxiliary sensing circuit which will automatically disconnect the main circuit at a predetermined current); (E) any appliance which is fitted with a plug transformer (ie an electrical transformer which carries three pins substantially rectangular in form and which is designed for engagement with a socket made to the dimensions specified in BS 1363); (F) any appliance which is fitted with a plug other than a standard plug which is designed to engage with a compatible portable multiple socket outlet (ie electrical equipment which comprises two or more sockets designed and made to dimensions other than those specified in BS 1363 which is designed to be connected to a socket conforming to BS 1363 by means of a flexible cable or cord and a plug, and which may be used without being mounted onto a fixed surface or structure); or (G) any appliance which is intended to be permanently connected to the fixed wiring of the mains system other than by means of a plug and socket: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, regs 3(1), 11(2), Sch 3. For the meaning of 'cable connector', 'socket', 'plug', 'luminaire' and 'standard plug' see PARA 1149 note 1 ante; and as to compliance with British Standards see PARA 1149 note 3 ante.

3 le the requirements of ibid reg 8: see PARA 1149 ante.

4 For the meaning of 'fuse link' see PARA 1149 note 1 ante.

5 le which conforms to BS 1362 (see PARA 1149 note 3 ante): Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 12(1)(a).

6 Ibid regs 3(1), 12(1). Part II applies in relation to supply etc by any person (reg 1(3)(b)).

In the absence of the manufacturer's instructions, the fuse link may be rated in accordance with BS 1363 Table 2: Plugs and Sockets etc (Safety) Regulations 1994 reg 12(1)(b).

7 For the meaning of 'non-UK plug' see PARA 1149 note 1 ante.

8 le the safety provisions of IEC 884-1 (see PARA 1149 note 1 ante): Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 12(2).

9 'Conversion plug' means a device which may be engaged with a socket conforming to BS 1363 and which is designed to enable a non-UK plug to be engaged with such a socket: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 3(1).

10 le the requirements of ibid reg 12(3). A conversion plug must be of a type approved by a notified body for use in conjunction with a non-UK plug which complies with the safety provisions of IEC 884-1 and in respect of which such approval has not been cancelled: Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 12(3). As to the granting of approvals and the imposition of conditions see reg 12(3)(a), (b), (4)-(8). For the meaning of 'notified body' see PARA 1149 note 3 ante.

11 Ibid reg 12(2).

12 Ibid reg 12(9).

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1151. Information requirements with respect to plugs; offences.

No person may supply, offer for supply, agree to supply, expose for supply or possess for supply any standard plug¹ or conversion plug² of a type approved by a notified body³ in respect of which the following requirements are not satisfied⁴.

A standard plug or conversion plug of a type so approved must be legibly marked with, or bear a label legibly marked with, words, marks or abbreviations clearly signifying approval by and identifying the body which approved the type in question⁵. Where it is necessary for the safe operation of any such plug that the user should be aware of any particular characteristic of the plug, the necessary information must be given by markings on the plug itself or, where this is not practicable, in a notice accompanying it⁶. It is not sufficient compliance with this requirement to give information in a language other than English⁷.

Information must not be given in connection with any standard plug or conversion plug by means of a misleading mark or otherwise which purports to indicate or might reasonably be mistaken for an indication that the plug is of a type approved by a notified body or, in the case of a standard plug, conforms to the prescribed British Standard⁸, when the plug is not so approved or does not so conform to the standard, or when any approval has been cancelled⁹.

A person contravening any prohibition contained in the safety provisions relating to plugs, sockets and other electrical appliances for domestic use¹⁰ is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both¹¹.

1 For the meaning of 'standard plug' see PARA 1149 note 1 ante.

2 For the meaning of 'conversion plug' see PARA 1150 note 9 ante.

3 For the meaning of 'notified body' see PARA 1149 note 3 ante.

4 Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 13(1).

5 Ibid reg 13(2).

6 Ibid reg 13(3). This is without prejudice to any requirement of any British Standard: reg 13(3). As to compliance with British Standards see PARA 1149 note 3 ante.

7 Ibid reg 13(4).

8 Ie BS 1363 (see PARA 1150 note 2 ante): Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768, reg 13(5).

9 Ibid reg 13(5).

10 Ie the Plugs and Sockets etc (Safety) Regulations 1994, SI 1994/1768,: see the text and notes 1-9 supra; and PARAS 1149-1150 ante.

11 See the Consumer Protection Act 1987 s 12(1), (5); and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 540. As to the standard scale see PARA 613 note 11 ante.

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(iv) Supply and Safety Provisions

A. POWER TO MAKE REGULATIONS

1152. Power to make regulations concerning supply and safety.

The Secretary of State¹ may make such regulations² as he thinks fit for the purpose of:

- 2618 (1) securing that supplies³ of electricity are regular and efficient⁴;
- 2619 (2) protecting the public from dangers arising from the generation⁵, transmission⁶, distribution⁷ or supply of electricity, from the use of electricity interconnectors⁸, from the use of electricity supplied or from the installation, maintenance or use of any electric line⁹ or electrical plant¹⁰; and
- 2620 (3) eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in head (2) above, without prejudice to the generality of that provision¹¹.

Such regulations may include provision for securing the purposes mentioned in heads (1) to (3) above in relation to the territorial sea adjacent to Great Britain¹² or any renewable energy zone¹³. They may, in particular:

- 2621 (a) prohibit the distribution or transmission of electricity except by means of a system approved by the Secretary of State¹⁴;
- 2622 (b) make provision requiring notice in the prescribed form¹⁵ to be given to the Secretary of State, in such cases as may be specified in the regulations, of accidents and of failures in the distribution or transmission of electricity or in the use of electricity interconnectors¹⁶;
- 2623 (c) make provision as to the keeping, by persons authorised by a licence¹⁷ or exemption¹⁸ to distribute or participate in the transmission of electricity¹⁹ or to participate in the operation of an electricity interconnector²⁰, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying²¹;
- 2624 (d) make provision for relieving electricity distributors²² from any duty to connect²³ or authorising them to disconnect any premises²⁴ or distribution system²⁵ in such cases as may be prescribed²⁶;
- 2625 (e) make provision requiring compliance with notices given by the Secretary of State specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of preventing or ending a breach of such regulations or eliminating or reducing a risk of personal injury or damage to property or interference with its use²⁷;
- 2626 (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements²⁸;
- 2627 (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations²⁹.

Such regulations may also provide that any person who contravenes³⁰ any specified provision of the regulations or who does so in specified circumstances is to be liable on summary conviction to a fine not exceeding level 5 on the standard scale³¹; but nothing in this provision affects any liability of any person to pay compensation in respect of any damage or injury which may have been caused by the contravention³². No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or on behalf of the Secretary of State or the Director of Public Prosecutions³³.

Separate regulations impose health and safety requirements with respect to electricity at work³⁴. There are also separate provisions (i) governing the use of electricity and electrical apparatus in mines³⁵; (ii) relating to radioactive substances and materials³⁶; (iii) for securing safety in cinemas³⁷; and (iv) for restricting the use of certain hazardous substances in electric and electronic equipment³⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of regulations generally see the Electricity Act 1989 ss 60, 106 (as amended); and PARA 1306 post.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 Electricity Act 1989 s 29(1)(a). See further note 11 infra; and PARA 1153 et seq post.

5 For the meaning of 'generation' see PARA 1041 note 7 ante.

6 For the meaning of 'transmission' see PARA 1041 note 6 ante.

7 For the meaning of 'distribution' see PARA 1041 note 5 ante.

8 For the meaning of 'electricity interconnector' see PARA 1041 note 11 ante.

9 For the meaning of 'electric line' see PARA 1041 note 5 ante.

10 Electricity Act 1989 s 29(1)(b) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 30(1), (2); the Energy Act 2004 s 147(1), (3)(a)). See further note 11 infra; and PARA 1153 et seq post. For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

11 Electricity Act 1989 s 29(1)(c). In exercise of the powers conferred by s 29 (as amended), the Secretary of State has made the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended), which came into force on 31 January 2003: see reg 1(1). See further PARA 1153 et seq post.

12 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

13 Electricity Act 1989 s 29(1A) (added by the Energy Act 2004 s 94(1)). For the meaning of 'renewable energy zone' see s 84 (applied by the Electricity Act 1989 s 64(1) (definition added by the Energy Act 2004 s 102(1), (4)(b)); and PARA 1310 post.

14 Electricity Act 1989 s 29(2)(a) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 30(1), (3)(a)).

15 For the prescribed form of notice see the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, regs 31, 32, Sch 3; and PARAS 1156-1157 post. For the meaning of 'prescribed' see PARA 1096 note 11 ante; and for the meaning of 'notice' see PARA 1047 note 11 ante.

16 Electricity Act 1989 s 29(2)(b) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 30(1), (3)(b); the Energy Act 2004 s 147(1), (3)(b)). For the specified events see the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, regs 31, 32; and PARAS 1156-1157 post.

17 For the meaning of 'licence' see PARA 1041 note 12 ante.

18 For the meaning of 'exemption' see PARA 1046 note 7 ante.

- 19 For the meaning of references to participating in the transmission of electricity see PARA 1050 note 5 ante.
- 20 For the meaning of references to participating in the operation of an electricity interconnector see PARA 1050 note 7 ante.
- 21 Electricity Act 1989 s 29(2)(c) (amended by the Utilities Act 2000 s 108 Sch 6 Pt II paras 24, 30(1), (3)(c); the Energy Act 2004 ss 143(1), 147(1), (3)(c), Sch 19 paras 3, 10). As to the maps which must be kept of underground networks see the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 15; and PARA 1164 post.
- 22 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.
- 23 Is any duty under the Electricity Act 1989 s 16 (as substituted): see PARA 1094 ante.
- 24 For the meaning of 'premises' see PARA 1041 note 5 ante.
- 25 For the meaning of 'distribution system' see PARA 1041 note 5 ante.
- 26 Electricity Act 1989 s 29(2)(d) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 30(1), (3)(d)). See further PARA 1174 post.
- 27 Electricity Act 1989 s 29(2)(e).
- 28 Ibid s 29(2)(f).
- 29 Ibid s 29(2)(g). See the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 33; and PARA 1158 post.
- 30 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.
- 31 Electricity Act 1989 s 29(3). See the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 35; and PARA 1177 post. As to the standard scale see PARA 613 note 11 ante.
- 32 Electricity Act 1989 s 29(3). See *Hartley v Mayoh & Co* [1953] 2 All ER 525; affd [1954] 1 QB 383, [1954] 1 All ER 375, CA; *Sellars v Best* [1954] 2 All ER 389, [1954] 1 WLR 913.
- 33 Electricity Act 1989 s 29(4).
- 34 See the Electricity at Work Regulations 1989, SI 1989/635 (as amended); para 1036 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 605 et seq. As to the implementation of EC legislation relating to electricity in potentially explosive atmospheres see the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 569.
- 35 See the Coal and Other Mines (Safety-Lamps and Lighting) Order 1956, SI 1956/1765 (as amended); para 1036 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 798 et seq. See also the Management and Administration of Safety and Health at Mines Regulations 1993, SI 1993/1897 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 748 et seq.
- 36 See PARA 1474 et seq post.
- 37 See PARA 1037 ante.
- 38 See the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006, SI 2006/1463. Those regulations implement European Parliament and EC Council Directive 2002/95 (OJ L37, 13.3.2003, p 19) (as amended) on the restriction of the use of certain hazardous substances in electrical and electronic equipment establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment and providing for certain exempt applications. They apply to new electrical and electronic equipment within the categories set out in the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006, SI 2006/1463, Sch 1 and to electric light bulbs and to luminaires for use in households that are put on the market on or after 1 July 2006 (see reg 4) but do not apply to (1) spare parts for the repair of electrical and electronic equipment or to the reuse of such equipment put on the market before 1 July 2006 (see reg 5(1)); and (2) the applications of lead, mercury, cadmium, hexavalent chromium and polybrominated diphenyl ethers listed in Sch 2 (see reg 5(2)). General requirements relating to the putting on the market on or after 1 July 2006 of electrical and electronic equipment are set out in regs 7-9. New equipment put on the market must not contain more than the permissible maximum concentration values of hazardous substances (see reg 7). Regulations 8 and 9 set out

requirements relating to technical documentation. The Secretary of State has the duty of enforcing the regulations (see reg 10) and may appoint any person to act on his behalf. The Secretary of State has the power to serve a compliance notice (see reg 11) and make test purchases (see reg 12). Any person who contravenes or fails to comply with a requirement of reg 7, reg 8 or reg 9 is guilty of an offence (see reg 13). Penalties for such offences are set out in reg 14. Proceedings in relation to offences may be commenced within 12 months of the offence being committed (see reg 15). A defence of due diligence is provided in reg 16 and the liability of persons other than the principal offender is set out in reg 17. There is provision for service of documents under the regulations under reg 18.

UPDATE

1152 Power to make regulations concerning supply and safety

TEXT AND NOTES--The following provisions are not yet in force. The Health and Safety at Work etc Act 1974 Pt I (ss 1-54) has effect as if the Electricity Act 1989 s 29, and regulations made under s 29, in so far as they relate to the protection of the public from dangers relating to electricity and to eliminating or reducing the risks of personal injury, were existing statutory provisions within the meaning of the Health and Safety at Work etc Act 1974 Pt I: Energy Act 2008 s 99(1). Without prejudice to the generality of the Health and Safety at Work etc Act 1974 s 15(1) (health and safety regulations), regulations under that provision may (1) repeal or modify a provision mentioned in the Energy Act 2008 s 99(1), (2) make any provision which, but for a repeal or modification under head (1), could be made by regulations made under the Electricity Act 1989 s 29: Energy Act 2008 s 99(2).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 38--SI 2006/1463 replaced: Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008, SI 2008/37 (amended by SI 2009/581).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iv) Supply and Safety Provisions/B. ELECTRICITY SAFETY, QUALITY AND CONTINUITY; IN GENERAL/1153. General adequacy of electrical equipment.

B. ELECTRICITY SAFETY, QUALITY AND CONTINUITY; IN GENERAL

1153. General adequacy of electrical equipment.

Generators¹, distributors² and meter operators³ must ensure that their equipment⁴ is:

- 2628 (1) sufficient for the purposes for and the circumstances in which it is used; and
- 2629 (2) so constructed, installed, protected (both electrically and mechanically), used and maintained as to prevent danger, interference with or interruption of supply⁵, so far as is reasonably practicable⁶.

Generators and distributors must:

- 2630 (a) for each of their overhead lines⁷ or part thereof and for each of their substations⁸, assess the foreseeable risk of danger from interference, vandalism or unauthorised access, having regard to both the nature of the equipment and the use of the surrounding land, and must classify the degree of the risk⁹;
- 2631 (b) enter details of the result of the classification of risk in a register or other permanent record kept updated for the purpose¹⁰;
- 2632 (c) take measures to safeguard the equipment commensurate with the nature and class of risk to which it gives rise¹¹;
- 2633 (d) take reasonable steps to ensure that the public are made aware of dangers which may arise from activities carried out in proximity to overhead lines, and to indicate the means by which those dangers may be avoided¹²;
- 2634 (e) take precautions to prevent, so far as is reasonably practicable, danger¹³ due to the influx of water, or any noxious or explosive liquid or gas, into any enclosed space, arising from the installation or operation of their equipment¹⁴.

Heads (a) to (c) above, however:

- 2635 (i) do not apply, in the case of overhead lines, until five years after 31 January 2003¹⁵; and
- 2636 (ii) did not apply, in the case of substations, until two years after that date¹⁶.

Except as otherwise provided for¹⁷, in so far as the relevant regulations¹⁸ apply to any generator, distributor, supplier¹⁹ or meter operator, they also apply to any agent, contractor or sub-contractor of his acting on his behalf in relation to a matter which is the subject of those regulations²⁰.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain²¹ and the renewable energy zone²² the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²³.

1 'Generator' means a person who generates electricity at high voltage for the purpose of supplying consumer's installations via a network: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5). 'High voltage' means any voltage exceeding low voltage; and 'low voltage' means (1) in relation to alternating current, a voltage exceeding 50 volts measured between phase conductors (or between phase conductors and earth), but not exceeding 1,000 volts measured between phase conductors (or 600 volts if measured between phase conductors and earth), calculated by taking the square root of the mean of the squares of the instantaneous values of a voltage during a complete cycle; and (2) in relation to direct current, a voltage exceeding 120 volts measured between live conductors (or between live conductors and earth), but not exceeding 1,500 volts measured between live conductors (or 900 volts if measured between live conductors and earth), with any variations of voltage allowed by the 2002 Regulations: reg 1(5). 'Conductor' means an electrical conductor arranged to be electrically connected to a network but does not include conductors used or intended to be used solely for the purposes of control, protection or regulation of supply or for communication; 'phase conductor' means a conductor for the carrying of energy other than a neutral conductor or a protective conductor or a conductor used for earthing purposes; 'neutral conductor' means a conductor which is, or is intended to be, connected to the neutral point of an electrical system and intended to contribute to the carrying of energy; 'protective conductor' means a conductor which is used for protection against electric shock and which connects the exposed conductive parts of equipment with earth; and 'earth' means the general mass of the earth: reg 1(5).

'Network' means an electrical system supplied by one or more sources of voltage and comprising all the conductors and other equipment used to conduct electricity for the purposes of conveying energy from the source or sources of voltage to one or more consumer's installations, street electrical fixtures, or other networks, but does not include an electrical system which is situated entirely on an offshore installation; and 'street electrical fixture' means a permanent fixture which is or is intended to be connected to a supply of electricity and which is in, on, or is associated with a highway: reg 1(5). 'Consumer' means any person supplied or entitled to be supplied by a supplier but in regs 24, 25 and 26 (see PARAS 1172-1174 post) does not include, in respect of any supply to meet haulage or traction requirements, any person who is an operator of a network within the meaning of the Railways Act 1993 Pt I (ss 4-83) (as amended) or an operator of a tramway, a trolley vehicle system or guided transport; and 'consumer's installation' means the electric lines situated upon the consumer's side of the supply terminals together with any equipment permanently connected or intended to be permanently connected thereto on that side: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (definition of 'consumer' amended by SI 2006/1521, reg 3(a)). For these purposes, 'tramway' means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which (a) provide support and guidance for vehicles carried on flanged wheels; and (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment); 'trolley vehicle system' means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles); and 'guided transport' means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way): Transport and Works Act 1992 s 67(1) (definitions applied by the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (amended for these purposes by SI 2006/1521, reg 3(b)).

2 'Distributor' means a person who owns or operates a network, except for a network where that person is an operator of a network within the meaning of the Railways Act 1993 Pt I (as amended) or an operator of a tramway, a trolley vehicle system or guided transport: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (definition amended by SI 2006/1521, reg 3(a)).

3 'Meter operator' means a person who installs, maintains or removes metering equipment used for measuring the flow of energy to or from a network at or near the supply terminals; and 'energy' means electrical energy: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5).

4 'Equipment' includes plant, meters, lines, supports, appliances and associated items used or intended to be used for carrying electricity for the purposes of generating, transmitting or distributing energy, or for using or measuring energy; and 'support' means any structure, pole or other device, in, on, by or from which any electric line is or may be supported, carried or suspended and includes stays and struts, but does not include insulators, their fittings or any building or structure the principal purpose of which is not the support of electric lines or equipment: *ibid* reg 1(5). 'Insulator' means a device which supports a live conductor or which electrically separates the upper and lower parts of a stay wire: *ibid* reg 1(5).

5 'Supply' means the supply of electricity: *ibid* reg 1(5).

6 *Ibid* reg 3(1).

7 'Overhead line' means any electric line which is placed above ground and in the open air; and 'electric line' means any line which is used or intended to be used for carrying electricity for any purpose and includes, unless the context otherwise requires (1) any equipment connected to any such line for the purpose of carrying electricity; and (2) any wire, cable, tube, pipe, insulator or other similar thing (including its casing or coating) which surrounds or supports, or is associated with, any such line: *ibid* reg 1(5).

8 'Substation' means any premises or part thereof which contain equipment for either transforming or converting energy to or from high voltage (other than transforming or converting solely for the operation of switching devices or instruments) or for switching, controlling or regulating energy at high voltage, but does not include equipment mounted on a support to any overhead line: *ibid* reg 1(5).

9 *Ibid* reg 3(2)(a).

10 *Ibid* reg 3(2)(b).

11 *Ibid* reg 3(2)(c).

12 *Ibid* reg 3(3).

13 'Danger' includes danger to health or danger to life or limb from electric shock, burn, injury or mechanical movement to persons, livestock or domestic animals, or from fire or explosion, attendant upon the generation, transmission, transformation, distribution or use of energy: *ibid* reg 1(5).

14 *Ibid* reg 3(4).

15 31 January 2003 is the date when the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended) came into force: see reg 1(1).

16 *Ibid* reg 2(3). For transitional provisions see reg 2(10).

17 *Ie* in *ibid* reg 2(2), which disapplies regs 4, 15, 25-28, 31 and 32 (see *PARAS* 1154, 1164, 1172-1175, 1157-1158 respectively post) to any agent, contractor or sub-contractor.

18 *Ie* the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see the text and notes 1-17 *supra*; and *PARA* 1154 *et seq* post.

19 'Supplier' means a person who contracts to supply electricity to consumers: *ibid* reg 1(5).

20 *Ibid* reg 2(1).

21 As to the territorial sea of the United Kingdom see *WATER AND WATERWAYS* vol 100 (2009) *PARA* 31 note 3; and for the meaning of 'Great Britain' see *PARA* 602 note 7 *ante*.

22 'Renewable energy zone' means those areas of the sea designated in the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668 (see *PARA* 1310 post): Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(3).

23 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1154. Duty of co-operation.

Generators¹, distributors², suppliers³ and meter operators⁴ must:

- 2637 (1) disclose such information to each other as might reasonably be required in order to ensure compliance with the relevant regulations⁵; and
- 2638 (2) otherwise co-operate amongst themselves so far as is necessary in order to ensure compliance with those regulations⁶.

This duty of co-operation does not apply to agents, contractors or sub-contractors⁷. It does, however, apply in relation to activities carried on in the territorial sea adjacent to Great Britain⁸ and the renewable energy zone⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁰.

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'supplier' see PARA 1153 note 19 ante.

4 For the meaning of 'meter operator' see PARA 1153 note 3 ante.

5 I.e. the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 ante, PARA 1155 et seq post.

6 Ibid reg 4.

7 Ibid reg 2(2).

8 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

9 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

10 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1155. Inspection of networks.

A generator¹ or distributor² must, so far as is reasonably practicable, inspect his network³ with sufficient frequency so that he is aware of what action he needs to take so as to ensure compliance with the relevant regulations⁴. In the case of his substations⁵ and overhead lines⁶, a generator or distributor must maintain for a period of not less than ten years a record of such an inspection including any recommendations arising therefrom⁷.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain⁸ and the renewable energy zone⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁰.

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'network' see PARA 1153 note 1 ante. In relation to a distributor, generator or meter operator a reference in the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended) (see PARAS 1153-1154 ante; the text and notes 1-2 supra, 4-7 infra; and PARA 1156 et seq post) to his network, his overhead line, his substation or his equipment is a reference to a network, an overhead line, a substation or equipment (as the case may be) owned or operated by him: *ibid* reg 1(6). For the meaning of 'equipment' see PARA 1153 note 4 ante; and for the meaning of 'meter operator' see PARA 1153 note 3 ante.

4 *Ibid* reg 5.

5 For the meaning of 'substation' see PARA 1153 note 8 ante. See also note 3 supra.

6 For the meaning of 'overhead line' see PARA 1153 note 7 ante. See also note 3 supra.

7 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 5.

8 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

9 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

10 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1156. Notification of specified events.

Notice¹ must be given to the Secretary of State² in accordance with the following provisions by the distributor³ in respect of any event⁴ which is of a type specified in head (2) below where the event involves a consumer's installation⁵ which is connected to the distributor's network⁶, and by the generator⁷, distributor or meter operator⁸, as the case may be, in respect of any event which is an event of a type otherwise specified in heads (1) to (5) below and involves a network or equipment⁹ which is in the ownership of, under the control of, or used by, the generator, distributor or meter operator, as the case may be¹⁰. The events referred to above are:

- 2639 (1) any event attributable in whole or in part to the generating, transforming, control or carrying of energy¹¹ up to and including the supply terminals¹², which has given rise to:
- 239
- 357. (a) the death of any person other than a person engaged by the generator, distributor or meter operator for the purposes of his business; or
- 358. (b) an injury, including any electric shock, to any person other than a person engaged by the generator, distributor or meter operator for the purposes of his business; or
- 359. (c) any fire; or
- 360. (d) any explosion or implosion¹³;
- 240
- 2640 (2) any event attributable in whole or in part to the presence of energy on the consumer's side of the supply terminals on any non-industrial and non-commercial premises resulting in the death of any person¹⁴;
- 2641 (3) any event, whether or not accompanied by an event specified in head (1) above, which caused an overhead line¹⁵ to be at a height less¹⁶ than that required¹⁷;
- 2642 (4) the occurrence of any damage to any underground cable¹⁸ resulting from an event not specified in heads (1) and (2) above¹⁹; and
- 2643 (5) any event other than those listed in head (1), head (3) or head (4) above which, taking into account the circumstances of that event, was likely to cause any of the events listed in head (1) above²⁰.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain²¹ and the renewable energy zone²² the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²³. They do not, however, apply to agents, contractors or sub-contractors²⁴.

1 As to the requirement to give notice see further notes 13, 19 infra.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'distributor' see PARA 1153 note 2 ante.

4 For these purposes, 'event' means any event of the kind specified irrespective of whether it was accidental: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 31(9).

- 5 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.
- 6 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.
- 7 For the meaning of 'generator' see PARA 1153 note 1 ante.
- 8 For the meaning of 'meter operator' see PARA 1153 note 3 ante.
- 9 For the meaning of 'equipment' see PARA 1153 note 4 ante.
- 10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 31(1).
- 11 For the meaning of 'energy' see PARA 1153 note 3 ante.
- 12 'Supply terminals' means the ends of the electric lines at which the supply is delivered to a consumer's installation: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5). For the meaning of 'electric line' see PARA 1153 note 7 ante.
- 13 Ibid reg 31(2)(2)(a). In respect of any event specified in reg 31(2)(a): (1) the requirement to give notice in accordance with reg 31(4) (so far as applicable) applies in addition to the requirement to give notice in accordance with reg 31(5) unless the notice given satisfies the requirements of both reg 31(4) and reg 31(5); and (2) the requirement to give notice in accordance with reg 31(4) and reg 31(5) applies in addition to the requirement to give notice in accordance with reg 31(6): reg 31(3). In respect of any event specified in reg 31(2)(a)(i) (see head (1)(a) in the text) or (in the case of a serious injury) in reg 31(2)(a)(ii) (see head (1)(b) in the text), notice of the event must be given to the Secretary of State by telephone or other immediate means of communication immediately after the event becomes known to the generator, distributor or meter operator, as the case may be: reg 31(4). 'Serious injury' means any injury which results in the person injured being admitted into hospital as an in-patient: reg 31(9).

In respect of any event specified in reg 31(2)(a) (see head (1) in the text) or reg 31(2)(b) (see head (2) in the text), notice containing the relevant particulars must, subject to reg 31(8), be given to the Secretary of State in writing by the quickest practicable means as soon as possible after the event becomes known to the generator, distributor or meter operator, as the case may be: reg 31(5). 'Relevant particulars' means (a) in respect of an event specified in reg 31(2)(a), (2)(b) or (2)(d) (see heads (1), (2), (4) in the text), the particulars specified in Sch 3 Pts I, II, IV, respectively; and (b) in respect of an event specified in reg 31(2)(c) or (2)(e) (see heads (3), (5) in the text), the particulars specified in Sch 3 Pt III: reg 31(9).

In respect of any event notifiable under reg 31(2)(a), (2)(c) or (2)(e) (see heads (1), (3), (5) in the text), notice must be given to the Secretary of State by post within 15 days of the end of the month in which the event becomes known to the generator, distributor or meter operator as the case may be, in the form of a computer disc which (i) conforms to the description specified in the Department's publication; and (ii) subject to reg 31(8), contains the information comprising the relevant particulars, arranged in a form which complies with the technical requirements specified in that publication: reg 31(6). 'The Department's publication' means the publication entitled (under the heading 'Electricity Safety, Quality and Continuity Regulations 2002') 'Computerisation of the Notification of Certain Specified Events under Regulation 31', subtitled 'Specification of the Data Files', and published in September 2002 by the then Department of Trade and Industry (now the Department for Business, Enterprise and Regulatory Reform), a copy of which was certified as such by the signature of the Minister of State for Energy and Construction, Department of Trade and Industry: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 31(9).

The notices required by reg 31(5), (6) must, where the giver of the notice is unable to provide full particulars, contain such of the relevant particulars as are available to the giver of the notice at the time of giving it, and the remaining particulars must be supplied to the Secretary of State in writing by the quickest practicable means immediately after they have become known: reg 31(8).
- 14 Ibid reg 31(2)(b). As to the notice see note 13 supra.
- 15 For the meaning of 'overhead line' see PARA 1153 note 7 ante.
- 16 Ie less than that required by the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 17(2): see PARA 1166 post.
- 17 Ibid reg 31(2)(c). As to the notice see note 13 supra.
- 18 'Underground cable' means any conductor surrounded by insulation which is placed below ground; and 'insulation' means non-conducting material enclosing or surrounding a conductor or any part thereof and of such quality and thickness as to withstand the operating voltage of the equipment: ibid reg 1(5). For the meaning of 'conductor' see PARA 1153 note 1 ante.

19 Ibid reg 31(2)(d). In respect of any event specified in reg 31(2)(d), notice containing the relevant particulars must be sent to the Secretary of State by means of a return in writing to be submitted within one month of the end of the period of three months ending on 31 March, 30 June, 30 September or 31 December (as the case may be) in which the event became known to the generator, distributor or meter operator as the case may be: reg 31(7). As to the relevant particulars see note 13 supra.

20 Ibid reg 31(2)(e). As to the notice see note 13 supra.

21 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

22 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

23 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

24 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 2(2).

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1157. Notification of certain interruptions of supply.

A distributor¹ must give to the Secretary of State² notification in accordance with heads (a) and (b) below of those interruptions of supply³ involving his network⁴ where there has been:

- 2644 (1) any single interruption of supply, to any demand of 20 megawatts or more at the time of the interruption, for a period of three minutes or longer; or
- 2645 (2) any single interruption of supply, to any demand of 5 megawatts or more at the time of the interruption, for a period of one hour or longer; or
- 2646 (3) any single interruption of supply to 5,000 or more consumer's installations⁵ for a period of one hour or longer⁶.

The notification must:

- 2647 (a) be sent in writing by the quickest practicable means immediately after the distributor becomes aware of the interruption; and
- 2648 (b) contain the specified⁷ particulars⁸.

Where the distributor is unable to give the full particulars required⁹, the notification given to the Secretary of State must contain such of the particulars as are available to the distributor at the time of giving the notification, and any remaining particulars must be sent in a supplementary notification in writing to the Secretary of State by the quickest practicable means immediately after they have become known¹⁰.

The above provisions do not apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹¹ and the renewable energy zone¹² the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹³. Nor do they apply to agents, contractors or sub-contractors¹⁴.

1 For the meaning of 'distributor' see PARA 1153 note 2 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'supply' see PARA 1153 note 5 ante.

4 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

5 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.

6 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 32(1).

7 I.e. the particulars specified in *ibid* Sch 4: reg 32(2).

8 *Ibid* reg 32(2).

9 I.e. required by *ibid* Sch 4.

10 *Ibid* reg 32(3).

11 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

12 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

13 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(e).

14 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 2(2).

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1158. Exemption from requirements of the regulations.

Where a request is made to the Secretary of State¹ to grant an exemption from a requirement of the relevant regulations², that request must be made in writing and must state the full extent of the reasons for the exemption sought³.

Where the Secretary of State is satisfied that an exemption may be granted without prejudice to safety or interference with the supply⁴ to others, the Secretary of State may grant such an exemption as he thinks appropriate⁵. An exemption so granted is to be for such period as the Secretary of State specifies when granting that exemption or, where no period is so specified, for a period of 25 years⁶.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain⁷ and the renewable energy zone⁸ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. a requirement of the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 et seq ante, PARA 1159 et seq post.

3 Ibid reg 33(1).

4 For the meaning of 'supply' see PARA 1153 note 5 ante.

5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 33(2).

6 Ibid reg 33(3).

7 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

8 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

9 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iv) Supply and Safety Provisions/C. PROTECTION AND EARTHING/1159. Electrical protection; continuity of the supply neutral conductor and earthing connections.

C. PROTECTION AND EARTHING

1159. Electrical protection; continuity of the supply neutral conductor and earthing connections.

A generator¹ or distributor²:

- 2649 (1) is to be responsible for the application of such protective devices to his network³ as will, so far as is reasonably practicable, prevent any current, including any leakage to earth⁴, from flowing in any part of his network for such a period that that part of his network can no longer carry that current without danger⁵;
- 2650 (2) must, in the design, construction, maintenance or operation of his network, take all reasonable precautions to ensure continuity of the supply neutral conductor⁶.

No generator or distributor must introduce or retain any protective device in any supply neutral conductor or any earthing connection of a low voltage network which he owns or operates⁷. This does not, however, apply to any distributor's fusible cut-out brought into use on or before 31 December 1936, until ten years after 31 January 2003⁸ or until a material alteration is made to any part of his network⁹.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁰ and the renewable energy zone¹¹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹².

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

4 For the meaning of 'earth' see PARA 1153 note 1 ante.

5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 6. For the meaning of 'danger' see PARA 1153 note 13 ante.

6 Ibid reg 7(1). 'Supply neutral conductor' means the neutral conductor of a low voltage network which is or is intended to be connected with earth, but does not include any part of the neutral conductor on the consumer's side of the supply terminals: reg 1(5). 'Connected with earth' means connected with earth in such manner as will at all times provide a rapid and safe discharge of electrical energy, and cognate expressions are to be construed accordingly: reg 1(5). For the meanings of 'neutral conductor', 'low voltage' and 'consumer' see PARA 1153 note 1 ante; and for the meaning of 'supply terminals' see PARA 1156 note 12 ante.

7 Ibid reg 7(2).

8 Ibid reg 2(4).

9 See ibid reg 2(8). Where any provision of the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended) does not apply to any network, or part of a network, by virtue of any of the provisions of reg 2(4)-(7), any equivalent provision which applied to the network, or part of it, as the case may be,

immediately before 31 January 2003 by virtue of the Electricity Supply Regulations 1988, SI 1988/1057 (revoked) including any approval, authority or exemption granted or given under or pursuant to that provision applies as if that equivalent provision had been contained in the 2002 Regulations: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 2(9).

10 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

11 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

12 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1160. General requirements for connection with earth.

A generator¹ or distributor² must:

- 2651 (1) ensure that, so far as is reasonably practicable, his network³ does not become disconnected from earth⁴ in the event of any foreseeable current due to a fault⁵;
- 2652 (2) in respect of any high voltage⁶ network which he owns or operates, ensure that:
 - 241 361. (a) the network is connected with earth at, or as near as is reasonably practicable to, the source of voltage but where there is more than one source of voltage in that network, the connection with earth need only be made at one such point;
 - 362. (b) the earth electrodes⁷ are designed, installed and used in such a manner so as to prevent danger⁸ occurring in any low voltage⁹ network as a result of any fault in the high voltage network; and
 - 363. (c) where the network is connected with earth through a continuously rated arc suppression coil, an automatic warning is given to the generator or distributor (as the case may be) of any fault which causes the arc suppression coil to operate¹⁰;
- 242 2653 (3) in respect of any low voltage network which he owns or operates, ensure that:
 - 243 364. (a) the outer conductor of any electric line¹¹ which has concentric conductors is connected with earth;
 - 365. (b) every supply neutral conductor¹² is connected with earth at, or as near as is reasonably practicable to, the source of voltage except that where there is only one point in a network at which consumer's installations¹³ are connected to a single source of voltage, that connection may be made at that point, or at another point nearer to the source of voltage; and
 - 366. (c) no impedance is inserted in any connection with earth of a low voltage network other than that required for the operation of switching devices¹⁴ or of instruments or equipment¹⁵ for control, telemetry or metering¹⁶.
- 244

Heads (1) to (3) above not apply to a network which is situated within a generating station¹⁷ if, and only if, adequate alternative arrangements are in place to prevent danger¹⁸.

A consumer¹⁹ must not combine the neutral and protective functions in a single conductor in his consumer's installation²⁰.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain²¹ and the renewable energy zone²² the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²³.

- 1 For the meaning of 'generator' see PARA 1153 note 1 ante.
- 2 For the meaning of 'distributor' see PARA 1153 note 2 ante.
- 3 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.
- 4 For the meaning of 'earth' see PARA 1153 note 1 ante; and for the meaning of 'connected with earth' and cognate expressions see PARA 1159 note 6 ante.
- 5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(1).
- 6 For the meaning of 'high voltage' see PARA 1153 note 1 ante.
- 7 'Earth electrode' means a conductor or group of conductors in intimate contact with, and providing a connection with, earth: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5). For the meaning of 'conductor' see PARA 1153 note 1 ante.
- 8 For the meaning of 'danger' see PARA 1153 note 13 ante.
- 9 For the meaning of 'low voltage' see PARA 1153 note 1 ante.
- 10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(2).
- 11 For the meaning of 'electric line' see PARA 1153 note 7 ante.
- 12 For the meaning of 'supply neutral conductor' see PARA 1159 note 6 ante.
- 13 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.
- 14 'Switching device' includes any device which can either make or break a current, or both: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (definition amended by SI 2006/1521).
- 15 For the meaning of 'equipment' see PARA 1153 note 4 ante.
- 16 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(3).
- 17 'Generating station' means those parts of any premises which are principally used for the purpose of generating electrical energy: see *ibid* reg 1(5).
- 18 *Ibid* reg 8(5).
- 19 For the meaning of 'consumer' see PARA 1153 note 1 ante.
- 20 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(4).
- 21 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 22 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 23 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1161. Protective multiple earthing and earthing of metalwork.

With regard to distributors¹ low voltage² networks³ in which the neutral and protective functions are combined, a distributor must ensure that, in addition to the required neutral with earth connection⁴, the supply neutral conductor⁵ is connected with earth at:

- 2654 (1) a point no closer to the distributor's source of voltage (as measured along the distributing main⁶) than the junction between that distributing main and the service line⁷ which is most remote from the source; and
- 2655 (2) such other points as may be necessary to prevent, so far as is reasonably practicable, the risk of danger⁸ arising from the supply neutral conductor becoming open circuit⁹.

Head (1) above only applies, however, where the supply neutral conductor of the service line there referred to is connected to the protective conductor¹⁰ of a consumer's installation¹¹.

With respect to such low voltage networks, the distributor must not connect his combined neutral and protective conductor to any metalwork¹² in a caravan or boat¹³.

Without prejudice to any other requirement as to earthing, a generator¹⁴, distributor or meter operator¹⁵, as the case may be, must ensure that any metalwork enclosing, supporting or otherwise associated with his equipment¹⁶ in a network and which is not intended to serve as a phase conductor¹⁷ is, where necessary to prevent danger, connected with earth¹⁸. This does not, however, apply:

- 2656 (a) to any metalwork attached to, or forming part of, a wooden pole support¹⁹, the design and construction of which is such as to prevent, so far as is reasonably practicable, danger within three metres of the ground from any failure of insulation²⁰ or failure of insulators²¹; or
- 2657 (b) to any wall-mounted metal bracket carrying an overhead line²² not connected with earth, where the line is both supported by an insulator and the part of the line in contact with the insulator is itself surrounded by insulation²³.

The above provisions regarding the earthing of metalwork²⁴ also apply, and the above provisions regarding multiple protective earthing²⁵ do not apply, in relation to activities carried on in the territorial sea adjacent to Great Britain²⁶ and the renewable energy zone²⁷ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²⁸.

1 For the meaning of 'distributor' see PARA 1153 note 2 ante.

2 For the meaning of 'low voltage' see PARA 1153 note 1 ante.

3 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

4 I.e. the connection required under the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(3)(b): see PARA 1160 ante at head (3)(b) in the text. For the meaning of 'earth' see PARA 1153 note 1 ante; and for the meaning of 'connected with earth' and cognate expressions see PARA 1159 note 6 ante.

- 5 For the meaning of 'supply neutral conductor' see PARA 1159 note 6 ante.
- 6 'Distributing main' means a low voltage electric line which connects a distributor's source of voltage to one or more service lines or directly to a single consumer's installation: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5). For the meaning of 'electric line' see PARA 1153 note 7 ante; and for the meaning of 'consumer's installation' see PARA 1153 note 1 ante.
- 7 'Service line' means an electric line which connects either a street electrical fixture, or no more than four consumer's installations in adjacent buildings, to a distributing main: *ibid* reg 1(5). For the meaning of 'street electrical fixture' see PARA 1153 note 1 ante.
- 8 For the meaning of 'danger' see PARA 1153 note 13 ante.
- 9 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 9(1), (2).
- 10 For the meaning of 'protective conductor' see PARA 1153 note 1 ante.
- 11 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 9(3).
- 12 'Metalwork' does not include any electric line or conductor used for earthing purposes: *ibid* reg 1(5). For the meaning of 'conductor' see PARA 1153 note 1 ante.
- 13 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 9(1), (4).
- 14 For the meaning of 'generator' see PARA 1153 note 1 ante.
- 15 For the meaning of 'meter operator' see PARA 1153 note 3 ante.
- 16 For the meaning of 'equipment' see PARA 1153 note 4 ante. See also PARA 1155 note 3 ante.
- 17 For the meaning of 'phase conductor' see PARA 1153 note 1 ante.
- 18 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 10(1).
- 19 For the meaning of 'support' see PARA 1153 note 4 ante.
- 20 For the meaning of 'insulation' see PARA 1156 note 18 ante.
- 21 For the meaning of 'insulator' see PARA 1153 note 4 ante.
- 22 For the meaning of 'overhead line' see PARA 1153 note 7 ante.
- 23 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 10(2).
- 24 *Ie* *ibid* reg 10: see the text and notes 14-23 *supra*.
- 25 *Ie* *ibid* reg 9: see the text and notes 1-13 *supra*.
- 26 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 27 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 28 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(a).

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D. SUBSTATIONS

1162. Substation safety.

Every generator¹ and distributor² must, for every substation³ which he owns or operates:

- 2658 (1) enclose the substation where necessary to prevent, so far as is reasonably practicable, danger⁴ or unauthorised access;
- 2659 (2) enclose any part of the substation, which is open to the air and contains live equipment⁵ which is not encased, with a fence or wall not less than 2.4 metres in height to prevent, so far as is reasonably practicable, danger or unauthorised access;
- 2660 (3) ensure that, so far as is reasonably practicable, there are at all times displayed:
 - 245 367. (a) sufficient safety signs which comply with the prescribed design, colours and proportions⁶ and which are of such size and placed in such positions as are necessary to give due warning of such danger as is reasonably foreseeable in the circumstances;
 - 368. (b) a notice which is placed in a conspicuous position and which gives the location or identification of the substation, the name of each generator or distributor who owns or operates the substation equipment making up the substation and the telephone number where a suitably qualified person appointed for this purpose by the generator or distributor will be in constant attendance; and
 - 369. (c) such other signs, which are of such size and placed in such positions, as are necessary to give due warning of danger having regard to the siting of, the nature of, and the measures taken to ensure the physical security of, the substation equipment; and
- 246 2661 (4) take all reasonable precautions to minimise the risk of fire associated with the equipment⁷.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain⁸ and the renewable energy zone⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁰.

¹ For the meaning of 'generator' see PARA 1153 note 1 ante.

² For the meaning of 'distributor' see PARA 1153 note 2 ante.

³ For the meaning of 'substation' see PARA 1153 note 8 ante.

⁴ For the meaning of 'danger' see PARA 1153 note 13 ante.

⁵ For the meaning of 'equipment' see PARA 1153 note 4 ante.

6 le which comply with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 11(c)(i), Sch 1.

7 Ibid reg 11. Regulation 11(c) (see head (3) in the text) did not apply until 31 January 2005: see regs 1(1), 2(5).

8 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

9 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

10 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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E. UNDERGROUND CABLES AND EQUIPMENT

1163. General restriction on, and requirements for, the use of underground cables.

No generator¹ or distributor² must use any of his underground cables³ and associated equipment⁴, except those in generating stations⁵ or substations⁶, which he knows do not comply with the following requirements⁷.

Underground cables and associated equipment which contain conductors⁸ not connected with earth⁹ must be protected in accordance with heads (1) and (2) below¹⁰. That protection must comprise:

- 2662 (1) in respect of joints or terminations of a conductor in a low voltage¹¹ system, some form of mechanical protection; and
- 2663 (2) in respect of any other part of any conductor, an electrically continuous metallic screen connected with earth,

so placed as to ensure that, so far as is reasonably practicable, any tool or device likely to be used in the vicinity will make contact with that protection or screen before it can make contact with any conductors not connected with earth¹².

Every underground cable must be kept at such depth or be otherwise protected so as to avoid, so far as is reasonably practicable, any damage or danger¹³ by reason of such uses of the land which can be reasonably expected¹⁴. In addition to satisfying those requirements, an underground cable containing conductors not connected with earth must be protected, marked or otherwise indicated so as to ensure, so far as is reasonably practicable, that any person excavating the land above the cable will be given sufficient warning of its presence¹⁵. The protection, marking or indication so required must be made by placing the cable in a pipe or duct or by overlaying the cable at a suitable distance with protective tiles or warning tape or by the provision of such other protective or warning device, mark or indication, or by a suitable combination of such measures, as will be likely to provide an appropriate warning¹⁶.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁷ and the renewable energy zone¹⁸ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁹.

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'underground cable' see PARA 1156 note 18 ante. See also PARA 1155 note 3 ante.

4 For the meaning of 'equipment' see PARA 1153 note 4 ante.

5 For the meaning of 'generating station' see PARA 1160 note 17 ante.

6 For the meaning of 'substation' see PARA 1153 note 8 ante.

- 7 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 12.
- 8 For the meaning of 'conductor' see PARA 1153 note 1 ante.
- 9 For the meaning of 'earth' see PARA 1153 note 1 ante; and for the meaning of 'connected with earth' and cognate expressions see PARA 1159 note 6 ante.
- 10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 13(1).
- 11 For the meaning of 'low voltage' see PARA 1153 note 1 ante.
- 12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 13(2).
- 13 For the meaning of 'danger' see PARA 1153 note 13 ante.
- 14 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 14(1).
- 15 Ibid reg 14(2). Regulation 14(2) does not, however, apply to any low voltage underground cable installed on or before the day before 31 January 2003 (regs 1(1), 2(6)) until a material alteration is made to any part of the relevant network (reg 2(8)). See also reg 2(9), cited in PARA 1159 note 9 ante.
- 16 Ibid reg 14(3). Regulation 14(3) does not, however, apply to any low voltage underground cable installed on or before the day before 31 January 2003 (regs 1(1), 2(6)) until a material alteration is made to any part of the relevant network (reg 2(8)). See also reg 2(9), cited in PARA 1159 note 9 ante.
- 17 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 18 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 19 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1164. Maps of underground networks.

The following provisions apply in respect of any network¹ or part thereof, owned or operated by a generator² or distributor³ which is below ground on land which is not under his control⁴.

Every generator or distributor must have and, so far as is reasonably practicable, keep up to date, a map or series of maps indicating the position and depth below surface level of all networks or parts thereof which he owns or operates⁵. The generator or distributor must make a copy of the whole or the relevant part of any map prepared or kept for these purposes available for inspection by any of:

- 2664 (1) the Secretary of State⁶;
- 2665 (2) the local planning authority⁷ for the area where the network or part thereof is situated; and
- 2666 (3) any other person who can show reasonable cause for requiring to inspect any part of the map,

and must, on request, provide a copy of such map or part of the map⁸. The generator or distributor may, at his discretion, require payment of a reasonable fee for the inspection or copying of that map or part of that map⁹.

Any map prepared for these purposes may be prepared and kept by electronic means provided that that means has the capability of reproducing such map in printed form¹⁰. Nothing in these provisions requires the inclusion, on a map prepared or kept for these purposes, of information relating to the position and depth below surface level of networks or parts thereof which were placed below ground before 1 October 1988 where it would not be reasonably practicable to obtain such information¹¹.

These duties do not apply to agents, contractors or sub-contractors¹². They do, however, apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹³ and the renewable energy zone¹⁴ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁵.

1 For the meaning of 'network' see PARA 1153 note 1 ante.

2 For the meaning of 'generator' see PARA 1153 note 1 ante.

3 For the meaning of 'distributor' see PARA 1153 note 2 ante.

4 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 15(1).

5 Ibid reg 15(2).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 As to local planning authorities see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28 et seq.

8 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 15(3).

9 Ibid reg 15(4).

10 Ibid reg 15(5).

11 Ibid reg 15(6).

12 See ibid reg 2(2).

13 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

14 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

15 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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F. OVERHEAD LINES

1165. General restriction on the use of overhead lines.

No generator¹ or distributor² must use any of his overhead lines³, except those in generating stations⁴ and substations⁵, which he knows do not comply with Part V⁶ of the Electricity Safety, Quality and Continuity Regulations 2002⁷.

No overhead line must be used for the purpose of supply⁸ at a nominal voltage greater than 400,000 volts⁹.

None of the provisions of Part V of the 2002 Regulations apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁰ and the renewable energy zone¹¹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹².

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'overhead line' see PARA 1153 note 7 ante.

4 For the meaning of 'generating station' see PARA 1160 note 17 ante.

5 For the meaning of 'substation' see PARA 1153 note 8 ante.

6 I.e. the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, Pt V (regs 16-20): see the text and notes 8-9 infra; and PARA 1166 et seq post.

7 Ibid reg 16(1).

8 For the meaning of 'supply' see PARA 1153 note 5 ante.

9 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 16(2).

10 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

11 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

12 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(b).

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1166. Minimum height of overhead lines, wires and cables.

The height above ground of any overhead line¹, at the maximum likely temperature of that line, must not² be less than the specified³ height⁴. This does not, however, apply to any section of an overhead line at a point where it is not over a road accessible to vehicular traffic and which:

- 2667 (1) is surrounded by insulation⁵; or
- 2668 (2) is not surrounded by insulation but is at least 4.3 metres above ground and connects equipment⁶ mounted on a support⁷ to any overhead line; or
- 2669 (3) is connected with earth⁸.

The height above ground of any wire or cable which is attached to a support carrying any overhead line must not be less than 5.8 metres at any point where it is over a road accessible to vehicular traffic⁹.

1 For the meaning of 'overhead line' see PARA 1153 note 7 ante.

2 I.e. subject to the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 17(3): see the text and notes 5-8 infra.

3 I.e. the height specified by ibid reg 17(2). In relation to an overhead line used, or intended to be used, at a voltage specified in Sch 2 col 1, the height referred to in reg 17(1) must be: (1) at any point where that line is over a road accessible to vehicular traffic, the height specified in Sch 2 col 2 as appropriate to that voltage; and (2) at any other point, the height specified in Sch 2 col 3 as appropriate to that voltage: reg 17(2).

4 Ibid reg 17(1).

5 For the meaning of 'insulation' see PARA 1156 note 18 ante.

6 For the meaning of 'equipment' see PARA 1153 note 4 ante.

7 For the meaning of 'support' see PARA 1153 note 4 ante.

8 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 17(3). For the meaning of 'connected with earth' see PARA 1159 note 6 ante.

9 Ibid reg 17(4).

Regulation 17 does not apply in relation to activities carried on in the territorial sea adjacent to Great Britain and the renewable energy zone the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668: see PARA 1165 the text and notes 10-12 ante.

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1167. Position, insulation and protection of overhead lines.

Any part of an overhead line¹ which is not connected with earth² and which is not ordinarily accessible³ must be supported on insulators⁴ or surrounded by insulation⁵.

Any part of an overhead line which is not connected with earth and which is ordinarily accessible must be:

- 2670 (1) made dead; or
- 2671 (2) so insulated that it is protected, so far as is reasonably practicable, against mechanical damage or interference; or
- 2672 (3) adequately protected to prevent danger⁶.

Any person responsible for erecting a building or structure which will cause any part of an overhead line which is not connected with earth to become ordinarily accessible must give reasonable notice to the generator⁷ or distributor⁸ who owns or operates the overhead line of his intention to erect that building or structure⁹.

Any bare conductor¹⁰ not connected with earth, which is part of a low voltage¹¹ overhead line, must be situated throughout its length directly above a bare conductor which is connected with earth¹².

No overhead line must, so far as is reasonably practicable, come so close to any building, tree or structure as to cause danger¹³.

1 For the meaning of 'overhead line' see PARA 1153 note 7 ante.

2 For the meaning of 'connected with earth' and cognate expressions see PARA 1159 note 6 ante.

3 For these purposes, the expression 'ordinarily accessible' means the overhead line could be reached by hand if any scaffolding, ladder or other construction was erected or placed on, in, against or near to a building or structure: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(6).

4 For the meaning of 'insulator' see PARA 1153 note 4 ante.

5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(1). For the meaning of 'insulation' see PARA 1156 note 18 ante.

6 Ibid reg 18(2). For the meaning of 'danger' see PARA 1153 note 13 ante.

7 For the meaning of 'generator' see PARA 1153 note 1 ante.

8 For the meaning of 'distributor' see PARA 1153 note 2 ante.

9 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(3).

10 For the meaning of 'conductor' see PARA 1153 note 1 ante.

11 For the meaning of 'low voltage' see PARA 1153 note 1 ante.

12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(4).

13 Ibid reg 18(5).

Regulation 18 does not apply in relation to activities carried on in the territorial sea adjacent to Great Britain and the renewable energy zone the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668: see PARA 1165 the text and notes 10-12 ante.

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1168. Precautions against access and warnings of dangers; fitting of insulators to stay wires.

Every support¹ carrying a high voltage² overhead line³ must, if the circumstances reasonably require, be fitted with devices to prevent, so far as is reasonably practicable, any unauthorised person from reaching a position at which any such line would be a source of danger⁴.

Every support carrying a high voltage overhead line, and every support carrying a low voltage⁵ overhead line incorporating bare phase conductors⁶, must have attached to it sufficient safety signs complying with the prescribed design, colours and proportions⁷ of such size and placed in such positions as are necessary to give due warning of such danger as is reasonably foreseeable in the circumstances⁸. This requirement does not, however, apply until ten years after 31 January 2003⁹ or until there is a material alteration in the relevant network¹⁰.

Every stay wire which forms part of, or is attached to, any support carrying an overhead line incorporating bare phase conductors, except where the support is a lattice steel structure or other structure entirely of metal and connected to earth¹¹, must be fitted with an insulator¹² no part of which must be less than three metres above ground or above the normal height of any such line attached to that support¹³. This requirement does not, however, apply until ten years after 31 January 2003¹⁴ or until there is a material alteration in the relevant network¹⁵.

1 For the meaning of 'support' see PARA 1153 note 4 ante.

2 For the meaning of 'high voltage' see PARA 1153 note 1 ante.

3 For the meaning of 'overhead line' see PARA 1153 note 7 ante.

4 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 19(1). For the meaning of 'danger' see PARA 1153 note 13 ante.

5 For the meaning of 'low voltage' see PARA 1153 note 1 ante.

6 For the meaning of 'phase conductor' see PARA 1153 note 1 ante.

7 ie complying with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 19(2), Sch 1.

8 Ibid reg 19(2).

9 Ibid regs 1(1), 2(7).

10 See ibid reg 2(8). For the meaning of 'network' see PARA 1153 note 1 ante. See also reg 2(9), cited in PARA 1159 note 9 ante.

11 For the meaning of 'earth' see PARA 1153 note 1 ante; and for the meaning of 'connected with earth' see PARA 1159 note 6 ante.

12 For the meaning of 'insulator' see PARA 1153 note 4 ante.

13 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 20.

14 Ibid regs 1(1), 2(7).

15 See *ibid* reg 2(8). See also reg 2(9), cited in PARA 1159 note 9 *ante*.

Regulations 19, 20 do not apply in relation to activities carried on in the territorial sea adjacent to Great Britain and the renewable energy zone the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668: see PARA 1165 the text and notes 10-12 *ante*.

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1169. Avoidance of interference with or interruption of supply caused by trees.

A generator¹ or distributor² must, so far as is reasonably practicable, ensure that there is no interference with or interruption of supply³ caused by an insufficient clearance between any of his overhead lines⁴ and a tree or other vegetation⁵. This does not, however, apply until six years after 31 January 2003⁶ or until there is a material change in the relevant network⁷.

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'supply' see PARA 1153 note 5 ante.

4 For the meaning of 'overhead line' see PARA 1153 note 7 ante. See also PARA 1155 note 3 ante.

5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 20A (added by SI 2006/1521).

The Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 20A (as so added) does not apply in relation to activities carried on in the territorial sea adjacent to Great Britain and the renewable energy zone the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668 (see PARA 1310 post): see the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(b). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

6 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, regs 1(1), 2(7A) (reg 2(7A) added by SI 2006/1521).

7 See the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 2(8). See also reg 2(9), cited in PARA 1159 note 9 ante.

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G. GENERATION

1170. Switched alternative sources of energy and parallel operation.

Where a person operates a source of energy¹ as a switched alternative to a distributor's² network³, he must ensure that that source of energy cannot operate in parallel with that network; and where the source of energy is part of a low voltage⁴ consumer's installation⁵, that installation must comply with British Standard Requirements⁶. Without prejudice to the above provision, no person must install or operate a source of energy which may be connected in parallel with a distributor's network unless he:

- 2673 (1) has the necessary and appropriate equipment⁷ to prevent danger⁸ or interference with that network or with the supply to consumers⁹ so far as is reasonably practicable;
- 2674 (2) has the necessary and appropriate personnel and procedures to prevent danger so far as is reasonably practicable;
- 2675 (3) complies with British Standard Requirements where the source of energy is part of a low voltage consumer's installation; and
- 2676 (4) agrees specific requirements with the distributor who owns or operates the network¹⁰.

Heads (2) and (4) above do not, however, apply to a person who installs or operates a source of energy which may be connected in parallel with a distributor's network provided that heads (1) and (3) above are complied with; and:

- 2677 (a) the source of energy does not produce an electrical output exceeding 16 amperes per phase at low voltage;
- 2678 (b) the source of energy is configured to disconnect itself electrically from the parallel connection when the distributor's equipment disconnects the supply of electricity to the person's installation; and
- 2679 (c) the person installing the source of energy ensures that the distributor is advised of the intention to use the source of energy in parallel with the network before, or at the time of, commissioning the source¹¹.

The above provisions with regard to parallel operation¹² also apply, and the above provision with regard to switched alternative sources of energy¹³ does not apply, in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁴ and the renewable energy zone¹⁵ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁶.

1 For the meaning of 'energy' see PARA 1153 note 3 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

- 4 For the meaning of 'low voltage' see PARA 1153 note 1 ante.
- 5 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.
- 6 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 21. For these purposes, 'British Standard Requirements' means the British Standard Requirements for Electrical Installations BS 7671 (2001) IEE Wiring Regulations (16th Edn) ISBN 0 85296 988 0 (2001) (as amended by Amendment No 1 (AMD 13628) (February 2002) and as further amended by Amendment No 2 (AMD 14905) (March 2004)): Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(5) (definition amended by SI 2006/1521). Any requirement in the 2002 Regulations for goods or materials to comply with a specified standard is to be satisfied by compliance with an equivalent standard or code of practice of a national standards or equivalent body of any EEA state, in so far as the standard or code of practice in question enables electricity safety, quality or continuity considerations to be met in an equivalent manner: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(2). For this purpose, the expression 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993: Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 1(3).
- 7 For the meaning of 'equipment' see PARA 1153 note 4 ante.
- 8 For the meaning of 'danger' see PARA 1153 note 13 ante.
- 9 For the meaning of 'consumer' see PARA 1153 note 1 ante.
- 10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 22(1).
- 11 Ibid reg 22(2).
- 12 Ie ibid reg 22: see the text and notes 7-11 supra.
- 13 Ie ibid reg 21: see the text and notes 1-6 supra.
- 14 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 15 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 16 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(c).

UPDATE

1170 Switched alternative sources of energy and parallel operation

NOTE 6--In definition of 'British Standard Requirements' for '(2001) ... (2001)' read '(2008) IEE Wiring Regulations (17th Edn) ISBN 978 0 86341 844 0': SI 2002/2665 reg 1(5) (definition amended by SI 2009/639).

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H. SUPPLIES TO INSTALLATIONS AND TO OTHER NETWORKS

1171. Precautions against supply failure; discontinuation of supplies for testing etc.

A distributor¹ must:

- 2680 (1) ensure that his network² is to be:
- 247
- 370. (a) so arranged; and
- 371. (b) so provided, where necessary, with fuses or automatic switching devices³, appropriately located and set,
- 248
- 2681 as to restrict, so far as is reasonably practicable, the number of consumers⁴ affected by any fault in his network⁵;
- 2682 (2) at all times take all reasonably practicable steps to avoid interruptions of supply⁶ resulting from his own acts⁷.

A distributor may discontinue a supply for the purposes of testing or for any other purpose connected with the carrying on of his activities⁸; but only:

- 2683 (i) for such period as may be necessary but no longer; and
- 2684 (ii) if not less than 2 days' notice in writing⁹ has been received by the relevant persons¹⁰.

He may, however, discontinue a supply even if the notice required by head (ii) above has not been received by the relevant persons if:

- 2685 (A) the discontinuation is agreed between the relevant persons and the distributor; or
- 2686 (B) the distributor considers it necessary to discontinue supplies to the relevant persons in order to prevent danger¹¹ or to undertake essential emergency repairs; or
- 2687 (C) if there is an urgent need to discontinue the supply relating to the safe or proper operation of the network; or
- 2688 (D) the notice is not received by the relevant persons due to circumstances not within the control of the distributor¹².

Heads (1) and (2) above also apply, but the above provisions with regard to discontinuation for testing and other purposes¹³ do not apply, in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁴ and the renewable energy zone¹⁵ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁶.

- 1 For the meaning of 'distributor' see PARA 1153 note 2 ante.
- 2 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.
- 3 For the meaning of 'switching device' see PARA 1160 note 14 ante.
- 4 For the meaning of 'consumer' see PARA 1153 note 1 ante.
- 5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 23(1).
- 6 *Ie* subject to *ibid* reg 29: see the text and notes 8-12 *infra*. For the meaning of 'supply' see PARA 1153 note 5 ante.
- 7 *Ibid* reg 23(2).
- 8 *Ibid* reg 29(1).
- 9 Unless the context otherwise requires, any reference in the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended), to the provision of information 'in writing' includes the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication: reg 1(4).
- 10 *Ibid* reg 29(2). For these purposes, the expression 'relevant persons' means every consumer likely to be affected by a discontinuation of supply by a distributor and every other distributor likely to be affected by that discontinuation: reg 29(4).
- 11 For the meaning of 'danger' see PARA 1153 note 13 ante.
- 12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 29(3).
- 13 *Ie* *ibid* reg 29: see the text and notes 8-12 *supra*.
- 14 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 15 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 16 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(d).

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1172. Equipment on a consumer's premises.

A distributor¹ or meter operator² must ensure that each item of his equipment³ which is on a consumer's⁴ premises but which is not under the control of the consumer, whether forming part of the consumer's installation⁵ or not, is:

- 2689 (1) suitable for its purpose;
- 2690 (2) installed and, so far as is reasonably practicable, maintained so as to prevent danger⁶; and
- 2691 (3) protected by a suitable fusible cut-out or circuit breaker which is situated as close as is reasonably practicable to the supply terminals⁷;

and every circuit breaker or cut-out fuse forming part of the fusible cut-out mentioned in head (3) above must be enclosed in a locked or sealed container as appropriate⁸.

Where they form part of his equipment which is on a consumer's premises but which is not under the control of the consumer, a distributor or meter operator, as appropriate, must mark permanently, so as clearly to identify the polarity of each of them, the separate conductors⁹ of low voltage¹⁰ electric lines¹¹ which are connected to supply terminals and such markings must be made at a point which is as close as is practicable to the supply terminals in question¹².

Unless he can reasonably conclude that it is inappropriate for reasons of safety, a distributor must, when providing a new connection¹³ at low voltage, make available his supply neutral conductor¹⁴ or, if appropriate, the protective conductor¹⁵ of his network¹⁶ for connection to the protective conductor of the consumer's installation¹⁷.

The above provisions do not apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁸ and the renewable energy zone¹⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²⁰.

1 For the meaning of 'distributor' see PARA 1153 note 2 ante.

2 For the meaning of 'meter operator' see PARA 1153 note 3 ante.

3 For the meaning of 'equipment' see PARA 1153 note 4 ante. See also PARA 1155 note 3 ante.

4 For the meaning of 'consumer' see PARA 1153 note 1 ante.

5 For the meaning of 'consumer's installation' see PARA 1153 note 2 ante.

6 For the meaning of 'danger' see PARA 1153 note 13 ante.

7 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 24(1). For the meaning of 'supply terminals' see PARA 1156 note 12 ante.

8 Ibid reg 24(2).

9 For the meaning of 'conductor' see PARA 1153 note 1 ante.

10 For the meaning of 'low voltage' see PARA 1153 note 1 ante.

- 11 For the meaning of 'electric line' see PARA 1153 note 7 ante.
- 12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 24(3).
- 13 For these purposes, the expression 'new connection' means the first electric line, or the replacement of an existing electric line, to one or more consumer's installations: *ibid* reg 24(5).
- 14 For the meaning of 'supply neutral conductor' see PARA 1159 note 6 ante.
- 15 For the meaning of 'protective conductor' see PARA 1153 note 1 ante.
- 16 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.
- 17 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 24(4).
- 18 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 19 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 20 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(d).

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1173. Connections to installations or to other networks.

No person must make or alter a connection from a distributor's¹ network² to a consumer's installation³, to a street electrical fixture⁴ or to another distributor's network without that distributor's consent, unless such consent has been unreasonably withheld⁵. A distributor must not give his consent to the making or altering of the connection referred to above where he has reasonable grounds for believing that:

- 2692 (1) the consumer's installation, street electrical fixture or other distributor's network fails to comply with British Standard Requirements⁶ or the relevant regulations⁷; or
- 2693 (2) the connection itself will not be so constructed, installed, protected and used or arranged for use, so as to prevent, as far as is reasonably practicable, danger⁸ or interruption of supply⁹.

Any dispute between a person desiring to make or alter such a connection¹⁰ and the distributor, arising from delay in giving or refusal to give the required consent by virtue of the provisions of head (1) or head (2) above, which cannot be resolved between them may be referred by either of them to the Secretary of State¹¹ who must appoint a suitably qualified person to determine the dispute and to order as he thinks fit whether the costs, or any part of them, associated with the determination should be borne by one or other of the parties¹². Following the determination by the person appointed by the Secretary of State, the distributor must grant or withhold the required consent as appropriate, subject to any conditions which the person appointed by the Secretary of State may stipulate in his determination¹³.

These provisions do not apply to agents, contractors or sub-contractors¹⁴. Nor do they apply in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁵ and the renewable energy zone¹⁶ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004¹⁷.

1 For the meaning of 'distributor' see PARA 1153 note 2 ante.

2 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

3 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.

4 For the meaning of 'street electrical fixture' see PARA 1153 note 1 ante.

5 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 25(1).

6 For the meaning of 'British Standard Requirements', and as to compliance with those requirements, see PARA 1170 note 6 ante.

7 Ie with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 et seq ante, PARA 1174 et seq post.

8 For the meaning of 'danger' see PARA 1153 note 13 ante.

- 9 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 25(2). For the meaning of 'supply' see PARA 1153 note 5 ante.
- 10 Is such a person as is referred to in *ibid* reg 25(1): see the text and notes 1-5 *supra*.
- 11 As to the Secretary of State see PARA 601 note 1 ante.
- 12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 25(3).
- 13 *Ibid* reg 25(4).
- 14 See *ibid* reg 2(2).
- 15 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 16 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 17 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(d).

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1174. Disconnection of supply, refusal to connect and resolution of disagreements.

Where a connection to a distributor's¹ network² has been made, or is proposed, and the distributor is not satisfied that the consumer's installation³ or other distributor's network or street electrical fixture⁴ which is or would be connected to his network is or would be so constructed, installed, protected and used or arranged for use so as to prevent, so far as is reasonably practicable, danger⁵ or interference with his or any other distributor's network, or with the supply⁶ to any consumer's installation or street electrical fixture, he may issue a notice in writing⁷ to the consumer⁸ or other distributor or owner of the street electrical fixture, as the case may be, requiring remedial works to be carried out within such reasonable period as may be specified in the notice⁹. If the remedial works specified in the notice by the distributor are not carried out by the end of the period specified in the notice the distributor may disconnect or refuse to connect (as the case may be) the supply to the consumer's installation or other distributor's network or street electrical fixture, and in such an event the distributor must by further notice in writing addressed to the consumer or other distributor or owner of the street electrical fixture (as the case may be) set out the reasons for the disconnection or refusal to connect¹⁰. A distributor may disconnect the supply to the consumer's installation or other distributor's network or street electrical fixture without giving notice as required by the above provisions if such disconnection can be justified on grounds of safety, but in such an event the distributor must by notice in writing addressed to the consumer or other distributor or owner of the street electrical fixture (as the case may be) and served as soon as reasonably practicable after the disconnection, give the reasons for such disconnection and if applicable details of any remedial measures required to be taken by the consumer or other distributor or owner of the street electrical fixture¹¹.

The distributor must connect or restore the supply when the stipulated remedial measures have been taken by the consumer or other distributor or owner of the street electrical fixture (as the case may be) to the reasonable satisfaction of the distributor, or if no remedial measures are required, as soon as is reasonably practicable after the grounds for disconnection have ceased to apply¹².

Any dispute between the distributor and the consumer or other distributor or owner of the street electrical fixture (as the case may be), over the disconnection of or refusal to connect the consumer's installation or other distributor's network or street electrical fixture which cannot be resolved between them, may be referred by any of them to the Secretary of State¹³ who must appoint a suitably qualified person to determine the dispute and to order as he thinks fit whether the costs, or any part of them, associated with the determination should be borne by one or other of the parties¹⁴. Where a referral is made to the Secretary of State in accordance with that provision before the expiry of the notice period referred to above¹⁵, the distributor must not take any action¹⁶ until the determination of the dispute¹⁷. Following the determination by the person appointed by the Secretary of State, the distributor must maintain, connect, restore or may disconnect the supply as appropriate, subject to any conditions which the person appointed by the Secretary of State may stipulate in his determination¹⁸.

A copy of these provisions must be indorsed upon or accompany every notice given by the distributor pursuant to them¹⁹.

These provisions do not apply to agents, contractors or sub-contractors²⁰. Nor do they apply in relation to activities carried on in the territorial sea adjacent to Great Britain²¹ and the renewable energy zone²² the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²³.

1 For the meaning of 'distributor' see PARA 1153 note 1 ante.

2 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

3 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.

4 For the meaning of 'street electrical fixture' see PARA 1153 note 1 ante.

5 For the meaning of 'danger' see PARA 1153 note 13 ante.

6 For the meaning of 'supply' see PARA 1153 note 5 ante.

7 For the meaning of 'in writing' see PARA 1171 note 9 ante. As to the notice see also the text and note 19 *infra*.

8 For the meaning of 'consumer' see PARA 1153 note 1 ante.

9 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 26(1).

10 *Ibid* reg 26(2).

11 *Ibid* reg 26(3).

12 *Ibid* reg 26(4).

13 As to the Secretary of State see PARA 601 note 1 ante.

14 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 26(5).

15 *Ie* the notice period referred to in *ibid* reg 26(1): see the text and notes 1-9 *supra*.

16 *Ie* pursuant to *ibid* reg 26(2): see the text and note 10 *supra*.

17 *Ibid* reg 26(6).

18 *Ibid* reg 26(7).

19 *Ibid* reg 26(8).

20 *Ibid* reg 2(2).

21 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

22 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

23 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(d).

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1175. Declaration of phases, frequency and voltage at supply terminals; other information to be provided on request.

Before commencing a supply¹ to a consumer's installation², or when the existing supply characteristics have been modified, the supplier³ must ascertain from the distributor⁴ and then declare to the consumer⁵:

- 2694 (1) the number of phases;
- 2695 (2) the frequency; and
- 2696 (3) the voltage,

at which it is proposed to supply electricity and the extent of the permitted variations thereto⁶. Unless otherwise agreed in writing⁷ between the distributor, the supplier and the consumer, and, if necessary, between the distributor and any other distributor likely to be affected, the frequency so declared is to be 50 hertz and the voltage declared in respect of a low voltage⁸ supply is to be 230 volts between the phase and neutral conductors⁹ at the supply terminals¹⁰; and unless otherwise agreed in writing between those persons the permitted variations are:

- 2697 (a) a variation not exceeding 1 per cent above or below the declared frequency;
- 2698 (b) in the case of a low voltage supply, a variation not exceeding 10 per cent above or 6 per cent below the declared voltage at the declared frequency;
- 2699 (c) in the case of a high voltage¹¹ supply operating at a voltage below 132,000 volts, a variation not exceeding 6 per cent above or below the declared voltage at the declared frequency; and
- 2700 (d) in the case of a high voltage supply operating at a voltage of 132,000 volts or above, a variation not exceeding 10 per cent above or below the declared voltage at the declared frequency¹².

Every distributor must ensure that, save in exceptional circumstances, the characteristics of the supplies to consumer's installations connected to his network comply with the declarations so made¹³. The number and rotation of phases in any supply must not be varied by the distributor except with the agreement of the consumer or, in the absence of such agreement, the consent of the Secretary of State¹⁴ who may impose such conditions, if any, as he thinks appropriate¹⁵.

Following an application by any distributor affected by a declaration made pursuant to the above provisions, the Secretary of State may authorise the variation of any of the values or permitted variations contained in a declaration provided that the applicant has previously given notice of his application to such persons and in such terms as the Secretary of State may require¹⁶. Where the Secretary of State has so authorised a variation the distributor must forthwith serve notice of any such variation on every supplier, every other distributor likely to be affected¹⁷ and every consumer to whom it may apply¹⁸.

A distributor must provide, in respect of any existing or proposed consumer's installation which is connected or is to be connected to his network¹⁹, to any person who can show a reasonable cause for requiring the information, a written statement of:

- 2701 (i) the maximum prospective short circuit current at the supply terminals;
- 2702 (ii) for low voltage connections, the maximum earth loop impedance of the earth fault path outside the installation;
- 2703 (iii) the type and rating of the distributor's protective device or devices nearest to the supply terminals;
- 2704 (iv) the type of earthing system applicable to the connection; and
- 2705 (v) the information specified in heads (1) to (3) above,

which apply, or will apply, to that installation²⁰.

The above provisions do not apply to agents, contractors or sub-contractors²¹. Nor do they apply in relation to activities carried on in the territorial sea adjacent to Great Britain²² and the renewable energy zone²³ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²⁴.

1 For the meaning of 'supply' see PARA 1153 note 5 ante.

2 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.

3 For the meaning of 'supplier' see PARA 1153 note 19 ante.

4 For the meaning of 'distributor' see PARA 1153 note 2 ante.

5 For the meaning of 'consumer' see PARA 1153 note 1 ante.

6 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 27(1).

7 For the meaning of 'in writing' see PARA 1171 note 9 ante.

8 For the meaning of 'low voltage' see PARA 1153 note 1 ante.

9 For the meanings of 'phase conductor' and 'neutral conductor' see PARA 1153 note 1 ante.

10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 27(2). For the meaning of 'supply terminals' see PARA 1156 note 12 ante.

11 For the meaning of 'high voltage' see PARA 1153 note 1 ante.

12 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 27(3). For the meaning of 'supply terminals' see PARA 1156 note 12 ante.

13 Ibid reg 27(6).

14 As to the Secretary of State see PARA 601 note 1 ante.

15 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 27(7).

16 Ibid reg 27(4).

17 Ie every other distributor referred to in ibid reg 27(2).

18 Ibid reg 27(5).

19 For the meaning of 'network' see PARA 1153 note 1 ante. See also PARA 1155 note 3 ante.

20 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 28.

21 Ibid reg 2(2).

22 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

23 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.

24 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(d).

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I. BREACHES OF THE RELEVANT REGULATIONS; OFFENCES

1176. Networks, equipment or installations in breach of the safety, quality and continuity regulations.

The following provisions apply in any case where the Secretary of State¹ is satisfied that:

- 2706 (1) any network² or any part thereof, or any equipment³ which is constructed, placed, erected, maintained, or used otherwise than in accordance with the relevant regulations⁴; or
- 2707 (2) any part of a consumer's installation⁵ which is not enclosed in a building; or
- 2708 (3) any network or any part thereof, any part of a consumer's installation which is not enclosed in a building or any equipment which is in breach of any relevant exemption⁶ or other relevant provision made under those regulations in force at the time when the notice referred to below⁷ is served,

is or is liable to become a source of danger⁸ to others or an interference with a supply⁹ to others or a cause of interruption of a supply to others¹⁰.

The Secretary of State may serve notice on the generator¹¹, distributor¹², meter operator¹³ or consumer¹⁴, as the case may be, specifying the matter of which he is satisfied and require that the network, consumer's installation, or the equipment or the part thereof specified in the notice:

- 2709 (a) must not be used; or
- 2710 (b) must be made dead; or
- 2711 (c) must be removed; or
- 2712 (d) must only be used subject to compliance with such conditions, improvements or modifications as that notice specifies,

within the time specified in that notice; and the person on whom that notice is served must comply with the provisions of that notice¹⁵. Where such a notice has required that any network, consumer's installation, equipment or the part thereof specified in the notice must not be used or must be made dead or must be removed or only used subject to compliance with conditions, improvements or modifications, that notice is to remain in effect until such time as the network, consumer's installation, equipment or the part thereof specified in the notice complies with the relevant regulations¹⁶ or until the Secretary of State withdraws the notice¹⁷.

If, within the period specified by that notice for compliance or such longer period as the Secretary of State may allow, the person on whom the notice is served disputes the basis for, or the requirements of, the notice, he may give notice in writing¹⁸ to the Secretary of State of that dispute and must state the grounds¹⁹. Where a notice is so given to the Secretary of State, the Secretary of State must refer the dispute to an independent person agreed between the Secretary of State and the person giving the notice, or in default of agreement, to a person nominated by the president for the time being of the Institution of Electrical Engineers²⁰. The

person to whom a dispute is referred may and, if so requested by any party to the dispute, must:

- 2713 (i) give the parties to the dispute an opportunity of appearing before and being heard by him; and
- 2714 (ii) make an inspection of the network, consumer's installation, or equipment which is the subject of the dispute²¹.

Where it appears to the person to whom a dispute is referred that any other person, not being a party to the dispute, has an interest in the outcome of that dispute, he may at his discretion treat that other person as if he were a party to the dispute²². The person to whom a dispute is referred may decide:

- 2715 (A) to uphold the notice served by the Secretary of State²³; or
- 2716 (B) to recommend to the Secretary of State that the notice be withdrawn or modified;

and must notify his decision in writing to the Secretary of State and to the person who has given notice²⁴ of the dispute²⁵. Having deliberated upon the dispute, the person to whom a dispute is referred must make a direction as to whether the person giving the notice of the dispute must bear the costs of the reference, including any fees or expenses payable to him, or whether those costs are to be borne by the Secretary of State²⁶.

A copy of the above provisions must be indorsed upon or accompany every notice served by the Secretary of State pursuant to them²⁷.

The above provisions also apply in relation to activities carried on in the territorial sea adjacent to Great Britain²⁸ and the renewable energy zone²⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004³⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'network' see PARA 1153 note 1 ante.

3 For the meaning of 'equipment' see PARA 1153 note 4 ante.

4 Ie otherwise than in accordance with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 et seq ante, PARA 1177 post.

5 For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.

6 As to exemptions from the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended) see PARA 1158 ante.

7 Ie the notice under ibid reg 34(2): see the text and notes 11-15 infra.

8 For the meaning of 'danger' see PARA 1153 note 13 ante.

9 For the meaning of 'supply' see PARA 1153 note 5 ante.

10 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 34(1).

11 For the meaning of 'generator' see PARA 1153 note 1 ante.

12 For the meaning of 'distributor' see PARA 1153 note 2 ante.

13 For the meaning of 'meter operator' see PARA 1153 note 3 ante.

14 For the meaning of 'consumer' see PARA 1153 note 1 ante.

- 15 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 34(2).
- 16 *Ie* with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see *PARA 1153 et seq ante*, *PARA 1177 post*.
- 17 *Ibid* reg 34(3).
- 18 For the meaning of 'writing' see *PARA 1171 note 9 ante*.
- 19 Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 34(4).
- 20 *Ibid* reg 34(5).
- 21 *Ibid* reg 34(7).
- 22 *Ibid* reg 34(8).
- 23 *Ie* the notice under *ibid* reg 34(2): see the text and notes 11-15 *supra*.
- 24 *Ie* under *ibid* reg 34(4): see the text and notes 18-19 *supra*.
- 25 *Ibid* reg 34(6).
- 26 *Ibid* reg 34(9).
- 27 *Ibid* reg 34(10).
- 28 As to the territorial sea of the United Kingdom see *WATER AND WATERWAYS* vol 100 (2009) *PARA 31 note 3*; and for the meaning of 'Great Britain' see *PARA 602 note 7 ante*.
- 29 For the meaning of 'renewable energy zone' for these purposes see *PARA 1153 note 22 ante*.
- 30 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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1177. Offences.

Any:

- 2717 (1) generator¹, distributor², supplier³, or meter operator⁴ or any agent, contractor or sub-contractor of any of them who fails to comply with any provision of the safety, quality and continuity regulations⁵ which applies to him;
- 2718 (2) person who fails to comply with:
- 249
372. (a) the duty to give reasonable notice of his intention to erect a building or structure which will cause any part of an overhead line⁶ which is not connected with earth⁷ to become ordinarily accessible⁸;
373. (b) the requirements with regard to switched alternative sources of energy⁹;
374. (c) the restrictions on parallel operation¹⁰; or
375. (d) the prohibition on making or altering connections without the distributor's consent¹¹; and
- 250
- 2719 (3) consumer¹² who fails to comply with:
- 251
376. (a) the prohibition on combining the neutral and protective functions in a single conductor¹³ in his consumer's installation¹⁴; or
377. (b) a notice given by the Secretary of State specifying the action to be taken where a network, equipment or installation is in breach of the relevant regulations¹⁵;
- 252

is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁶. Where relevant¹⁷, this also applies in relation to activities carried on in the territorial sea adjacent to Great Britain¹⁸ and the renewable energy zone¹⁹ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004²⁰.

1 For the meaning of 'generator' see PARA 1153 note 1 ante.

2 For the meaning of 'distributor' see PARA 1153 note 2 ante.

3 For the meaning of 'supplier' see PARA 1153 note 19 ante.

4 For the meaning of 'meter operator' see PARA 1153 note 3 ante.

5 Ie any provision of the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 et seq ante.

6 For the meaning of 'overhead line' see PARA 1153 note 7 ante.

7 For the meaning of 'connected with earth' see PARA 1159 note 6 ante.

8 Ie with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(3): see PARA 1167 ante.

9 Ie with ibid reg 21: see PARA 1170 ante.

- 10 Ie with ibid reg 22: see PARA 1170 ante.
- 11 Ie with ibid reg 25(1): see PARA 1173 ante.
- 12 For the meaning of 'consumer' see PARA 1153 note 1 ante.
- 13 For the meaning of 'conductor' see PARA 1153 note 1 ante.
- 14 Ie with the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 8(4): see PARA 1160 ante. For the meaning of 'consumer's installation' see PARA 1153 note 1 ante.
- 15 Ie with ibid reg 34(2): see PARA 1176 ante.
- 16 Ibid reg 35. As to the standard scale see PARA 613 note 11 ante.
- 17 Ibid regs 18, 21, 25 do not apply: see the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2)(b)-(d). For other exclusions see reg 5(2)(a)-(d).
- 18 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 19 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 20 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

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J. ELECTRICAL INSPECTORS

1178. Appointment of electrical inspectors; duties of such inspectors.

The Secretary of State¹ may appoint competent and impartial persons to be electrical inspectors². The duties of an electrical inspector are to be:

- 2720 (1) to inspect and test, periodically and in special cases, electric lines³ and electrical plant⁴ belonging to persons authorised by a licence⁵ or exemption⁶ to generate⁷, distribute⁸ or participate in the transmission⁹ of electricity or to participate in the operation of electricity interconnectors¹⁰;
- 2721 (2) to examine, periodically and in special cases, the generation, transmission, distribution or supply¹¹ of electricity by such persons;
- 2722 (3) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises¹², for the purpose of determining whether any requirement imposed¹³ in respect of the lines or plant or the conveyance of electricity through or by them has been complied with; and
- 2723 (4) such other duties as may be imposed by regulations¹⁴ or as the Secretary of State may determine¹⁵.

The Secretary of State may by regulations:

- 2724 (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
- 2725 (b) require persons authorised by a licence or exemption to carry on licensable activities¹⁶ to furnish electrical inspectors with records or other information¹⁷ and to allow such inspectors access to premises and the use of electrical plant and other facilities;
- 2726 (c) make provision for relieving electricity distributors from any duty to connect on request¹⁸ or authorising them to disconnect any premises or distribution system¹⁹ in such cases as may be prescribed²⁰; and
- 2727 (d) prescribe the amount of the fees which are to be payable to such inspectors²¹.

Any fees received by electrical inspectors must be paid to the Secretary of State; and any sums so received by him must be paid into the Consolidated Fund²².

The regulations that may be made under the above provisions include regulations:

- 2728 (i) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain²³ or a renewable energy zone²⁴; or
- 2729 (ii) making any other provision authorised by the above provisions in relation to activities carried on there²⁵.

A generator²⁶ or distributor²⁷ whose equipment²⁸ is subject to inspection, test or examination for the purpose of ascertaining whether a breach of the relevant regulations²⁹ may have occurred, by an inspector appointed by the Secretary of State under the above provisions, must afford reasonable facilities for such inspection, test or examination³⁰. A generator or distributor must provide such information to the inspector as he may require for the purposes of performing his statutory³¹ functions³². These duties also apply in relation to activities carried on in the territorial sea adjacent to Great Britain and the renewable energy zone³³ the area of which is designated by the Renewable Energy Zone (Designation of Area) Order 2004³⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Electricity Act 1989 s 30(1).

3 For the meaning of 'electric line' see PARA 1041 note 5 ante.

4 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

5 For the meaning of 'licence' see PARA 1041 note 12 ante.

6 For the meaning of 'exemption' see PARA 1046 note 7 ante.

7 For the meaning of 'generate' see PARA 1041 note 6 ante.

8 For the meaning of 'distribute' see PARA 1041 note 5 ante.

9 For the meaning of 'transmission' see PARA 1041 note 6 ante; and for the meaning of references to participating in the transmission of electricity see PARA 1050 note 5 ante.

10 For the meaning of 'electricity interconnector' see PARA 1041 note 11 ante; and for the meaning of references to participating in the operation of an electricity interconnector see PARA 1050 note 7 ante.

11 For the meaning of 'supply' see PARA 1041 note 10 ante.

12 For the meaning of 'premises' see PARA 1041 note 5 ante.

13 Ie imposed by or under the Electricity Act 1989 Pt I (ss 3-64) (as amended): see PARA 1041 et seq ante, PARA 1179 et seq post.

14 Ie by regulations under ibid s 30 (as amended). As to the making of regulations generally see ss 60, 106 (as amended); and PARA 1306 post.

15 Ibid s 30(2) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 31(1), (2); the Energy Act 2004 ss 143(1), 147(1), (4), Sch 19 paras 3, 11). As to the exercise of these powers see the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended); the text and notes 26-34 infra; and PARA 1153 et seq ante.

16 For the meaning of 'licensable activities' see PARA 1087 ante.

17 For the meaning of 'information' see PARA 1044 note 10 ante.

18 Ie any duty under the Electricity Act 1989 s 16 (as substituted): see PARA 1094 ante.

19 For the meaning of 'distribution system' see PARA 1041 note 5 ante.

20 For the meaning of 'prescribed' see PARA 1096 note 11 ante.

21 Electricity Act 1989 s 30(3) (amended by Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 31(1), (3)).

22 Electricity Act 1989 s 30(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

23 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

- 24 For the meaning of 'renewable energy zone' see the Energy Act 2004 s 84 (applied by the Electricity Act 1989 s 64(1) (definition added by the Energy Act 2004 s 102(1), (4)(b)); and PARA 1310 post.
- 25 Electricity Act 1989 s 30(3A) (added by the Energy Act 2004 s 94(2)).
- 26 For the meaning of 'generator' see PARA 1153 note 1 ante.
- 27 For the meaning of 'distributor' see PARA 1153 note 2 ante.
- 28 For the meaning of 'equipment' see PARA 1153 note 4 ante. See also PARA 1155 note 3 ante.
- 29 Ie a breach of the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665 (as amended): see PARA 1153 et seq ante.
- 30 Ibid reg 30(1).
- 31 Ie his functions under ibid reg 30.
- 32 Ibid reg 30(2).
- 33 For the meaning of 'renewable energy zone' for these purposes see PARA 1153 note 22 ante.
- 34 See the Electricity Safety, Quality and Continuity (Amendment) Regulations 2006, SI 2006/1521, reg 5(1), (2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/(iv) Supply and Safety Provisions/K. SECURITY OF SUPPLIES/1179. Directions for preserving security of electricity supplies etc.

K. SECURITY OF SUPPLIES

1179. Directions for preserving security of electricity supplies etc.

The Secretary of State¹ may, after consultation with any licence holder² or any person authorised by an exemption³ to generate⁴ or supply⁵ electricity⁶, give to that person such directions⁷ of a general character as appear to the Secretary of State to be requisite or expedient for the purpose of (1) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission⁸ or supply of electricity; or (2) mitigating the effects of any civil emergency⁹ which may occur¹⁰. If it appears to the Secretary of State to be requisite or expedient to do so for any such purpose, he may, after consultation with any licence holder and any person authorised by an exemption to generate or supply electricity, give to that person a direction requiring him (according to the circumstances of that case) to do, or not to do, a particular thing specified in the direction¹¹.

Any licence holder and any person authorised by an exemption to generate or supply electricity must give effect to any direction so given to him by the Secretary of State notwithstanding any other duty imposed¹² on him¹³.

The Secretary of State must lay before each House of Parliament a copy of every direction so given unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person¹⁴.

A person must not disclose, nor may he be required by virtue of any enactment or otherwise to disclose, anything done by virtue of these provisions if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person¹⁵.

Various other directions may be given to the electricity industry under statute¹⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'licence' and 'licence holder' see PARA 1041 note 12 ante.

3 For the meaning of 'exemption' see PARA 1046 note 7 ante.

4 For the meaning of 'generate' see PARA 1041 note 7 ante.

5 For the meaning of 'supply' see PARA 1041 note 10 ante.

6 Electricity Act 1989 s 96(1), (6).

7 As to directions generally see *ibid* s 107; and PARA 1306 post.

8 For the meaning of 'transmission' see PARA 1041 note 6 ante.

9 For these purposes, 'civil emergency' means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to disrupt electricity supplies: Electricity Act 1989 s 96(7).

10 *Ibid* s 96(1)(a), (b).

- 11 Ibid s 96(2).
- 12 ie by or under the Electricity Act 1989: see PARA 1041 et seq ante, PARA 1180 et seq post.
- 13 Ibid s 96(3).
- 14 Ibid s 96(4).
- 15 Ibid s 96(5).
- 16 See eg the Energy Act 1976 s 14 (as amended); and PARAS 1216-1217 post.

UPDATE

1179 Directions for preserving security of electricity supplies etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1180. Consumption to be ascertained by appropriate meter.

(v) Electricity Meters

A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT

1180. Consumption to be ascertained by appropriate meter.

Where a customer of an authorised supplier¹ is to be charged for his supply² wholly or partly by reference to the quantity of electricity supplied, the supply must be given through, and the quantity of electricity must be ascertained by, an appropriate meter³. An authorised supplier may, however, give a supply otherwise than through an appropriate meter in such circumstances as may be prescribed⁴.

If the authorised supplier agrees, the meter may be provided by the customer, who may provide a meter which belongs to him or is made available otherwise than in pursuance of arrangements made by the supplier; but otherwise it must be provided by the authorised supplier who may provide a meter which belongs to him or to any person other than the customer⁵. An authorised supplier may refuse to allow one of his customers to provide a meter only if there are reasonable grounds for its refusal⁶.

The meter must be installed on the customer's premises⁷ in a position determined by the authorised supplier, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position⁸.

Where in the case of a meter which has been provided and installed in accordance with the above provisions, it is necessary to replace it in order to secure compliance with the relevant statutory provisions⁹, or where it is otherwise reasonable in all the circumstances, an authorised supplier may require the meter to be replaced and the supplier must provide and install the replacement meter in accordance with the above provisions¹⁰.

If the customer refuses or fails to take his supply through an appropriate meter duly provided and installed, the supplier may refuse to give or may discontinue the supply¹¹.

Any dispute arising between an electricity supplier and a customer under the above provisions is to be determined in accordance with the statutory procedures¹² and, pending the determination of the dispute, the Gas and Electricity Markets Authority ('GEMA') may give directions in respect of the meter, its provision and its installation¹³.

No meter may be used for ascertaining the quantity of electricity supplied by an authorised supplier to a customer unless the meter is of an approved¹⁴ pattern or construction and is installed in an approved manner and certified in accordance with the statutory requirements¹⁵; but the requirement of certification does not apply to a meter used in connection with an exempt supply¹⁶ if the authorised supplier and the customer have agreed in writing to dispense with that requirement¹⁷. Regulations may provide:

2730 (1) for determining the fees to be paid for approvals given by or under the regulations¹⁸;

- 2731 (2) for revoking an approval so given to any particular pattern or construction of meter and requiring meters of that pattern or construction which have been installed to be replaced with meters of an approved pattern or construction within a prescribed period¹⁹;
- 2732 (3) for revoking an approval so given to any particular manner of installation and requiring meters which have been installed in that manner to be installed in an approved manner within such a period²⁰,

and may make different provision for meters of different descriptions or for meters used or intended to be used for different purposes²¹.

If an authorised supplier supplies electricity through a meter which is used for ascertaining the quantity of electricity supplied and (a) it is not of an approved pattern or construction or is not installed in an approved manner; or (b) it requires certification and is not certified, the supplier is liable on summary conviction to a fine not exceeding level 3 on the standard scale²².

Regulations²³ may, however, disapply this provision in such circumstances as may be prescribed, being circumstances in which an authorised supplier is not required to supply electricity through an appropriate meter²⁴. Where the commission by any person of such an offence is due to the act or default of some other person, that other person is taken to be guilty of the offence and a person may be charged and convicted of the offence whether or not proceedings are taken against the first-mentioned person²⁵. In any proceedings in respect of such an offence, it is, however, a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence²⁶.

No proceedings may be instituted in England and Wales in respect of such an offence except by or on behalf of the Authority²⁷.

1 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

3 Electricity Act 1989 s 31, Sch 7 para 1(1) (Sch 7 paras 1, 2, 3 amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1)). For these purposes, a meter is an appropriate meter for use in connection with any particular supply if it is of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is particularly suitable for such use: Electricity Act 1989 Sch 7 para 1(6).

4 Ibid Sch 7 para 1(1A) (added by the Utilities Act 2000 s 52, Sch 5 paras 1, 3(1), (2)).

An unmetered supply may be given where (1) the electrical load is of a predictable nature; and (2) either (a) the electrical load is less than 500W; or (b) it is not practical for a supply of electricity to be given through an appropriate meter at the premises due to (i) the anticipated metering costs in the particular case being significantly higher than the usual metering costs associated with that size of electrical load; (ii) technical difficulties associated with providing such a meter in the particular case; or (iii) operation of law so as to prohibit or make excessively difficult the provision of such a meter in the particular case: Electricity (Unmetered Supply) Regulations 2001, SI 2001/3263, reg 3(1). Subject to reg 4, an unmetered supply may only be given where the authorised distributor, authorised supplier and the customer have agreed to such a supply: reg 3(2). An unmetered supply which does not fall into the categories given in reg 3(1) and which was first given prior to 1 October 2001 (ie the date on which the 2001 Regulations came into force: see reg 1) and which has been so supplied since that date, may continue to be an unmetered supply where the authorised distributor, authorised supplier and customer concerned agree to such continuation: reg 3(3). For these purposes, 'customer' means any person supplied or requiring to be supplied with electricity at any premises in Great Britain; 'metering costs' means the cost associated with ascertaining by an appropriate meter the quantity of electricity supplied to a customer by an authorised supplier; and 'unmetered supply' means a supply of electricity to premises which is given otherwise than through an appropriate meter: reg 2. For the meaning of 'appropriate meter' see note 3 supra (definition applied by reg 2); and for the meaning of 'authorised distributor' see PARA 1094 note 8 ante.

Any dispute between the authorised distributor, the authorised supplier and the customer as to whether or not reg 3 applies in particular circumstances may be referred to the Gas and Electricity Markets Authority ('GEMA') by any party to the dispute and must, on such reference, be determined (by order in writing to the parties) by the Authority or, if it thinks fit, by such person as it may appoint: reg 4(1). A person making such an order must include in the order the reasons for reaching the decision with respect to the dispute: reg 4(2). Such an order is to be final and is enforceable in England and Wales, as if it were a judgment of a county court: reg 4(3)(a)(i).

The order may include a provision requiring any party to pay a sum in respect of the reasonable costs or expenses incurred by the person making the order: reg 4(3)(b). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Electricity Act 1989 Sch 7 para 1(2) (substituted by the Competition and Service (Utilities) Act 1992 s 56(6), Sch 1 para 16; amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1), 3(1), (3)).

6 Electricity Act 1989 Sch 7 para 1(2A) (added by the Competition and Service (Utilities) Act 1992 Sch 1 para 16; amended as set out in note 3 supra).

7 For the meaning of 'premises' see PARA 1041 note 5 ante.

8 Electricity Act 1989 Sch 7 para 1(3) (as amended: see note 3 supra).

9 *Ibid* Sch 7 (as amended) (see the text and notes 1-8 supra, 10-27 infra; and PARA 1182 et seq post) or any regulations made thereunder: Sch 7 para 1(4)(a). 'Regulations' means regulations made by the Authority with the consent of the Secretary of State: Sch 7 para 13 (amended by virtue of the Utilities Act 2000 s 3(2)). As to the Secretary of State see PARA 601 note 1 ante.

10 See the Electricity Act 1989 Sch 7 para 1(4) (as amended: see note 3 supra).

11 *Ibid* Sch 7 para 1(5).

12 See *ibid* Sch 7 para 1(7) (amended by the Utilities Act 2000 ss 52, 108, Sch 5 paras 1, 3(1), (5), Sch 8). The provisions of the Electricity Act 1989 s 23 (as amended) (see PARA 1100 ante) apply to a dispute arising under Sch 7 para 1 (as amended) as if it were a dispute arising under ss 16-22 (as amended) (see PARA 1094 et seq ante): Sch 7 para 1(7) (as so amended).

13 *Ibid* Sch 7 para 1(8) (amended by virtue of the Utilities Act 2000 s 3(2)). Directions so given may apply either in cases of particular descriptions or in particular cases: Electricity Act 1989 Sch 7 para 1(8) (as so amended). Part I (ss 3-64) (as amended): see PARA 1041 et seq ante, PARA 1182 et seq post) applies as if any duty or other requirement imposed on an electricity supplier by such directions were imposed by directions under s 23 (as amended) (see PARA 1100 ante): Sch 7 para 1(9) (amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 3(1), (5)). As to directions generally see the Electricity Act 1989 s 107 (as amended); and PARA 1306 post.

14 'Approved' means approved by or under regulations made under *ibid* Sch 7 para 2(1) (as amended): Sch 7 para 2(1). For the exercise of this power by the former Director General of Electricity Supply see the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565 (as amended), which came into force on 1 August 1998: reg 1. As to the procedure for approval see PARA 1181 post. Any meter which was approved for the purposes of the Energy Act 1983 s 12 (repealed) immediately prior to 31 March 1990 (ie the transfer date: see PARA 1034 note 2 ante) is to be treated as being of an approved pattern: Electricity Act 1989 s 112(3), Sch 17 para 11(1). See also the Meters (Approval of Pattern or Construction and Method of Installation) Regulations 1998, SI 1998/1565, reg 11 (meters approved prior to 1 August 1998 deemed to be approved for the purposes of the regulations until the date upon which the approval would have expired or the period for which that approval was granted expires). If, however, a meter which is a relevant instrument for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679 (see PARA 1196 et seq post), is put into use within the meaning of and in accordance with those regulations, then for the purpose of the Electricity Act 1989 Sch 7 paras 2(1)(a), 3(1)(a) (as amended) and Sch 7 para 9(3) (see PARA 1187 post), it is to be deemed to be of an approved pattern or construction and installed in an approved manner; and for the purposes of Sch 7 paras 2(1)(b), 3(1)(b), the meter is to be deemed to be certified under Sch 7 para 5 (as amended) (see PARA 1182 post): Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(1), (2)(a). This does not, however, apply if the error of measurement of the meter exceeds the maximum permissible error as set out in Sch 1 Pt 1 para 15 (see PARA 1196 note 15 head (13) post): reg 28(4). For similar provisions where a meter is of a pattern in respect of which an EC pattern approval has been granted under the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607 (as amended) (see PARA 1191 et seq post) see reg 3(2). See also reg 3(1), (3); and PARA 1191 note 4 post.

15 Electricity Act 1989 Sch 7 para 2(1) (as amended: see note 3 supra). As to certification see Sch 7 para 5 (as amended); and PARA 1182 post.

16 'Exempt supply' means a supply of electricity to any premises where (1) the premises are not premises used wholly or mainly for domestic purposes; or (2) the authorised supplier or the customer is a person authorised by an exemption to supply electricity to those premises: *ibid* Sch 7 para 1(10) (as amended: see note 3 supra).

17 Ibid Sch 7 para 2(2) (as amended: see note 3 supra).

18 Ibid Sch 7 para 2(3)(a). As to the fees payable see the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 10; as to the functions of the Authority to be taken into account in fixing those fees see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, art 2, Sch 1 Pt II (amended by virtue of the Utilities Act 2000 s 3(2)); and as to the matters specified in relation to those functions for the purposes of the Finance (No 2) Act 1987 s 102(4) see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184 art 3, Sch 1 Pt II (as so amended), Sch 2 paras 1-8 (as so amended).

19 Electricity Act 1989 Sch 7 para 2(3)(b). As to revocation of approval see the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 9; and PARA 1181 post.

20 Electricity Act 1989 Sch 7 para 2(3)(c); and see note 19 supra.

21 Ibid Sch 7 para 2(3).

22 Ibid Sch 7 para 3(1) (as amended: see note 3 supra). As to the standard scale see PARA 613 note 11 ante.

23 Ie regulations under ibid Sch 7 para 1(1A) (as added): see the text and note 4 supra.

24 Ibid Sch 7 para 3(1A) (added by the Utilities Act 2000 s 52, Sch 5 paras 1, 4).

25 Electricity Act 1989 Sch 7 para 3(2). As to offences by bodies corporate see s 108; and PARA 1303 post.

26 Ibid Sch 7 para 3(3).

27 Ibid Sch 7 para 3(4) (amended by virtue of the Utilities Act 2000 s 3(2)).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

1180 Consumption to be ascertained by appropriate meter

TEXT AND NOTES 9, 12, 13--Electricity Act 1989 Sch 7 para 1(7) and definition of 'regulations' in Sch 7 para 13 substituted, Sch 7 para 1(8), (9) further amended: Energy Act 2008 s 96(3), (9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1181. Procedure for approval of pattern or construction or manner of installation.

1181. Procedure for approval of pattern or construction or manner of installation.

A meter, other than:

- 2733 (1) a meter which is deemed to be of an approved pattern or construction¹; or
- 2734 (2) a meter which is a relevant instrument for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006² and is put into use within the meaning and in accordance with those regulations,

which is used for ascertaining the quantity of electricity supplied by an electricity supplier³ to a customer is not be regarded as being of an approved pattern or construction unless a notification of approval⁴ in respect of that pattern or construction has been issued, or is deemed to have been issued, and that approval has not been revoked⁵. Nor is it to be regarded as installed in an approved manner unless a notification of approval of that manner of installation has been issued, or is deemed to have been issued, and that approval has not been revoked⁶.

Any person who requires the pattern or construction of a meter or its manner of installation⁷ to be approved must submit to the Gas and Electricity Markets Authority ('GEMA')⁸:

- 2735 (a) an application containing the specified information⁹ and signed by that person;
- 2736 (b) not less than three meters of the pattern or construction and containing the components described in the application; and
- 2737 (c) where a report has been obtained in support of the application from a nominated laboratory¹⁰, a certified test report¹¹.

Where a meter has been so submitted to the Authority, a meter examiner¹² must¹³ carry out or procure the carrying out of such tests as he considers are necessary to determine whether the pattern or construction of the meter or the proposed manner of its installation is such that any meter of that pattern or construction or such a meter installed in that manner will be capable of accurately recording the quantity of electricity for which the meter is intended to operate¹⁴. In carrying out his functions under the above provision, a meter examiner must have regard to any national, European or international technical standards relating to meters of that or a similar pattern or construction¹⁵. He is not, however, to carry out or procure the carrying out of tests in accordance with that provision if he is satisfied that the pattern or construction or the manner of installation complies with any relevant European or international standard recognised for use in any EEA state¹⁶ or:

- 2738 (i) an equivalent standard or code of practice of a national standards body or equivalent body of any EEA state;
- 2739 (ii) an equivalent technical specification acknowledged for use as a standard by a public authority of any EEA state; or

- 2740 (iii) customary procedures of manufacture of an EEA state where these are the subject of a written technical description sufficiently detailed to permit assessment of the meter for this purpose,

provided that a meter complying with head (i), head (ii) or head (iii) above will be of equivalent standard to a meter complying with a relevant European or international standard recognised for use in any EEA state¹⁷. Any meter which a meter examiner is satisfied complies with those standards is to be deemed to be capable of accurately recording the quantity of electricity for which it is intended to operate¹⁸. Nor, unless requested to do so by the person who made the submission, is a meter examiner to carry out or procure the carrying out of tests¹⁹ if, in connection with the submission:

- 2741 (A) a certified test report has been submitted in support of the application for approval in accordance with head (c) above; and
 2742 (B) he is satisfied that the report of the nominated laboratory is sufficient and reliable for the purpose of determining whether the pattern or, as the case may be, the construction or the manner of installation of the meter meets the prescribed requirement²⁰ and, on the basis of the report, that the pattern or construction of the meter or the proposed manner of its installation is such that any meter of that pattern or construction or such a meter installed in that manner will be capable of meeting that requirement²¹.

A meter which has been submitted to the Authority²² must not be repaired or modified by any person, other than by a meter examiner for the purpose of carrying out tests in accordance with the above provisions, until a notification has been issued²³ of approval or refusal of approval²⁴.

If a meter examiner concludes that the pattern or construction of the meter or the proposed manner of its installation is such that any meter of that pattern or construction or any such meter installed in that manner will not be capable of satisfying the prescribed requirement²⁵, the Authority must notify the person applying for approval accordingly, giving the reasons for such refusal²⁶. Where a meter examiner reaches that conclusion before he has completed every test which he had considered necessary for the statutory purposes²⁷, he is not to be required to carry out the remainder of those tests²⁸.

Where a meter examiner concludes that the pattern or construction of the meter or the manner of its installation either complies with any relevant European or international standard recognised for use in any EEA state or with the equivalents set out in heads (i) to (iii) above²⁹ or is such that any meter of that pattern or construction or any such meter installed in that manner will be capable of satisfying the prescribed requirement³⁰, the meter examiner must issue a notification of approval to the applicant, which may notify approval both of the pattern or construction of the meter and of the manner of its installation³¹. A notification of approval for these purposes must specify:

- 2743 (aa) the type or model number referred to in the application submitted to the Authority³²;
 2744 (bb) where the approval is of the pattern or construction of the meter and the meter contains more than one register of or relating to the quantity of electricity supplied, the maximum number of registers for which the approval is given;
 2745 (cc) where the approval is of the manner of installation of the meter, the approved manner of its installation³³; and
 2746 (dd) the conditions as to the use of the meter subject to which the approval is given,

and must relate only to a meter of the pattern or construction and containing the components described in the application³⁴. It may contain a condition that the approval will cease within such period as the Authority is to determine³⁵; and where it contains such a condition, any person may apply to the Authority for the renewal of that approval not more than three months before the date upon which the period will expire³⁶. Such an application must contain the specified information³⁷ and be signed by the person making the application³⁸ and must be accompanied by not less than three meters of the pattern or construction to which the notification in question relates³⁹.

A modification to any part of a meter that has satisfied the prescribed requirement⁴⁰ causes that meter to cease to be of an approved pattern or construction and installed in an approved manner unless a meter examiner issues a notification of approval⁴¹ in respect of the pattern or construction and manner of installation of the meter including that modification⁴².

If the Authority wishes to revoke an approval given under the above provisions, it must publish in such manner as it considers appropriate its wish to revoke the approval, the fact that it has prepared written reasons for the revocation and the date on which it wishes the revocation to take effect, and must invite representations within a period of not less than 28 days from the date of publication⁴³. The Authority must send a copy of its written reasons free of charge to any person who requests one before the approval is revoked⁴⁴. After considering any representations so made, the Authority may revoke the approval in writing stating the date on which the revocation of the approval takes effect and must publish notice of the revocation in such manner as the Authority considers appropriate, provided that the revocation must not take effect earlier than 28 days from the date on which notice of revocation is published⁴⁵. Where the approval of the pattern or construction of a meter has been revoked, every meter of that pattern or construction used to ascertain the quantity of electricity supplied by an electricity supplier must be replaced with a meter of an approved pattern or construction within six months of the date on which the revocation takes effect⁴⁶; and where the approval of the manner of installation of a meter has been revoked, every meter installed in that manner which is used as described above must be installed in an approved manner within six months of the date on which the revocation takes effect⁴⁷.

1 Ie under the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(2): see PARA 1180 ante.

2 Ie for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1190 et seq post.

3 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

4 Ie under the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 7: see the text and notes 29-39 infra.

5 Ibid reg 3(a); Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(5)(b). As to the revocation of approval see the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 9; and the text and notes 43-47 infra.

6 Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 3(b); Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(5)(b).

7 References for this purpose to the pattern or construction of a meter or to the manner of its installation include references to a modification of a pattern or construction or of a manner of installation which has previously been approved in accordance with the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565 (as amended): reg 4(2).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 Ie the information specified in the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, Schedule, as follows: (1) name and address of the person submitting the application; (2) name and address of the person by whom the meter was manufactured; (3) the type or model

number of the meter; (4) the voltage and current rating of the meter and the frequency at which it is designed to operate; (5) a description of the meter, stating (a) whether the meter is single or polyphase; (b) whether it is an induction or electronic meter; (c) whether it is a prepayment or credit meter; and (d) if it contains more than one register, the number of registers it contains; (6) conceptual designs, manufacturing drawings, circuits and schemes of all components; (7) a description and explanation of the information in head (6) supra sufficient to enable a meter examiner to understand the design and operation of the meter; (8) the manner in which the meter is to be fixed in position; (9) a list of any national, European or international standards with which the meter or any parts of it comply or are believed to comply; (10) a report of any examination or test of the meter; (11) a statement of the instructions for connection of the meter to the electric line when it is in operation which will be permanently fixed to the meter if a notification of approval is issued (unless the instructions are attached to or impressed on the meters submitted under reg 4(1)(b)); (12) a statement of any other body to which the meter has been submitted for an approval having the same or substantially similar effect to a notification of approval; (13) an indication whether the applicant requires approval of the pattern or construction of the meter, or of the manner of its installation, or of both.

10 'Nominated laboratory' means a laboratory nominated by the Authority for the purpose of testing meters: *ibid* reg 2(1) (definition added by SI 2002/3129).

11 Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 4(1) (amended by SI 2002/3129). 'Certified test report' means a copy certified by the nominated laboratory as a true copy of the full report of the tests carried out by the laboratory for the purpose of establishing whether the pattern or construction or manner of installation of the meter is capable of meeting the requirement in reg 5(1) (as amended) and the results of those tests: reg 2(1) (definition added by SI 2002/3129).

12 For these purposes, 'meter examiner' means a person appointed under the Electricity Act 1989 s 31, Sch 7 para 4 (as amended) (see PARA 1182 post): Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 2(1).

13 *Ie* subject to *ibid* reg 5(3), (3A) (reg 5(3A) as added): see the text and notes 16-21 *infra*.

14 *Ibid* reg 5(1) (amended by SI 2002/3129). In relation to any one or more of the tests which the meter examiner considers necessary, he may require the person applying for approval to procure the carrying out of specified tests at any premises approved by the Authority for carrying out tests of the type specified: Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 5(6). A test referred to in reg 5(6) must, if the meter examiner so requires: (1) not be carried out until the meters have been sealed by him for identification purposes; and (2) be carried out in his presence, and the meters must on completion of the test be delivered to the meter examiner: reg 5(7).

15 *Ibid* reg 5(2).

16 For these purposes, 'EEA state' means a state which, at the date of the entry into force of the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565 (as amended), is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993: Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 2(1).

17 *Ibid* reg 5(3). For the purpose of reg 5(3) a meter examiner must take into account the results of the tests carried out by the bodies and laboratories of other EEA states where such bodies and laboratories conform with European Standard EN 45001 (1989): Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 5(5).

18 *Ibid* reg 5(4).

19 *Ie* in accordance with *ibid* reg 5(1): see the text and notes 12-14 *supra*.

20 *Ie* the requirement in *ibid* reg 5(1).

21 *Ibid* reg 5(3A) (added by SI 2002/3129).

22 *Ie* under the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 4 (as amended): see the text and notes 7-11 *supra*.

23 *Ie* under *ibid* reg 6 or reg 7: see the text and notes 25-39 *infra*.

24 *Ibid* reg 5(8).

25 See note 20 *supra*.

26 Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 6(1).

27 Ie for the purposes of ibid reg 5 (as amended): see the text and notes 12-24 supra.

28 Ibid reg 6(2).

29 Ie complies with ibid reg 5(3): see the text and notes 16-17 supra.

30 See note 20 supra.

31 Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 7(1).

32 Ie under ibid reg 4(1)(a) (as amended): see head (a) in the text.

33 The approved manner of installation of a meter must be by affixing it in a vertical position to a secure surface and connecting it to the electric line providing the supply in accordance with the manner specified on the meter, unless the notification of approval otherwise provides: ibid reg 7(3). For these purposes, a meter which is installed at an inclination of not more than three degrees from the vertical in any direction is to be deemed to have been installed in a vertical position: reg 7(7).

34 Ibid reg 7(2).

35 Ibid reg 7(4).

36 Ibid reg 7(5).

37 Ie the information contained in ibid reg 7(6), Schedule: see note 9 supra.

38 Ibid reg 7(6)(a).

39 Ibid reg 7(6)(b).

40 See note 20 supra.

41 Ie under the Meters (Approval of Pattern or Construction and Manner of Installation) Regulations 1998, SI 1998/1565, reg 7: see the text and notes 29-39 supra.

42 Ibid reg 8.

43 Ibid reg 9(1).

44 Ibid reg 9(2).

45 Ibid reg 9(3).

46 Ibid reg 9(4)(a).

47 Ibid reg 9(4)(b).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical

Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1182. Meter examiners and meter certification.

1182. Meter examiners and meter certification.

The Gas and Electricity Markets Authority ('GEMA')¹ must appoint competent and impartial persons as meter examiners for the statutory purposes².

A meter may be certified by a meter examiner so appointed or by a person authorised³ to certify meters of that description⁴ but no meter must be certified unless the examiner⁵ is satisfied:

- 2747 (1) that the meter is of an approved⁶ pattern or construction; and
- 2748 (2) that it conforms to such standards (including standards framed by reference to margins of error⁷) as may be prescribed⁸.

If, however, a meter which is a relevant instrument for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006⁹ is put into use within the meaning of and in accordance with those regulations, head (1) above is to be disregarded¹⁰ and the meter is deemed to be certified¹¹ for the relevant statutory purposes¹².

An examiner may certify any meter submitted to him notwithstanding that he has not personally examined or tested it, if:

- 2749 (a) the meter is submitted to him by a person authorised by the Authority for the purposes of certification¹³;
- 2750 (b) it is accompanied by a report stating that it has been examined and tested by the person submitting it and containing such other information as may be prescribed¹⁴;
- 2751 (c) the examiner considers that the report indicates that the meter is entitled to be certified¹⁵;
- 2752 (d) the meter is one of a number submitted by the same person at the same time¹⁶,

and the examiner has personally examined and tested as many of those meters as he considers sufficient to provide a reasonable test of all of them¹⁷.

Regulations may make different provision for meters of different descriptions or meters used for different purposes and may include provision:

- 2753 (i) for the termination of certification in the case of meters which no longer conform to the prescribed standards and in such other cases as may be prescribed¹⁸;
- 2754 (ii) for determining the fees to be paid for examining, testing and certifying meters, and the persons by whom they are to be paid¹⁹; and
- 2755 (iii) as to the procedure to be followed in examining, testing and certifying meters²⁰.

Such regulations may also include provision for determining the fee to be paid in respect of any authorisation of examiners²¹, for imposing conditions on any such authorisation and for withdrawing any such authorisation before the end of any period for which it is given if any of those conditions is not satisfied²².

If the Authority is satisfied that a person is competent to carry out the prescribed functions²³, the Authority may authorise that person to be an examiner for the purpose of the Electricity Act 1989²⁴. Such an authorisation may be general or may be limited to one or more descriptions of meters, according to the Authority's determination of the competence of the person authorised, and once given may be modified in the light of further evidence of competence²⁵. An authorisation so granted by the Authority must be subject to the following conditions:

- 2756 (A) that the authorised examiner must only certify meters in the prescribed circumstances²⁶;
- 2757 (B) in the case of an authorised examiner whose authorisation is limited to one or more descriptions of meters²⁷, that he must not certify any meter not falling within the description of meters for which he has been authorised.
- 2758 (C) that he must not certify any meter which he has wholly or partly manufactured or repaired or one which he has examined, tested or regulated in any capacity other than that of authorised examiner²⁸;
- 2759 (D) that, where the provision relating to batch certification²⁹ applies, he must examine and test not less than the number of meters selected in accordance with a sampling procedure determined by the Authority having regard to national or international sampling procedures or plans;
- 2760 (E) that he must send to the Authority not more than seven days after the expiry of each month a report stating the number of meters which have been submitted to him³⁰ and the number of meters in respect of which a certificate has been issued³¹ during the preceding month;
- 2761 (F) that he must retain a copy of each certificate issued by him for a period of not less than one year from the date of issue and must produce the copy to the Authority if requested to do so;
- 2762 (G) that he must take all reasonable steps to maintain his competence to carry out the functions in respect of which he has been authorised;
- 2763 (H) that he must exercise proper care and attention at all times in performing his functions³² with respect to certification³³.

An authorisation so granted by the Authority may be terminated by 28 days' notice in writing by the Authority served upon the authorised examiner³⁴ if in the reasonable opinion of the Authority any of the prescribed circumstances³⁵ applies in his case³⁶. Where, however, the Authority proposes to exercise this power on the grounds that the authorised examiner is no longer competent to carry out the functions for which he has been authorised, or that he has not, for a period of one year, performed the functions for which he has been authorised and that there is no reason to believe that he will do so within the next following period of three months³⁷, the Authority must not terminate an authorisation until it has served notice on the authorised examiner of its intention and the ground on which it proposes to act and provided him with a reasonable opportunity to be heard³⁸. The Authority must take account of all representations received before exercising the power of termination³⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Electricity Act 1989 s 31, Sch 7 para 4(1) (Sch 7 paras 4, 5 amended by virtue of the Utilities Act 2000 s 3(2)). Such remuneration and allowances of meter examiners as may be determined by the Authority with the approval of the Treasury must be paid out of money provided by Parliament and such pensions as may be so determined may be so paid to or in respect of such examiners: Electricity Act 1989 Sch 7 para 4(2) (as so

amended). Any fees payable in respect of the examination of meters carried out by such examiners must be paid to the Authority and the Authority must then pay the sums into the Consolidated Fund: Sch 7 para 4(3) (as so amended). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. As to the fees to be paid see the Meters (Certification) Regulations 1998, SI 1998/1566, reg 11 (substituted by SI 2002/3129); as to the functions of the Authority to be taken into account in setting those fees see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, art 2, Sch 1 Pt II (amended by virtue of the Utilities Act 2000 s 3(2)); and as to the matters specified in relation to those functions for the purposes of the Finance (No 2) Act 1987 s 102(4) see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, art 3, Sch 1 Pt II (as so amended), Sch 2 paras 1-8 (as so amended).

3 Ie by or under regulations made under the Electricity Act 1989 Sch 7 para 5: Sch 7 para 5(1)(b). See the text and notes 24-39 *infra*. For the meaning of 'regulations' for these purposes see PARA 1180 note 9 *ante*.

4 Ibid Sch 7 para 5(1).

5 For these purposes, 'examiner' means a meter examiner or a person authorised in accordance with *ibid* Sch 7 para 5(1)(b): Sch 7 para 5(1).

6 For the meaning of 'approved' see PARA 1180 note 14 *ante*.

7 'Prescribed margins of error' means margins of error prescribed by regulations: Electricity Act 1989 Sch 7 paras 5(2), 13. As to the prescribed margins and standards of error see PARA 1183 *post*.

8 Ibid Sch 7 para 5(2). As to the effect of a meter not being certified see *Joseph v East Ham Corp* [1936] 1 KB 367, CA, where it was held that since there was no certified meter, the value of the supply had not been properly ascertained in accordance with the statutory provisions so that the charges were not recoverable by the undertakers. Any meter which was certified under the Electric Lighting (Clauses) Act 1899 Schedule s 50 (repealed) immediately before 31 March 1990 (ie the transfer date: see PARA 1034 the text and note 2 *ante*) is treated as certified under the Electricity Act 1989 Sch 7 para 5 (as amended): s 112(3), Sch 17 para 11(2). Any regulations made under the Electricity Act 1957 s 30(1) (repealed) which were effective on 31 March 1990 had effect as if made under the Electricity Act 1989 Sch 7 para 5: Sch 17 para 11(3).

9 Ie for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1196 *et seq post*.

10 Ibid reg 28(1)-(3).

11 Ie under the Electricity Act 1989 Sch 7 para 5 (as amended).

12 See the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(2)(a), cited in PARA 1180 note 14 *ante*.

13 Electricity Act 1989 Sch 7 para 5(3)(a) (amended by the Utilities Act 2000 ss 52, 108, Sch 5 paras 1, 5, Sch 8). As to authorisations see the text and notes 23-39 *infra*.

14 Electricity Act 1989 Sch 7 para 5(3)(b). As to reports see PARA 1183 *post*.

15 Ibid Sch 7 para 5(3)(c).

16 Ibid Sch 7 para 5(3)(d).

17 Ibid Sch 7 para 5(3).

18 Ibid Sch 7 para 5(4)(a). See PARA 1183 *post*.

19 Ibid Sch 7 para 5(4)(b). As to fees see note 2 *supra*.

20 Ibid Sch 7 para 5(4)(c). See the Meters (Certification) Regulations 1998, SI 1998/1566 (as amended), which came into force on 1 August 1998: reg 1. See further the text and notes 23-39 *infra*; and PARA 1183 *post*.

21 Ie under the Electricity Act 1989 Sch 7 para 5(1) or (3) (as amended). At the date at which this title states the law, no fees had been prescribed for such authorisations.

22 Electricity Act 1989 Sch 7 para 5(5). See the text and notes 23-39 *infra*.

23 Ie the functions contained in or referred to in the Meters (Certification) Regulations 1998, SI 1998/1566, reg 7: see PARA 1183 *post*.

24 Ibid reg 5(1) (reg 5 substituted by SI 2002/3129).

25 Meters (Certification) Regulations 1998, SI 1998/1566, reg 5(2) (as substituted: see note 24 supra).

26 Ie (1) if he is employed by an electricity supplier and a meter is submitted to him for certification by that supplier; (2) if he is employed by an authorised manufacturer or authorised repairer and a meter has been manufactured by, or, as the case may be, repaired by, and is submitted to him for certification by, that manufacturer or repairer; (3) if he is employed by a nominated laboratory, and a meter is submitted for certification to the nominated laboratory: ibid reg 5(3)(a)(i)-(iii). For the meaning of 'electricity supplier' see PARA 1065 note 7 ante. 'Nominated laboratory' means a laboratory nominated by the Authority for the purpose of testing meters: ibid reg 2(1) (definition added by SI 2003/3129). As to authorised manufacturers and authorised repairers see PARA 1183 post.

27 Ie whose authorisation is limited pursuant to the Meters (Certification) Regulations 1998, SI 1998/1566, reg 5(2) (as substituted): see the text and note 25 supra.

28 'Authorised examiner' means a person who is authorised in accordance with ibid reg 5 (as substituted): reg 2(1).

29 Ie ibid reg 9 (as amended): see PARA 1183 post.

30 Ie in accordance with ibid reg 6 (as amended): see PARA 1183 post.

31 Ie under ibid reg 7 or reg 9 (as amended): see PARA 1183 post.

32 See note 31 supra.

33 Meters (Certification) Regulations 1998, SI 1998/1566, reg 5(3) (as substituted: see note 24 supra).

34 See ibid reg 5(9), (10) (as substituted: see note 24 supra).

35 Ie any of ibid reg 5(7)-(7) (as substituted): see note 36 infra.

36 Ibid reg 5(4) (as substituted: see note 24 supra). The prescribed circumstances are as follows: (1) the authorised examiner is in breach of any condition of his authorisation and (a) the Authority has notified the authorised examiner of the breach; (b) in the case of a breach which is, in the opinion of the Authority, capable of being remedied, the authorised person has refused or failed within a reasonable time to remedy that breach after notice has been given to him by the Authority notifying him of the breach; and (c) the period specified in reg 5(8) (as substituted) has expired (reg 5(5) (as so substituted)); (2) in the reasonably held opinion of the Authority the authorised examiner is no longer competent to carry out the functions for which he has been authorised (reg 5(6) (as so substituted)); (3) the authorised examiner has not, for a period of one year, performed the functions for which he has been authorised and there is no reason to believe that he will do so within the next following period of three months (reg 5(7) (as so substituted)). The period for the purposes of reg 5(5) (as substituted) is, as the case may be, 28 days: (i) in a case to which head (b) supra applies, from the date on which the Authority notifies the authorised examiner of its opinion that the authorised examiner has refused or failed within a reasonable time to remedy the breach; (ii) in any other case, from the date on which the Authority notified the breach: reg 5(8) (as so substituted).

37 Ie in the circumstances of ibid reg 5(6) or (7) (as substituted): see note 36 heads (2)-(3) supra.

38 Ibid reg 5(10) (as substituted: see note 24 supra).

39 Ibid reg 5(11) (as substituted: see note 24 supra).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility

Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

1182 Meter examiners and meter certification

NOTE 2--Electricity Act 1989 Sch 7 para 4(2) further amended, Sch 7 para 4(2A) added: Energy Act 2008 s 96(4).

TEXT AND NOTE 19--Electricity Act 1989 Sch 7 para 5(4)(b) amended: Energy Act 2008 s 96(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1183. Certification procedure; revocation of certification.

1183. Certification procedure; revocation of certification.

A person who requires a meter to be certified for the purposes of the Electricity Act 1989 may submit the meter to an authorised examiner¹ who is authorised to certify a meter of that description, to a nominated laboratory² or to a meter examiner³. A nominated laboratory to which a meter is so submitted must direct either a meter examiner or an authorised examiner who is in the employ of the laboratory to carry out the prescribed procedures⁴ for certification⁵.

Subject to the procedure for batch certification⁶, a meter which is submitted to a meter examiner or an authorised examiner must not be certified by him unless, in addition to being satisfied that the meter is of an approved pattern or construction⁷, he is satisfied:

- 2764 (1) either that the meter has been tested in accordance with the specified provisions⁸, conforms to the standards described in those provisions⁹ and can reasonably be expected to operate within the permitted margins of error¹⁰ for not less than the certification period¹¹, or that it has been tested in accordance with and conforms to one of the equivalent European provisions¹²; and
- 2765 (2) that it has been sealed in accordance with directions issued¹³ by the Gas and Electricity Markets Authority ('GEMA')¹⁴.

Where the examiner is satisfied that a meter complies with these requirements, he must issue a certificate of compliance specifying the serial number of the meter, and thereupon that meter is a meter certified for the purpose of the Electricity Act 1989¹⁵. Each such certificate must be numbered in the sequence in which it is issued¹⁶.

Where:

- 2766 (a) a number of meters have been submitted to a meter examiner or an authorised examiner at the same time by the same person;
- 2767 (b) that person is an electricity supplier¹⁷, electricity distributor¹⁸, authorised manufacturer¹⁹ or authorised repairer²⁰;
- 2768 (c) each meter is of an approved pattern or construction and is accompanied by a report verified and signed by the person in charge of manufacture or repair, as the case may be, or by a person nominated by him²¹; and
- 2769 (d) the examiner has examined and tested a sufficient number of the meters to satisfy himself that it provides a reasonable test of all of them,

he may issue a certificate in respect of all the meters so submitted to him specifying or identifying the serial number of each meter and including all the information contained in the report submitted²², and thereupon each of those meters is a meter certified for the purpose of the Electricity Act 1989²³.

A meter certified or deemed to be certified for the purpose of the 1989 Act ceases to be so certified or deemed to be so certified:

- 2770 (i) if the approval of the pattern or construction of the meter is revoked;
- 2771 (ii) if it is or becomes installed in a manner which is not an approved manner of installation;
- 2772 (iii) if any alteration is made to the meter;
- 2773 (iv) if the meter ceases to operate within the permitted margins of error; or
- 2774 (v) at the expiry of its certification period²⁴.

This does not, however, apply to a meter which is a relevant instrument for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006²⁵ and which is put into use within the meaning of and in accordance with those regulations²⁶.

1 For the meaning of 'authorised examiner' see PARA 1182 note 28 ante.

2 For the meaning of 'nominated laboratory' see PARA 1182 note 26 ante.

3 Meters (Certification) Regulations 1998, SI 1998/1566, reg 6(1) (reg 6(1) substituted, and reg 6(1A) added, by SI 2002/3129). 'Meter examiner' means a person appointed under the Electricity Act 1989 s 31, Sch 7 para 4 (as amended) (see PARA 1182 ante): Meters (Certification) Regulations 1998, SI 1998/1566, reg 2(1).

4 I.e. the procedures provided for under the Meters (Certification) Regulations 1998, SI 1998/1566, reg 7 or reg 9 (as amended): see the text and notes 14-23 infra.

5 Ibid reg 6(1A) (as added: see note 3 supra). Regulations 7-9 (as amended) (see the text and notes 14-23 infra) apply as if the meter in question had been submitted to the meter examiner or the authorised examiner so directed: reg 6(1A) (as so added).

6 I.e. subject to ibid reg 9 (as amended): see the text and notes 22-23 infra.

7 I.e. being satisfied as required by the Electricity Act 1989 Sch 7 para 5(2)(a): see PARA 1182 ante. 'Approved' means approved by or under regulations made under Sch 7 para 2 (as amended) (see PARA 1180 ante): Meters (Certification) Regulations 1998, SI 1998/1566, reg 2(1).

8 I.e. in accordance with the provisions of ibid Sch 3 (which makes provision for certification tests and testing methods for alternating current watt-hour metres).

9 I.e. described in ibid Sch 3.

10 The permitted margins of error are to be an error not exceeding plus 2.5% or minus 3.5% at any load at which the meter is designed to operate: ibid regs 2(1), 7(2).

11 'Certification period' means, in the case of a meter of a type specified in ibid Sch 4 cols 1-6, the period stated in relation thereto in Sch 4 col 7, and, in the case of any other meter, the period of ten years, the period beginning in each case on the date on which the meter is certified for the purpose of the Electricity Act 1989: Meters (Certification) Regulations 1998, SI 1998/1566, reg 2(1).

12 'Equivalent European provisions' are (1) the provisions as to verification in EEC Council Directive 76/891 (OJ L336, 4.12.76, p 30) (as amended) (now repealed and replaced by European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1) on measuring instruments); (2) European Standard EN 61036 (1996); and (3) any standard, technical regulation, manufacturing method or code of practice accepted by other EEA states conformity with which will ensure a level of precision, security, safety, durability and fitness for purpose equivalent to that assured by conformity to the Meters (Certification) Regulations 1998, SI 1998/1566, Sch 3: reg 8(1). A meter examiner or an authorised examiner to whom a meter has been submitted under reg 6 (as amended) must take into account the results of the tests carried out by the bodies and laboratories of other EEA states where such bodies and laboratories conform with European Standard EN 450011 (1989): Meters (Certification) Regulations 1998, SI 1998/1566, reg 8(2).

13 I.e. under the Electricity Act 1989 Sch 7 para 6(1) (as amended): see PARA 1184 post.

14 See the Meters (Certification) Regulations 1998, SI 1998/1566, regs 2(1), 7(1). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

15 Ibid reg 7(3).

16 Ibid reg 7(4).

17 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

18 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

19 Ie a person who is authorised in accordance with the Meters (Certification) Regulations 1998, SI 1998/1566, reg 3 (as substituted): see reg 2(1). Any person who manufactures meters and satisfies the Authority that: (1) he owns or has available to him apparatus for the examination, testing and regulation of meters which complies with directions; (2) he operates at a manufacturing unit a quality assurance system in respect of every meter manufactured by him at that unit which conforms to the standard contained in European Standard EN ISO 9001 (2000) or to any standard, technical regulation, manufacturing method or code of practice accepted in other EEA states conformity with which will achieve an equivalent assurance of quality; and (3) he would be capable of complying with the conditions set out in reg 3(7) (as substituted), and, if, at the point of authorisation, reg 3(3) (as substituted) applies, that his proposals for audit are such as would, if implemented, meet the minimum requirements for audit set out in reg 3(4) (as substituted), may, upon payment of the appropriate fee, be authorised by the Authority for the purpose of the Meters (Certification) Regulations 1998, SI 1998/1566 (as amended) for a period not exceeding three years in respect of meters manufactured by him at that unit: reg 3(1) (reg 3 substituted by SI 2002/3129). Any such authorisation as is mentioned in the Meters (Certification) Regulations 1998, SI 1998/1566, reg 3(1) (as substituted) may, from time to time, if the authorised person so requests and for so long as the Authority remains satisfied as to the matters described there, be renewed for a further period not exceeding three years by the Authority: reg 3(2) (as so substituted). Regulation 3(3) (as substituted) applies if the person intends to make arrangements for audit to be carried out otherwise than by the Authority: reg 3(3) (as so substituted).

The minimum requirements for audit are: (a) the audit must be carried out by a nominated laboratory or a meter examiner; (b) a nominated laboratory carrying out an audit must be permitted at least the same level of access as the Authority is to be permitted under reg 3(7)(e) (as substituted); (c) in the course of any period of three months, all relevant apparatus, processes, systems and records must be submitted to audit; (d) the nominated laboratory or, as the case may be, meter examiner must make its or his report of each audit directly to the Authority at the same time as they report to the authorised person; (e) every report must be made within 14 days of completion of the audit to which it relates: reg 3(4) (as so substituted). Without prejudice to other means open to the Authority to satisfy itself as to the matters contained in reg 3(1)(a)-(c) (as substituted), the Authority may be satisfied as to those matters on the basis of a report by a nominated laboratory which concludes that the requirements of each of reg 3(1)(a)-(c) (as substituted) are met in relation to the person seeking authorisation, provided that the report in question is not more than three months old at the point at which the request for authorisation is made: reg 3(5) (as so substituted). A person to whom reg 3(3) (as substituted) did not apply at the point of authorisation who subsequently forms an intention to make arrangements to which that provision refers must inform the Authority of his proposals in such manner as the Authority may direct: reg 3(6) (as so substituted).

An authorisation granted by the Authority to a person who satisfies the provisions of reg 3(1) (as substituted) must be subject to the following conditions: (i) that the authorisation is to apply only in respect of meters which have been examined, tested and regulated using the apparatus referred to in reg 3(1)(a) (as substituted); (ii) that the authorised person must operate at all times in each manufacturing unit a quality assurance system which conforms to the standard referred to in reg 3(1)(b) (as substituted) and must maintain a record in permanent form of the system which he operates and of the actions taken to comply with that system in respect of the meter or meters which he intends to submit for certification in accordance with reg 6 (as amended); (iii) that the authorised person must secure that each meter referred to in head (ii) supra is to be examined and tested in accordance with the provisions of Sch 1 or one of the European provisions; (iv) that the authorised person must cause every meter in respect of which a certificate has been issued under reg 7 or reg 9 (as amended) to be so stored while it remains under his control and so packaged for delivery when it is dispatched from his control as to prevent, so far as reasonably practicable, damage which would cause it to operate in a manner which would not conform with the permitted margins of error; (v) that the authorised person must permit the Authority, a meter examiner or any person acting on behalf of the Authority to have access to any manufacturing unit and to examine and test all apparatus and to inspect all records referred to in reg 3(7) (as substituted) at all reasonable times for the purpose of ensuring that the authorised person is complying with the conditions of his authorisation; (vi) that where the authorised person has made arrangements for audit to be carried out otherwise than by the Authority and either those arrangements have ceased, or no audit has taken place under the arrangements for a period of three months, or he proposes that the arrangements be modified in any material respect, the authorised person must inform the Authority immediately, giving reasons in any case and, in the case of a proposal that the arrangements be modified in any material respect, an account of the proposed modifications in such manner as the Authority may direct; (vii) that the authorised person must comply with directions issued by the Authority under the Electricity Act 1989 Sch 7 para 6(1) (as amended) (see PARA 1184 post); (viii) that the authorised person must promptly pay any fee payable by him in accordance with the Meters (Certification) Regulations 1998, SI 1998/1566, reg 11 (as substituted): reg 3(7) (as so substituted). In the case of proposals made in pursuance of reg 3(6) (as substituted) or of information provided pursuant to reg 3(7)(f)(iii) (ie pursuant to head (vi) supra in a case where the authorised person proposes that the arrangements be modified in any material respect), the Authority

must, within 28 days of being informed of them, notify the authorised person of its view as to whether the requirements of reg 3(4) (as substituted) would be met by such arrangements: reg 3(8) (as so substituted).

An authorisation under reg 4 (as substituted) may be terminated in accordance with reg 3(11) (as substituted) at any time by the Authority if in the reasonable opinion of the Authority the authorised person is in breach of any condition of his authorisation and (A) the Authority has notified the authorised person of the breach; (B) in the case of a breach which is, in the opinion of the Authority, capable of being remedied, the authorised person has refused or failed within a reasonable time to remedy that breach after notice has been given to him by the Authority notifying of the breach; and (C) the period specified in reg 3(10) (as substituted) has expired: reg 3(9) (as so substituted). The period for these purposes is, as the case may be, 28 days: (aa) in a case to which head (B) supra applies, from the date on which the Authority notifies the authorised person of its opinion that the authorised person has refused or failed within a reasonable time to remedy the breach; (bb) in any other case, from the date on which the Authority notified the breach: reg 3(10) (as so substituted). Termination of authorisation must be effected by notice in writing by the Authority served upon the authorised person: reg 3(11) (as so substituted).

For the purposes of reg 3 (as so substituted), Sch 2, a person may be treated as having manufactured a meter notwithstanding that he has not himself manufactured every component part of that meter provided he has assembled the meter; 'assembled' includes the carrying out of repairs or modifications to a meter within a period of 12 months after the date upon which a certificate in respect of that meter was first issued under reg 7 or reg 9 (as amended); 'audit' means an audit of the apparatus, processes, systems (including quality assurance systems) and records available, utilised, operated or maintained by the authorised person in connection with his activities as an authorised person under reg 4 (as substituted); 'inspection' means an inspection to ascertain compliance with any conditions of authorisation and includes any monitoring of directions issued by the Authority; 'manufacturing unit' means any premises specified to the Authority in writing (which may identify the premises by reference to a plan) at which meters are manufactured but excludes any premises which are used, otherwise than as provided for in the definition of 'assembled', for the cleaning and repair of meters which have previously been used for measuring the quantity of electricity supplied: reg 3(12) (as so substituted). Nothing in reg 3 (as substituted) has effect so as to prevent the Authority at any time or in any case carrying out or procuring an audit or an inspection in connection with the performance of its functions under reg 3 (as substituted) or charging the requisite fee for so doing: reg 3(13) (as so substituted). For the requisite fee see reg 11(2), (4)-(6) (as so substituted).

20 le a person who is authorised in accordance with *ibid* reg 4 (as substituted): see reg 2(1). Any person who repairs meters and satisfies the Authority that (1) he owns or has available to him apparatus for the examination, testing and regulation of meters which complies with directions issued by the Authority under the Electricity Act 1989 Sch 7 para 6(1) (as amended); (2) he operates at a repair unit a quality assurance system in respect of every meter repaired by him at that unit which conforms to the standard contained in European Standard EN ISO 9001 (2000) or to any standard, technical regulation, manufacturing method or code of practice accepted in other EEA states conformity with which will achieve an equivalent assurance of quality; and (3) he would be capable of complying with the conditions set out in the Meters (Certification) Regulations 1998, SI 1998/1566, reg 4(7) (as substituted), and, if, at the point of authorisation, reg 4(3) (as substituted) applies, that his proposals for audit are such as would, if implemented, meet the minimum requirements for audit set out in reg 4(4) (as substituted), may, upon payment of the appropriate fee, be authorised by the Authority for the purpose of the 1998 Regulations for a period not exceeding three years in respect of meters repaired by him at that unit: reg 4(1) (reg 4 substituted by SI 2002/3129). Any such authorisation as is mentioned in the Meters (Certification) Regulations 1998, SI 1998/1566, reg 4(1) (as substituted) may, from time to time, if the authorised person so requests and for so long as the Authority remains satisfied as to the matters described there, be renewed for a further period not exceeding three years by the Authority: reg 4(2) (as so substituted). Regulation 4(3) (as substituted) applies if the person intends to make arrangements for audit to be carried out otherwise than by the Authority: reg 4(3).

The minimum requirements for audit are: (a) the audit must be carried out by a nominated laboratory or a meter examiner; (b) a nominated laboratory carrying out an audit must be permitted at least the same level of access as is to be permitted the Authority under reg 4(7)(f) (as substituted); (c) in the course of any period of three months, all relevant apparatus, processes, systems and records must be submitted to audit; (d) the nominated laboratory or, as the case may be, meter examiner must make their report of each audit directly to the Authority at the same time as they report to the authorised person; (e) every report must be made within 14 days of completion of the audit to which it relates: reg 4(4) (as so substituted). Without prejudice to other means open to the Authority to satisfy itself as to the matters contained in reg 4(1)(a)-(c) (as substituted), the Authority may be satisfied as to those matters on the basis of a report by a nominated laboratory which concludes that the requirements of each of reg 4(1)(a)-(c) (as substituted) are met in relation to the person seeking authorisation, provided that the report in question is not more than three months old at the point at which the request for authorisation is made: reg 4(5) (as so substituted). A person to whom reg 4(3) (as substituted) did not apply at the point of authorisation who subsequently forms an intention to make arrangements to which that provision refers must inform the Authority of his proposals in such manner as the Authority may direct: reg 4(6) (as so substituted).

An authorisation granted by the Authority to a person who satisfies the provisions of reg 4(1) (as so substituted) is to be subject to the following conditions: (i) that the authorisation is to apply only in respect of meters which

have been examined, tested and regulated using the apparatus referred to in reg 4(1)(a) (as substituted); (ii) that the authorised person must operate at all times in each repair unit a quality assurance system which conforms to the standard referred to in reg 4(1)(b) (as substituted) and must maintain a record in permanent form of the system which he operates and of the actions taken to comply with that system in respect of the meter or meters which he intends to submit for certification in accordance with reg 6 (as amended); (iii) that the authorised person must cause each meter which is repaired at a repair unit to be repaired to a standard and using such materials as would reasonably be expected to enable it to operate within the permitted margins of error for not less than the certification period; (iv) that the authorised person must secure that each meter referred to in head (ii) supra must be examined and tested in accordance with the provisions of Sch 1 or one of the European provisions; (v) that the authorised person must cause every meter in respect of which a certificate has been issued under reg 7 or reg 9 (as amended) to be so stored while it remains under his control and so packaged for delivery when it is dispatched from his control as to prevent, so far as reasonably practicable, damage which would cause it to operate in a manner which would not conform with the permitted margins of error; (vi) that the authorised person must permit the Authority, a meter examiner or any person acting on behalf of the Authority to have access to any manufacturing unit and to examine and test all apparatus and to inspect all records referred to in this provision at all reasonable times for the purpose of ensuring that the authorised person is complying with the conditions of his authorisation; (vii) that where the authorised person has made arrangements for audit to be carried out otherwise than by the Authority and either those arrangements have ceased, or no audit has taken place under the arrangements for a period of three months, or he proposes that the arrangements be modified in any material respect, the authorised person must inform the Authority immediately, giving reasons in any case and, in the case of a proposal that the arrangements be modified in any material respect, an account of the proposed modifications in such manner as the Authority may direct; (viii) that the authorised person must comply with directions issued by the Authority under the Electricity Act 1989 Sch 7 para 6(1) (as amended); (ix) that the authorised person must promptly pay any fee payable by him in accordance with the Meters (Certification) Regulations 1998, SI 1998/1566, reg 11 (as substituted): reg 4(7) (as so substituted). In the case of proposals made in pursuance of reg 4(6) (as substituted) or of information provided pursuant to head (vii) supra in a case where the authorised person proposed that the arrangements be modified in any material respect, the Authority must, within 28 days of being informed of them, notify the authorised person of its view as to whether the requirements of reg 4(4) (as substituted) would be met by such arrangements: reg 4(8) (as so substituted).

An authorisation under reg 4 (as substituted) may be terminated in accordance with reg 4(11) (as substituted) at any time by the Authority if in the reasonable opinion of the Authority the authorised person is in breach of any condition of his authorisation and (A) the Authority has notified the authorised person of the breach; (B) in the case of a breach which is, in the opinion of the Authority, capable of being remedied, the authorised person has refused or failed within a reasonable time to remedy that breach after notice has been given to him by the Authority notifying of the breach; and (C) the period specified in reg 4(10) (as substituted) has expired: reg 4(9) (as so substituted). The period for these purposes is, as the case may be, 28 days: (aa) in a case to which head (B) supra applies, from the date on which the Authority notifies the authorised person of its opinion that the authorised person has refused or failed within a reasonable time to remedy the breach; (bb) in any other case, from the date on which the Authority notified the breach: reg 4(10) (as so substituted). Termination of authorisation must be effected by notice in writing by the Authority served upon the authorised person: reg 4(11) (as so substituted).

For these purposes and the purposes of Sch 2, 'audit' means an audit of the apparatus, processes, systems (including quality assurance systems) and records available, utilised, operated or maintained by the authorised person in connection with his activities as an authorised person under reg 4 (as substituted); 'inspection' means an inspection to ascertain compliance with any conditions of authorisation and includes any monitoring of directions issued by the Authority under the Electricity Act 1989 Sch 7 para 6(1) (as amended); and 'repair unit' means premises specified to the Authority in writing (which may identify the premises by reference to a plan) at which meters which have previously been used for measuring the quantity of electricity supplied are cleaned, repaired, tested or regulated but excluding any premises which are used for the manufacture or assembly of meters: Meters (Certification) Regulations 1998, SI 1998/1566, reg 4(12) (as so substituted). Nothing in reg 4 (as substituted) has effect so as to prevent the Authority at any time or in any case carrying out or procuring an audit or an inspection in connection with the performance of its functions under reg 4 (as substituted) or charging the requisite fee for so doing: reg 4(13) (as so substituted). For the requisite fee see reg 11(2), (4)-(6) (as so substituted).

21 See *ibid* reg 6(2). Each meter which is submitted for certification in accordance with reg 9 (as amended) must be accompanied by a report such as is described in head (c) in the text: see reg 6(2). Such a report must contain the statements and information specified in Sch 2 including, where that meter is designed to operate with a transformer, the statements and information relating to the transformer: reg 6(3).

22 *Ie* under *ibid* reg 6(2).

23 *Ibid* reg 9 (amended by virtue of the Utilities Act 2000 s 31(1)).

24 See the Meters (Certification) Regulations 1998, SI 1998/1566, reg 10(1)-(5). For transitional provisions see reg 10(6).

25 le for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1196 et seq post.

26 Ibid reg 28(5)(a).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1184. Apparatus for testing etc of meters.

1184. Apparatus for testing etc of meters.

A person authorised by the Gas and Electricity Markets Authority ('GEMA')¹ for the purposes of certifying meters is under a duty to:

- 2775 (1) provide and maintain such apparatus for the examination, testing and regulation of meters and for the sealing and unsealing of meters as may be specified by a direction of the Authority²;
- 2776 (2) use apparatus so provided and maintained to carry out such examination, testing and regulation of meters, or to seal or unseal meters in such circumstances, as may be so specified³;
- 2777 (3) keep such records and make such reports as to the use of apparatus in connection with such activities as may be so specified⁴; and
- 2778 (4) afford to meter examiners⁵ acting in the exercise of their statutory functions⁶ all necessary facilities for the use of such apparatus⁷.

If the Authority considers that any person to whom this duty applies has made satisfactory arrangements whereby apparatus provided by some other person is available for the examination, testing or regulation of the first mentioned person's meters, the Authority may direct that these duties are not to apply to that person to such extent as may be specified in the direction⁸. Any two or more persons to whom this duty applies may, with the approval of the Authority, enter and carry into effect arrangements for making available apparatus provided by one or more of the parties to all or any of them⁹.

1 Ie a person authorised for the purposes of the Electricity Act 1989 s 31, Sch 7 para 5(3) (as amended): see PARA 1182 ante. As to authorised manufacturers and authorised repairers see PARA 1183 notes 19-20 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 Ibid Sch 7 para 6(1)(a) (amended by the Utilities Act 2000 ss 52, 108, Sch 5 paras 1, 6(a), Sch 8; and by virtue of s 3(2)). As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 post.

3 Ibid Sch 7 para 6(1)(b). See also note 3 supra.

4 Ibid Sch 7 para 6(1)(c).

5 As to meter examiners see PARA 1182 ante.

6 Ie their functions under the Electricity Act 1989 Sch 7 (as amended): see PARA 1180 et seq ante, PARA 1185 et seq post.

7 Ibid Sch 7 para 6(2).

8 Ibid Sch 7 para 6(3) (Sch 7 para 6(3), (4) amended by virtue of the Utilities Act 2000 s 3(2)).

9 Electricity Act 1989 Sch 7 para 6(4) (as amended: see note 8 supra).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

1184 Apparatus for testing etc of meters

TEXT AND NOTE 7--Electricity Act 1989 Sch 7 para 6(2) amended: Energy Act 2008 s 96(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1185. Testing of meters.

1185. Testing of meters.

A meter examiner¹, upon being required to do so by any person and after giving notice² to such persons as may be prescribed³, is under a duty:

- 2779 (1) to examine and test any meter used or intended to be used for the purpose of ascertaining the quantity of electricity supplied to any premises⁴;
- 2780 (2) to determine whether it is of an approved pattern or construction⁵ and, if it is installed for use, whether it is installed in an approved manner⁶;
- 2781 (3) to determine whether it is in proper order for ascertaining the quantity of electricity supplied within the prescribed margins of error⁷ and, if it has been in use and there is a dispute as to whether it registered correctly at any time, to determine if possible whether it registered within those margins at that time⁸; and
- 2782 (4) to make a written report of his conclusions in respect of the matters mentioned in heads (2) and (3) above⁹.

If a meter examiner determines that a meter is, or was at any time, operating outside the prescribed margins of error, he must if possible give an opinion as to any period for which the meter has or may have been so operating and the accuracy (if any) with which it was or may have been operating for any such period¹⁰.

Regulations¹¹ may make provision for determining the fees to be paid for examining and testing meters, and the persons by whom and the circumstances in which they are to be paid¹².

1 As to the appointment and remuneration etc of meter examiners see PARA 1182 note 2 ante.

2 As to the service of documents see the Electricity Act 1989 s 109; and PARA 1307 post.

3 For the meaning of 'prescribed' see PARA 1096 note 11 ante. At the date at which this title states the law, no regulations had been made prescribing any persons, procedures or matters for these purposes.

4 Electricity Act 1989 s 31, Sch 7 para 7(1)(a). For the meaning of 'premises' see PARA 1041 note 5 ante.

5 As to the approval of the pattern or construction of meters see PARAS 1180-1181 ante. For the meaning of 'approved' see PARA 1180 note 14 ante.

6 Electricity Act 1989 Sch 7 para 7(1)(b). As to the approved manner of installation of meters see PARAS 1180-1181 ante. In the case of a meter which is a relevant instrument for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679 (see PARA 1196 et seq post) and which is put into use within the meaning of and in accordance with those regulations, the Electricity Act 1989 Sch 7 para 7(1)(b) is to be disregarded: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(1), (3).

7 In relation to a meter used or intended to be used in connection with an exempt supply, the Electricity Act 1989 Sch 7 para 7 has effect as if any reference to prescribed margins of error included a reference to any margins of error agreed between the authorised supplier and the customer ('agreed margins of error'): Sch 7 para 7(4) (amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1)). For the prescribed margins of error for the purposes of Sch 7 para 5 (as amended) (certification of meters) see PARA 1182 note 7 ante; and for the meaning of 'exempt supply' see PARA 1180 note 16 ante. See, however, the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(2)(b) which provides that for the purpose of the application of the Electricity Act 1989 Sch 7 para 7(1)(c), (2) to relevant instruments put into use within the

meaning of and in accordance with those regulations, 'prescribed margins of error' means the maximum permissible error as set out in Sch 1 para 15 (see PARA 1196 post). See also the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(3)(b), applying the definition of 'prescribed margins of error' set out in PARA 1182 note 7 ante.

8 Electricity Act 1989 Sch 7 para 7(1)(c).

9 Ibid Sch 7 para 7(1)(d).

10 Ibid Sch 7 para 7(2).

11 For the meaning of 'regulations' for these purposes see PARA 1180 note 9 ante.

12 Electricity Act 1989 Sch 7 para 7(3). At the date at which this title states the law, no fees had been prescribed for these purposes; but as to the functions of the director which may be taken into account when fixing any such fees, and the matters specified in relation to those functions for the purposes of the Finance (No 2) Act 1987 s 102(4), see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, arts 2, 3, Sch 1 Pt II, Sch 2 paras 1-8 (amended by virtue of the Utilities Act 2000 s 3(2)).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

1185 Testing of meters

TEXT AND NOTES--Electricity Act 1989 Sch 7 para 7(1), (3) amended: Energy Act 2008 s 96(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1186. Disputes as to accuracy of meters.

1186. Disputes as to accuracy of meters.

Where there is a genuine dispute¹ as to the accuracy of a meter used for ascertaining the quantity of electricity supplied to any premises² and (1) notice of the dispute is given to the authorised supplier³ by the customer or to the customer by that supplier; or (2) such notice is given to both by any other person interested, the following provisions apply⁴. Except with the approval of a meter examiner⁵ and, if he so requires, under his supervision, a meter must not be removed or altered by the supplier or the customer until either (a) after the dispute has been resolved by agreement; or (b) the meter is examined and tested under the statutory provisions⁶, whichever first occurs⁷.

A supplier or a customer who removes or alters the meter in contravention⁸ of the above provisions is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁹.

1 As to what amounts to a genuine dispute see PARA 1103 note 6 ante.

2 For the meaning of 'premises' see PARA 1041 note 5 ante.

3 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

4 Electricity Act 1989 s 31, Sch 7 para 8(1) (amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1)).

5 As to the appointment and remuneration etc of meter examiners see PARA 1182 the text and note 2 ante.

6 Ie under the Electricity Act 1989 Sch 7 para 7 (as amended): see PARA 1185 ante.

7 Ibid Sch 7 para 8(2).

8 For the meaning of 'contravention' see PARA 1070 note 20 ante.

9 Electricity Act 1989 Sch 7 para 8(3). As to the standard scale see PARA 613 note 11 ante.

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to

the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

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1187. Presumptions and evidence.

The register of a meter used for ascertaining the quantity of electricity supplied to any premises¹ is to be admissible in any proceedings as evidence of the quantity of electricity supplied through it².

Where electricity has been supplied for any period through a meter which is of an approved pattern or construction³ and is installed in an approved manner⁴, the register of the meter is to be presumed to have been registering for that period within the prescribed margins of error⁵ and, in the case of a meter used in connection with an exempt supply⁶, within any agreed margins of error⁷, unless the contrary is proved⁸.

Where a meter has been operating for any period within the prescribed or, in the case of an exempt supply, within the agreed margins of error, the meter must be conclusively presumed to have been correctly registering for that period the quantity of electricity supplied through it⁹.

The report of a meter examiner¹⁰ on any question relating to such a meter is admissible in evidence in any proceedings in which that question is raised and any conclusions in the report as to the accuracy of the meter when it was tested are to be presumed to be correct unless the contrary is proved¹¹.

1 For the meaning of 'premises' see PARA 1041 note 5 ante.

2 Electricity Act 1989 s 31, Sch 7 para 9(1), (2).

3 For the meaning of 'approved' see PARA 1180 note 14 ante. As to approval of pattern or construction see PARAS 1180-1181 ante.

4 As to the approved manner of installation see PARAS 1180-1181 ante.

5 As to the prescribed margins of error see PARA 1183 ante. See, however, the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 28(2)(b) which provides that for the purpose of the application of the Electricity Act 1989 Sch 7 para 9(3), (4) to relevant instruments put into use within the meaning of and in accordance with those regulations, 'prescribed margins of error' means the maximum permissible error as set out in Sch 1 para 15 (see PARA 1196 post). See also the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(3)(b), applying the definition of 'prescribed margins of error' set out in PARA 1182 note 7 ante.

6 For the meaning of 'exempt supply' see PARA 1180 note 16 ante.

7 'Agreed margins of error' has the meaning given by the Electricity Act 1989 Sch 7 para 7(4) (see PARA 1185 ante): Sch 7 para 13.

8 Ibid Sch 7 para 9(3).

9 Ibid Sch 7 para 9(4).

10 For the appointment and remuneration etc of meter examiners see PARA 1182 note 2 ante.

11 Electricity Act 1989 Sch 7 para 9(5).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1188. Meters to be kept in proper order.

1188. Meters to be kept in proper order.

A customer of an authorised supplier¹ must at all times, and at his own expense, keep any meter belonging to him in proper order for correctly registering the quantity of electricity supplied to him; and in default of his doing so, the supplier may discontinue the supply² of electricity through that meter³.

An authorised supplier must at all times, at his own expense, keep any meter provided by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of prepayment meters⁴, for operating properly on receipt of the necessary payment⁵.

The duties so imposed on a supplier are without prejudice to any remedy the supplier may have against the customer for failing to take proper care of the meter⁶.

The statutory procedure for the determination of disputes⁷ applies in relation to any dispute arising under these provisions between an electricity supplier⁸ and a customer⁹.

1 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

3 Electricity Act 1989 s 31, Sch 7 para 10(1) (Sch 7 paras 10(1), (2) amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1), 7(a), (b)).

4 For special provisions relating to prepayment meters see PARA 1190 post.

5 Electricity Act 1989 Sch 7 para 10(2) (as amended: see note 3 supra).

6 Ibid Sch 7 para 10(4).

7 Ie ibid s 23 (as amended): see PARA 1100 ante.

8 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

9 Electricity Act 1989 Sch 7 para 10(2A) (added by the Utilities Act 2000 s 52, Sch 5 paras 1, 7(c)).

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the

Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

1188 Meters to be kept in proper order

TEXT AND NOTE 9--Electricity Act 1989 Sch 7 para 10(2A) substituted: Energy Act 2008 s 96(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1189. Interference with meters; unlawful abstraction of electricity.

1189. Interference with meters; unlawful abstraction of electricity.

Any person who intentionally or by culpable negligence alters the register of a meter used for ascertaining the quantity of electricity supplied to any premises¹ by an authorised supplier² or prevents any such meter from duly registering the quantity of electricity supplied is liable on summary conviction to a fine not exceeding level 3 on the standard scale³.

Where any person is prosecuted for such an offence, the possession by him of artificial means⁴ for causing an alteration of the register of the meter or the prevention of the meter from duly registering is, if the meter was in his custody or under his control, to be taken as prima facie evidence that the alteration or prevention was intentionally caused by him⁵.

Where such an offence has been committed⁶, the supplier may discontinue the supply⁷ of electricity to the premises until the matter has been remedied and may remove the meter in respect of which the offence was committed⁸. Where an authorised supplier removes a meter under this power, he must keep it safely until the Gas and Electricity Markets Authority ('GEMA')⁹ authorises the supplier to destroy or otherwise dispose of it¹⁰.

Under the Theft Act 1968, a person who dishonestly uses any electricity without due authority or dishonestly causes any electricity to be wasted or diverted¹¹ is liable on conviction on indictment to imprisonment for a term not exceeding five years or on summary conviction to imprisonment for a term not exceeding six months¹² or a fine not exceeding the prescribed sum, or to both¹³. Electricity is not 'property' and so cannot be the subject of theft under the general law¹⁴.

1 For the meaning of 'premises' see PARA 1041 note 5 ante.

2 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

3 Electricity Act 1989 s 31, Sch 7 para 11(1) (Sch 7 para 11(1), (4) amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1)). See eg *R v Harrison* [2001] EWCA Crim 2427, [2001] All ER (D) 42 (Nov) (defendant did not tamper with the electrical equipment himself, but took full advantage of a situation where the meter was not recording the consumption of electricity: sentence of 100 hours community service reduced to 50 hours on appeal). Cf the offence of damaging an electricity meter: see PARA 1106 ante. As to the standard scale see PARA 613 note 11 ante.

4 As to what constitutes artificial means see *Keane v Bathgate* 1983 SLT 651n, 1983 SCCR 251 (a case on interference with a gas meter).

5 Electricity Act 1989 Sch 7 para 11(2). See *Semple v Hingston* (19 June 1992, unreported), Scot HC (a finding that the seals on an electricity meter had been broken and a slot cut to allow the insertion of a piece of cardboard to prevent the meter from operating and that the meter had at all times been in the appellant's custody and control, was sufficient justification for a finding that the meter had intentionally been prevented from operating and to convict him of contravention of the Electricity Act 1989 Sch 7 para 11(1) (now as amended) and of stealing a quantity of electricity. The appellant's argument that there was no finding that he had any knowledge of the condition of the meter and insufficient evidence to support a finding of possession of the meter as tampered with was immaterial). See also *Singh v Normand* (1 February 1994, unreported), Scot HC ('the possession by him of artificial means' qualifies both of the offences referred to in the Electricity Act 1989 Sch 7 para 11(1) (now as amended) which are mentioned in the opening words of Sch 7 para 11(2). There are thus two requirements which need to be established before the presumption can be relied on; one is that the

accused was in possession of artificial means for causing the alteration of the register or, alternatively, the prevention of the meter from registering; the other is that the meter was in his custody or under his control).

Where two persons occupy a house, it is not enough to prove that the meter has been improperly disconnected and that one of them is the registered consumer nor that the meter had been tampered with by one or the other unless it can be shown that they were acting in concert: *Collins and Fox v Chief Constable of Merseyside* [1988] Crim LR 247; see also *Swallow v DPP* [1991] Crim LR 610; and *May v Crown Prosecution Service* (11 January 1991, unreported), QBD (CO/70/90).

6 le an offence under the Electricity Act 1989 Sch 7 para 11(1)(a) or (b) (as amended).

7 For the meaning of 'supply' see PARA 1041 note 10 ante.

8 Electricity Act 1989 Sch 7 para 11(3). There is no such power to disconnect, however, where a person has merely allowed the register of a meter to be altered or to be prevented from registering; cf the position where a person allows a meter to be damaged: see PARA 1106 ante.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 Electricity Act 1989 Sch 7 para 11(4) (as amended: see note 3 supra).

11 See the Theft Act 1968 s 13. The ingredients of the offence are using a quantity of electricity, doing so without authority and doing so dishonestly; it does not necessarily involve tampering with the meter: see *R v McCreadie, R v Tume* (1992) 96 Cr App Rep 143, 157 JP 541, CA (where it was held that it was quite wrong to suggest that in order to constitute the offence of using electricity without authority, the meter had to be tampered with in some way; the court approved the statement in Smith *The Law of Theft* (6th Edn) (1989) at p 156 that 'use implies some consumption of electricity which would not occur but for the accused's part. If squatters switch on electricity, not intending to pay for it, they appear to use it dishonestly'). The Theft Act 1968 s 2 (meaning of 'dishonestly': see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 283) does not apply for the purposes of s 13: see s 1(3). 'Dishonesty' is a question of fact, to be judged according to the tests in *R v Ghosh* [1982] QB 1053, 75 Cr App Rep 154, CA (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 283). As to the approach to be taken by the judge when the offence is alleged against a number of occupants of the property in which the meter has been bypassed see *R v Hoar* [1982] Crim LR 606, CA; *Collins and Fox v Chief Constable of Merseyside* [1988] Crim LR 247.

12 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not in force); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not in force). At the date at which this title states the law, no such day had been appointed.

13 Theft Act 1968 s 13; Magistrates' Courts Act 1980 ss 17, 32(1), Sch 1 para 28. As to the prescribed sum see PARA 613 note 20 ante.

14 Electricity is not 'property' within the Theft Act 1978 s 4 and is not appropriated by switching on the current: *Low v Blease* (1975) 119 Sol Jo 695, [1975] Crim LR 513, DC. Thus the only proceedings which can be taken are proceedings under the Theft Act 1978 s 13. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 301.

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5).

References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/A. REQUIREMENTS UNDER THE ELECTRICITY ACT 1989 AND REGULATIONS MADE UNDER THAT ACT/1190. Prepayment meters.

1190. Prepayment meters.

A customer of an authorised supplier¹ who takes his supply² of electricity through a prepayment meter is under a duty to take all reasonable precautions for the safekeeping of any money or tokens inserted into it³.

A prepayment meter installed by an authorised supplier through which a customer of such a supplier takes his supply of electricity must not be used to recover a sum unless:

- 2783 (1) the sum is owed to an authorised supplier in respect of the supply of electricity to the premises⁴ on which the meter is installed or in respect of the provision of the meter; or
- 2784 (2) the recovery of the sum in that manner is permitted by both regulations⁵ and an agreement such as is described below between the customer and the person to whom the sum is owed⁶, namely an agreement where:
 - 253 378. (a) the person to whom the sum is owed is a person who is authorised by regulations to enter into such agreements;
 - 379. (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
 - 380. (c) the agreement complies with the requirements specified for these purposes by regulations⁷.
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The sums that regulations under these provisions may permit the recovery of through a prepayment meter include:

- 2785 (i) sums owed to a person other than an authorised supplier;
- 2786 (ii) sums owed in respect of premises other than the premises on which the meter is installed;
- 2787 (iii) sums owed in respect of matters other than the supply of electricity⁸.

A prepayment meter⁹ may be used to recover a sum that is owed to a gas supplier¹⁰ or an electricity supplier¹¹ by a customer in respect of any one or more of the following:

- 2788 (A) at any premises previously owned or occupied by the customer, the supply of gas, the supply of electricity, the provision of a gas meter and the provision of an electricity meter;
- 2789 (B) the provision of a gas meter at the premises on which the prepayment meter is installed; and
- 2790 (C) the supply of gas to the premises on which the prepayment meter is installed¹².

Any sum recoverable through a prepayment meter under head (1) above may be consolidated with a sum specified in heads (A) to (C) above and recovered under the relevant¹³ regulations¹⁴.

An electricity supplier may not, however, recover sums specified in heads (A) to (C) above by means of a prepayment meter unless the supplier has previously entered into an agreement with the customer which complies¹⁵ with the prescribed requirements¹⁶.

1 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

3 Electricity Act 1989 s 31, Sch 7 para 12(1) (amended by the Utilities Act 2000 s 52, Sch 5 paras 1, 2(1)). If electricity is supplied through a prepayment meter actuated by coins or tokens, payment to the authorised supplier takes place when the coins or tokens are inserted in the meter so that if the coins or tokens are subsequently stolen, the loss, at any rate in the absence of negligence on the consumer's part, falls on the supplier: see *Edmundson v Longton Corp* (1902) 19 TLR 15, DC; *Martin v Marsh* [1955] Crim LR 781, DC. When money is put into a meter, it becomes the property of the supplier: see 119 JP Jo 843.

In *R v Midlands Electricity Board, ex p Busby, R v Midlands Electricity Board, ex p Williamson* (1987) Times, 28 October, QBD, the court, relying, in particular, on the general powers conferred on area electricity boards by the Electricity Act 1947 s 2(5) (now repealed) held that there was nothing in the relevant legislation to prevent the board from entering into an agreement the effect of which was to make the customer wholly responsible for third party theft from a coin-operated prepayment meter. The boards' successors in title have no such general powers. An authorised supplier therefore cannot recover money stolen from a meter if the customer can show that he took all reasonable precautions to keep the contents of the meter safe.

4 For the meaning of 'premises' see PARA 1041 note 5 ante.

5 For the meaning of 'regulations' see PARA 1180 note 9 ante.

6 Electricity Act 1989 Sch 7 para 12(2) (Sch 7 para 12(2) substituted, and Sch 7 paras 12(3)-(5) added, by the Energy Act 2004 s 181(2)).

7 Electricity Act 1989 Sch 7 para 12(3) (as added: see note 6 supra).

8 Ibid Sch 7 para 12(4) (as added: see note 6 supra). Before making such regulations the Gas and Electricity Markets Authority ('GEMA') must consult (1) the Gas and Electricity Consumer Council; (2) all authorised suppliers; and (3) such other persons as the Authority considers appropriate: Sch 7 para 12(5) (as so added). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

As to the exercise of these powers to make regulations see the Electricity (Prepayment Meter) Regulations 2006, SI 2006/2010, which came into force on 1 September 2006: see reg 1. See further notes 9-16 infra.

In the absence of specific provision in the relevant regulations, a prepayment meter cannot be used to recover eg water debts and charges: see *South Wales Electricity plc v Director General of Electricity Supply* [1999] All ER (D) 1152, (1999) Times, 28 October (decided under the Electricity Act 1989 Sch 7 para 12 as originally enacted).

9 For these purposes, 'prepayment meter' means an electricity prepayment meter installed by an authorised supplier through which the customer takes his supply of electricity: *ibid* reg 2.

10 For these purposes, 'gas supplier' means the holder of a licence under the Gas Act 1986 s 7A(1)(a) (as added and amended) (see PARA 807 ante) except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence: Electricity (Prepayment Meter) Regulations 2006, SI 2006/2010, reg 2.

11 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

12 Electricity (Prepayment Meter) Regulations 2006, SI 2006/2010, reg 3(1). Contrast the position with regard to a gas prepayment meter, which cannot be used to recover sums owed in respect of electricity: see the Gas (Prepayment Meter) Regulations 2006, SI 2006/2011, reg 3(1); and PARA 858 ante.

13 *Ie* under the Electricity (Prepayment Meter) Regulations 2006, SI 2006/2010.

14 *Ibid* reg 3(2).

15 le complies with ibid reg 4(2), (4) and, where applicable, regs 5, 6 (see note 16 infra): reg 4(1).

16 Ibid reg 4(1). The agreement must state in writing: (1) the name of the customer; (2) any charges that the customer will be required to pay in addition to those recovered under reg 3; and (3) that the electricity supplier warrants that he has, orally, provided the customer with details as required under reg 4(3): reg 4(2). The details so required are: (a) other means of payment available to the customer; (b) the operation of the prepayment meter, particularly as regards the recovery of debt and charging for ongoing consumption; and (c) the implications of failing to make any payments in full or in part when they fall due under the agreement: reg 4(3). The agreement must include written terms to the following effect: (i) that the customer can give a notice of cancellation to the electricity supplier; (ii) where notice of cancellation is given, the agreement is to be treated as if it had not been made; (iii) notice of cancellation can be given orally or in writing and must be given within seven working days beginning with the day on which the customer receives written terms of the agreement; and (iv) either party can terminate the agreement on provision of 30 days' oral or written notice: reg 4(4).

Where the prepayment meter is being used to recover a sum owed the agreement must include in writing: (A) the amount of each element of the sum owed and to what it relates; (B) the repayment rate and repayment amount; (C) the date at which the sum owed will be fully repaid if the repayment amount is paid at the repayment rate; (D) a term that the repayment rate and repayment amount have been calculated by the supplier to take into account the customer's ability to pay the total of all charges to be recovered through the prepayment meter; (E) a term that the customer has agreed to the repayment rate and repayment amount; and (F) a term that the repayment rate and repayment amount can only be varied either at the customer's request and if agreed by the electricity supplier, or by the supplier in accordance with head (D) above and with prior notice given to the customer: reg 5. 'Repayment amount' means the amount of each instalment to be paid towards the repayment of the sum owed; 'repayment rate' means the frequency with which instalments are to be paid towards the repayment of the sum owed; and 'sum owed' means the aggregate of sums specified under reg 3 owed at the time an agreement under reg 4 is sent to the customer: reg 2.

Where the prepayment meter is being used to recover a sum that is owed under reg 3(1)(c) for ongoing gas consumption the agreement must include in writing: (aa) the amount and frequency of payments required for ongoing gas consumption; (bb) a term that the supplier will make reasonable endeavours to obtain gas meter readings at least every six months; (cc) a term that the supplier will adjust the amount and frequency of payments required for ongoing gas consumption to reflect the gas meter readings obtained; and (dd) a term that when adjusting the amount and frequency of payments under head (cc) supra the supplier must first give notice of the adjustments to the customer: reg 6. 'Ongoing gas consumption' means gas consumed after the date an agreement under reg 4 is sent to the customer: reg 2.

UPDATE

1180-1190 Requirements under the Electricity Act 1989 and Regulations made under that Act

The functions of the Gas and Electricity Markets Authority ('the Authority') under electricity meter legislation are transferred to the Secretary of State: Energy Act 2008 s 95(1). 'Electricity meter legislation' means (1) the Electricity Act 1989 Sch 7 (other than Sch 7 para 12), and (2) electricity meter regulations; and 'electricity meter regulations' means (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607; (b) the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679; (d) any regulations made under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12): Energy Act 2008 s 95(5). References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of the Utilities Act 2000 s 3(2), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State: Energy Act 2008 s 95(2). Regulations made, or treated as made, by the Authority under the Electricity Act 1989 Sch 7 (other than Sch 7 para 12) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State: Energy Act 2008 s 95(3). 'Commencement' means the day on which s 95 comes into force (ie 1 April 2009: see SI 2009/45): Energy Act 2008 s 95(5). Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is

treated on and after commencement as if it had been done by the Secretary of State: s 95(4).

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B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS

(A) ELECTRICAL ENERGY METERS WHERE PATTERN OR CONSTRUCTION APPROVED BEFORE 30 OCTOBER 2006

1191. EC initial verification.

If a meter which is a relevant instrument¹ for the purposes of the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995² bears the mark of EC initial verification³ it is deemed for specified purposes of the Electricity Act 1989⁴ to be certified⁵ and, subject to certain conditions, to be installed in an approved manner⁶.

An application for the consideration of any relevant instrument for EC initial verification must be made to an electricity meter examiner⁷ in such manner as the Gas and Electricity Markets Authority ('GEMA')⁸ may direct⁹. The electricity meter examiner must determine whether an EC pattern approval¹⁰ is in force in respect of the instrument and, if so, whether it conforms to the approved pattern and to the requirements of the relevant European Directive¹¹; and, where he is satisfied:

- 2791 (1) that the instrument conforms to the requirements of that Directive; and
- 2792 (2) that an EC pattern approval is in force in respect of the instrument and that the instrument conforms to the approved pattern,

he must authorise the seal of EC initial verification¹² to be affixed to the instrument¹³. If the electricity meter examiner refuses to authorise the seal of EC initial verification to be affixed to a relevant instrument, he must give to the applicant a statement in writing of his reasons for refusal¹⁴. Each electricity meter examiner must keep a record of all tests and examinations carried out by him under these provisions¹⁵.

1 Ie an instrument of a category to which EEC Council Directive 76/891 (OJ L336, 4.12.76, p 30) (as amended) 'the Directive on Electrical Meters' (now repealed and replaced by European Parliament and EC Council Directive 2004/22 (OJ L35, 30.4.2004, p 1)) applied: see the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(b), (m).

2 Ie for the purposes of the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607 (as amended). Those regulations, and the provisions of the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended), which they apply with prescribed modifications, continue to apply to electrical energy meters of a pattern or construction which was approved before 30 October 2006: see the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 3(2)(a).

3 For the mark see the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 4, Sch 1 para 5 (amended by SI 1995/2607).

4 Ie (1) for the purposes of the Electricity Act 1989 Sch 7 paras 2(1)(b), 3(1)(b) (see PARA 1180 ante) in the case of certification; and (2) for the purposes of Sch 7 paras 2(1)(a), 3(1)(a) (as amended) (see PARA 1180 ante), Sch 7 para 7(1)(b) (see PARA 1185 ante) and Sch 7 para 9(3) (see PARA 1187 ante) in the case of installation: see

the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(1), (3)(a), (c), (d). Regulation 3 applies in relation to the use of certification of meters on or after 1 November 1995: reg 3(4).

5 le under the Electricity Act 1989 Sch 7 para 5 (as amended): see PARA 1182 ante. This is subject to any provision in regulations under Sch 7 para 5(4)(a) for the termination of certification: Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(a).

6 If the meter is installed and the installer had reason to believe that the manufacturer had given directions about its installation, for the purposes of the Electricity Act 1989 Sch 7 paras 2(1)(a), 3(1)(a) (as amended), Sch 7 paras 7(1)(b), 9(3) it is to be deemed to be installed in an approved manner if (and only if) it is installed in accordance with the directions; and if the meter is installed and the installer had no reason to believe that the manufacturer had given directions about its installation, then for those purposes it is to be deemed to be installed in an approved manner if (and only if) the manner of installation does not impede its operation with the prescribed margins of error; and for this purpose 'prescribed margins of error' is to be construed in accordance with Sch 7 para 13 (see PARA 1182 note 7 ante), notwithstanding that such margins of error were prescribed with respect to certification: Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 3(3)(c), (d).

7 'Electricity meter examiner' means a meter examiner appointed under the Electricity Act 1989 Sch 7 para 4 (as amended) (see PARA 1182 ante): Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(h).

8 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

9 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 9(1). As to the conduct in the United Kingdom of EC initial verification in relation to relevant instruments see reg 9(5), Sch 2.

10 As to EC pattern approval see PARA 1192 post.

11 See note 1 supra.

12 'The seal of EC initial verification' means the seal incorporating the mark of EC initial verification: Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(n).

13 Ibid reg 9(2). In the case of any relevant instrument submitted for EC initial verification to a meter examiner employed by the Authority, the Authority may charge such reasonable fee as it may determine in respect of the costs to the Authority of carrying out or procuring such examination or inquiry as may be required for the meter examiner to satisfy himself as to the matters in reg 9(2): reg 10(3) (substituted by SI 2002/3082).

14 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 9(3).

15 Ibid reg 9(4).

UPDATE

1191 EC initial verification

NOTE 3--SI 1988/186 Sch 1 para 5 further amended: SI 2008/1267.

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1192. EC pattern approval and revocation of approval.

Pattern approval of an electrical energy meter¹ might be granted by the Gas and Electricity Markets Authority ('GEMA')² on submission of an application by the manufacturer³ or his authorised representative which complied with the prescribed requirements⁴. It must have been granted before 30 October 2006⁵ and is valid for ten years⁶.

The Authority may also revoke any pattern approval after consultation with such persons as appear to it to be interested⁷. A pattern approval may be revoked on any one or more of the following grounds:

- 2793 (1) if meters constructed according to the pattern in question reveal in service a defect of a general nature which makes them unsuitable for their intended use;
- 2794 (2) if meters which are exempt from EEC initial verification⁸ on the basis that they are constructed in accordance with the approved pattern do not conform to that pattern or to the relevant requirements⁹;
- 2795 (3) if the metrological requirements specified in the certificate of pattern approval are not satisfied;
- 2796 (4) if the Authority is satisfied that the approval was improperly procured;
- 2797 (5) if any condition imposed¹⁰ is contravened; or
- 2798 (6) if meters constructed according to the pattern in question frequently fail a statistical check of attributes¹¹ and no improvement of the quality level is found once the shortcoming has been brought to the attention of the holder of the pattern approval¹².

If an approval is revoked, the Authority must give a statement in writing of the reasons to any person appearing to the Authority to be interested¹³. Any notice of revocation of approval must be published by the Authority¹⁴.

1 le a relevant instrument for the purposes of the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607 (as amended): see PARA 1191 note 1 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 'Manufacturer', where more than one person is responsible for the manufacture of an instrument, means the person responsible for the final stage of manufacture: Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(j).

4 See *ibid* reg 5A (added by SI 2002/3082). As to the material to be submitted with such an application see the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 6, Sch 1 (Sch 1 amended by SI 2002/3082); and as to fees for EC pattern approval see the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 10(1), (2) (substituted by SI 2002/3082).

With regard to applications made before 1 February 2003, an application for pattern approval was to be made under the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 8, Schs 1, 2 (as

amended; applied with modifications by SI 1995/2607): see the Measuring Instruments (EC Requirements) (Electrical Energy Meters) (Amendment) Regulations 2002, SI 2002/3082, regs 1, 4.

5 See the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 3(2) (a).

6 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 8(5) (applied by SI 1995/2607).

7 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 11(1) (reg 11 amended by SI 1995/2607; and by virtue of the Utilities Act 2000 s 3(2)).

8 As to initial verification see PARA 1191 ante.

9 Ie the requirements of EEC Council Directive 76/891 (OJ L336, 4.12.76, p 30) (as amended) 'the Directive on Electrical Meters' (now repealed and replaced by European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1) on measuring instruments).

10 Ie under the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 9(2) (conditions which might be imposed when pattern approval was granted).

11 Ie a statistical check of attributes carried out under *ibid* reg 13(4), Sch 3 para 5. Note, however, that reg 13, Sch 3 is not expressed to apply for these purposes: see the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 5(1)(b).

12 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 11(2) (as amended: see note 7 *supra*).

13 *Ibid* reg 11(4) (as amended: see note 7 *supra*).

14 *Ibid* reg 11(3) (as amended: see note 7 *supra*).

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1193. Restrictions on the use of meters of approved patterns.

Where a pattern approval¹ is in force, the manufacturer must cause the sign of EEC pattern approval to be affixed to meters conforming to the approved pattern².

Where:

- 2799 (1) the Gas and Electricity Markets Authority ('GEMA')³ revokes an EC pattern approval⁴ relating to a category of relevant instruments⁵; or
- 2800 (2) it appears to the Authority that any such pattern approval has been revoked by any member state other than the United Kingdom or by any other EEA state⁶,

the Authority must cause a notice to be published in the London Gazette requiring all relevant instruments of the pattern in question used for the purpose of ascertaining the amount of electrical energy supplied to any person in England and Wales to be removed as soon as practicable and in any event within a period of six months beginning with the date of publication of the notice⁷. Such a notice must give particulars of the pattern to which it relates and must include a statement of the grounds for the publication of the notice⁸.

Where the Authority is satisfied that relevant instruments, constructed according to a pattern in respect of which an EC pattern approval granted by a member state or an EEA state other than the United Kingdom is in force, reveal in service a defect of a general nature which makes them unsuitable for their intended use, the Authority must cause a notice to be published in the London Gazette requiring all relevant instruments of the pattern in question used for the purposes of ascertaining the amount of electrical energy supplied to any person in England and Wales to be removed as soon as practicable and in any event within a period of six months beginning with the date of publication of the notice⁹. Such a notice must give particulars of the pattern to which it relates and must include a statement of the grounds for the publication of the notice¹⁰. The Authority may at any time withdraw such a notice by publishing a notice of withdrawal in the London Gazette¹¹.

Where an EEC limited pattern approval¹² is subject to one or more of the following conditions, that is to say:

- 2801 (a) a condition requiring written notice of the place of installation to be given to the competent authorities of member states in which relevant instruments of the pattern in question are to be installed;
- 2802 (b) a condition limiting the use of relevant instruments of the pattern in question;
- 2803 (c) a special condition with respect to the techniques used;

any person who, knowing that any such condition applies to any relevant instrument:

- 2804 (i) uses for ascertaining the quantity of electricity supplied by an electricity supplier¹³ to a customer, or causes or permits any other person so to use, that relevant instrument knowing that notice has not been given as required by the condition mentioned in head (a) above or (as the case may be) in contravention of a condition mentioned in head (b) or head (c) above; or
- 2805 (ii) disposes of the relevant instrument to any other person in a state in which it could be so used without informing that person of the condition,

is guilty of an offence¹⁴ and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁵. The relevant instrument is liable to be forfeited¹⁶.

Where an EEC pattern approval¹⁷ is not extended¹⁸ then the relevant regulations¹⁹ apply, in relation to any relevant instrument of the pattern in question which was used for ascertaining the quantity of electricity supplied by an electricity supplier to a customer before the pattern approval ceased to have effect, as if the pattern approval had continued in force²⁰. The manufacturer of any relevant instrument of the pattern in question, bearing any EEC sign or mark related to that pattern approval, which has not been so used is guilty of an offence if, after the pattern approval has ceased to have effect, he disposes of the instrument to any other person²¹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale²² and the relevant instrument is liable to be forfeited²³.

No proceedings may be instituted in England and Wales in respect of an offence under the above provisions except by or on behalf of the Authority²⁴.

1 Ie whether that approval has been granted by the United Kingdom or any other member state: Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 12(2). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 Ibid reg 12(2). The sign must be affixed at a visible point on the meter and must be legible and indelible: ibid reg 12(4).

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 'EC pattern approval' includes 'EEC pattern approval': Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(d). As to EC pattern approval see PARA 1192 ante.

5 For the meaning of 'relevant instrument' see PARA 1191 note 1 ante.

6 'EEA state' means a state which, at 1 November 1995, was a contracting party to the EEA Agreement; and 'the EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993: Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(f), (g).

7 Ibid reg 7(1) (regs 7, 8 amended by virtue of the Utilities Act 2000 s 3(2)).

8 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 7(2).

9 Ibid reg 8(1) (as amended: see note 7 supra).

10 Ibid reg 8(2).

11 Ibid reg 8(3) (as amended: see note 7 supra).

12 As to limited EEC pattern approval see the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 10 (amended by SI 1995/2607).

13 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

14 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 16 (amended by SI 1995/2607).

15 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 14(2). As to the standard scale see PARA 613 note 11 ante. Where an offence under any provision of the 1995 Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and penalised accordingly: reg 13(1). Where the affairs of a body corporate are managed by its members, reg 13(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 13(2).

16 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 16 (as amended: see note 14 supra).

17 Is whether that approval has been granted by the United Kingdom or any other member state: Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 18.

18 As to extension of pattern approvals which were originally granted for a period of two years or less for a further period of not more than three years see *ibid* reg 9 (amended by SI 1995/2607).

19 Is the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186 (as amended).

20 *Ibid* reg 18(a) (reg 18 amended by SI 1995/2607).

21 Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 18(b) (as amended: see note 20 supra).

22 See note 15 supra.

23 See the Measuring Instruments (EEC Requirements) Regulations 1988, SI 1988/186, reg 18(b) (as amended: see note 20 supra).

24 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 15 (amended by virtue of the Utilities Act 2000 s 3(2)).

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1194. Obliteration of EC signs and marks.

An electricity meter examiner¹ may remove the seal of EC initial verification² affixed to a relevant instrument³ or obliterate any EC sign or mark⁴ affixed thereto if he is satisfied:

- 2806 (1) that the instrument to which the seal is affixed falls outside the prescribed limits of error⁵; or
- 2807 (2) that the instrument does not comply with the requirements of the relevant European Directive⁶.

Without prejudice to the above provision, where an electricity meter examiner is satisfied that an EC pattern approval⁷ has ceased to have effect, he may, at the request of any person appearing to him to be the owner of a relevant instrument which bears any EC sign or mark related to that EC pattern approval, remove the seal of EC initial verification affixed thereto, or obliterate any EC sign or mark thereon⁸.

Obliteration under these provisions must be carried out by the electricity meter examiner by means of punches or pincers of a prescribed⁹ six-pointed star design¹⁰; but this does not apply where in the opinion of the electricity meter examiner it would be impossible to obliterate any EC sign or mark by that method; and in any such case obliteration must be carried out in such other manner as the Gas and Electricity Markets Authority ('GEMA')¹¹ may direct, whether generally or in relation to signs or marks of any particular description¹².

1 For the meaning of 'electricity meter examiner' see PARA 1191 note 7 ante.

2 For the meaning of 'seal of EC initial verification' see PARA 1191 note 12 ante.

3 For the meaning of 'relevant instrument' see PARA 1191 note 1 ante.

4 For these purposes, 'EC mark' includes 'EEC mark' and 'EC sign' includes 'EEC sign': Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 2(1)(e).

5 I.e. the limits of error referred to in *ibid* reg 3(3)(d): see PARA 1191 note 6 ante.

6 *Ibid* reg 11(1). As to the relevant Directive see PARA 1191 note 1 ante.

7 I.e. whether granted in the United Kingdom or by any other member state or EEA state: *ibid* reg 11(2). As to EC pattern approval see PARA 1192 ante. See also PARA 1193 note 4 ante. For the meaning of 'United Kingdom' see PARA 602 note 7 ante; and for the meaning of 'EEA state' see PARA 1193 note 6 ante.

8 *Ibid* reg 11(2).

9 I.e. the design illustrated in *ibid* reg 11(3).

10 *Ibid* reg 11(3).

11 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

12 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 11(4) (amended by virtue of the Utilities Act 2000 s 3(2)).

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1195. Offences relating to EC signs and marks on meters.

Any person who, in the case of a relevant instrument¹:

- 2808 (1) not being an electricity meter examiner² or a person acting under the authority of an electricity meter examiner, marks in any manner any seal or plate used or designed for use for the reception of any EC sign or mark³;
- 2809 (2) not being authorised or required to do so under any provision of the relevant regulations⁴, marks any such instrument with any EC sign or mark;
- 2810 (3) forges, counterfeits or, except pursuant to a duty imposed on an electricity meter examiner, in any way alters or defaces any EC sign or mark⁵;
- 2811 (4) removes any EC sign or mark and inserts it into or attaches it onto any other relevant instrument; or
- 2812 (5) makes any alteration in the instrument after any EC sign or mark has been applied to it in accordance with the regulations referred to in head (2) above, so that it no longer complies with the requirements of the relevant European Directive⁶,

is guilty of an offence⁷ and liable on summary conviction to a fine not exceeding level 5 on the standard scale⁸. A person is not, however, guilty of such an offence by reason solely of the destruction or obliteration of any sign, mark, seal or plate, in the course of the adjustment or repair of any instrument of a category to which the relevant European Directive applied, by or by the duly authorised agent of the person who is a manufacturer⁹ of, or regularly engaged in the business of repairing, such instruments¹⁰.

Any person who supplies electricity through any relevant instrument, which to his knowledge:

- 2813 (a) bears any EC sign or mark which is a forgery or counterfeit, or which has been transferred from another instrument, or which has been altered or defaced otherwise than as permitted by virtue of the above provisions; or
- 2814 (b) does not comply with the requirements of the relevant European Directive by reason of any alteration made in it after any EC sign or mark was applied to it in accordance with the relevant regulations;

is also guilty of an offence¹¹ and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹².

No proceedings in respect of any such offence may be instituted in England and Wales except by or on behalf of the Gas and Electricity Markets Authority ('GEMA')¹³.

1 For the meaning of 'relevant instrument' see PARA 1191 note 1 ante.

2 For the meaning of 'electricity meter examiner' see PARA 1191 note 7 ante.

3 For the meaning of 'EC sign or mark' see PARA 1194 note 4 ante.

4 le the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607 (as amended): see PARA 1191 et seq ante.

5 As to obliteration of marks by meter examiners see PARA 1194 ante.

6 As to the relevant Directive see PARA 1191 note 1 ante.

7 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 12(1). As to offences by bodies corporate see reg 13, cited in PARA 1193 note 15 ante.

8 Ibid reg 14(1). As to the standard scale see PARA 613 note 11 ante.

9 For the meaning of 'manufacturer' see PARA 1192 note 3 ante.

10 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 12(2).

11 Ibid reg 12(3).

12 See note 8 supra.

13 Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607, reg 15 (amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

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(B) REQUIREMENTS OF THE MEASURING INSTRUMENTS (ACTIVE ELECTRICAL ENERGY METERS) REGULATIONS 2006

1196. Relevant instruments.

For the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006¹, a 'relevant instrument' is an active electrical energy meter² which is for use for trade³.

A relevant instrument is not, however:

2815 (1) an instrument which:

255

381. (a) is of a pattern or construction approved before 30 October 2006 by or under regulations made under the relevant provisions of the Electricity Act 1989⁴ or by or under the corresponding Northern Ireland provisions⁵, where such approval has not been revoked under regulations so made; and

382. (b) is certified⁶ or excepted from the requirement for certification⁷ and is put into use⁸ before 30 October 2016⁹;

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2816 (2) an instrument:

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383. (a) in respect of a pattern of which EC pattern approval was granted before 30 October 2006 under the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995¹⁰ or by any other member state¹¹ in accordance with the relevant provisions of measures in force which implement the relevant European Directive¹² and which is in force; and

384. (b) which bears a mark of EC initial verification affixed under those regulations or by any other member state in accordance with those provisions¹³;

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2817 (3) an instrument which is used under an agreement providing for the supply of active electrical energy where:

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385. (a) the maximum quantity supplied exceeds 100 kilowatts per hour; and

386. (b) the instrument provides measurement on a half-hourly basis¹⁴;

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2818 (4) an instrument which is not compliant with the essential requirements¹⁵ and which is displayed or presented at a trade fair, exhibition or demonstration, if a sign displayed visibly on or near the instrument clearly indicates that the instrument:

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387. (a) is not compliant with those requirements; and

388. (b) cannot be acquired or used until it is made compliant with those requirements by the manufacturer¹⁶.

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- 1 le the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1197 et seq post.
- 2 'Active electrical energy meter' means a device which measures the active electrical energy consumed in a circuit: *ibid* reg 2(1).
- 3 *Ibid* reg 3(1).
- 4 le by or under regulations made under the Electricity Act 1989 Sch 7 para 2 (as amended): see PARA 1180 ante.
- 5 le by or under regulations made under the Electricity (Northern Ireland) Order 1992, SI 1992/231, Sch 7 para 3.
- 6 le under the Electricity Act 1989 Sch 7 para 5 (as amended) (see PARA 1182 ante) or the corresponding Northern Ireland provision.
- 7 le excepted under the Electricity Act 1989 Sch 7 para 2(2) (as amended) (see PARA 1180 ante) or the corresponding Northern Ireland provision.
- 8 'Put into use' means the first use of a relevant instrument intended for the end user for the purposes for which it was intended: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 2(1).
- 9 *Ibid* reg 3(2), (3).
- 10 le under the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995, SI 1995/2607 (as amended): see PARA 1191 et seq ante. As to pattern approval under those regulations see PARA 1192 ante.
- 11 For these purposes, a reference to a member state includes Norway, Iceland and Liechtenstein: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 2(2).
- 12 le EEC Council Directive 76/891 (OJ L336, 4.12.76, p 30) (as amended) 'the Directive on Electrical Meters' (now repealed and replaced by European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1) on measuring instruments).
- 13 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 3(4). As to EC initial verification under the 1995 Regulations see PARA 1191 ante.
- 14 *Ibid* reg 3(5).
- 15 'Essential requirements' means the requirements set out in *ibid* Sch 1 Pt 1 (reg 2(1)) and are the relevant requirements relating to relevant instruments contained in European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1) on measuring instruments, Annex 1 and Annex M1-002, as so set out (Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 1 Pt 1 para 1). Those requirements relate to: (1) allowable errors; (2) reproducibility; (3) repeatability; (4) discrimination and sensitivity; (5) durability; (6) reliability; (7) protection against corruption; (8) information to be borne by and to accompany the relevant instrument; (9) indication of result; (10) conformity evaluation; (11) accuracy; (12) rated operating conditions; (13) maximum permissible error ('MPE'); (14) permissible effect of disturbance (electro-magnetic environment); (15) suitability; and (16) units: see Sch 1 Pt 1 paras 3-18. For the applicable statutory definitions of certain terms used therein see Sch 1 Pt 1 para 2.
- 16 *Ibid* reg 3(6). 'Manufacturer' means a person responsible for the conformity of a relevant instrument with the essential requirements with a view to either placing it on the market under his own name or putting it into use for his own purposes, or both; and 'place on the market' means making available for the first time in a member state a relevant instrument intended for an end user, whether for reward or free of charge: reg 2(1).

UPDATE

1196 Relevant instruments

NOTE 15--Directive 2004/22 Annex M1-002 amended: EC Commission Directive 2009/137 (OJ L294, 11.11.2009, p 7).

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1197. Requirements for placing on the market and putting into use of active electrical energy meters.

No person must place on the market¹ or put into use² a relevant instrument³ unless the following requirements, or the corresponding requirements of the relevant European Directive⁴ as implemented under the law of another member state, are met:

- 2819 (1) the instrument is compliant with the essential requirements⁵;
- 2820 (2) the manufacturer⁶ has demonstrated its compliance with the essential requirements⁷;
- 2821 (3) the instrument has affixed to it the CE marking⁸, the M marking⁹ and the identification number of the notified body¹⁰ which carried out the conformity assessment procedure¹¹ in respect of the instrument; and
- 2822 (4) the instrument is put into use in accordance¹² with the prescribed putting into use requirements¹³.

Where a person fails to comply with the requirements of head (1), head (2) or head (3) above, he is guilty of an offence¹⁴ and any relevant instrument to which the offence relates and which has not been put into use is liable to be forfeited¹⁵.

1 For the meaning of 'place on the market' see PARA 1196 note 16 ante.

2 For the meaning of 'put into use' see PARA 1196 note 8 ante.

3 For the meaning of 'relevant instrument' see PARA 1196 ante.

4 Ie European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).

5 As to the essential requirements see PARA 1196 note 15 ante.

6 For the meaning of 'manufacturer' see PARA 1196 note 16 ante.

7 Ie in accordance with the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 5. A manufacturer may demonstrate that a relevant instrument is compliant with the essential requirements by (1) using any technical solution that is compliant with the essential requirements; (2) correctly applying solutions set out in the relevant national standard; or (3) correctly applying solutions set out in the relevant normative document, and selecting and following one of the conformity assessment procedures: reg 5(1). A relevant instrument which is compliant with the relevant national standard or relevant normative document is to be presumed to be compliant with the essential requirements: reg 5(2). Where the relevant instrument is compliant only in part with the relevant national standard or relevant normative document, it is to be presumed to be compliant only with that part of the essential requirements which corresponds to the element of the relevant national standard or relevant normative document with which the instrument is compliant: reg 5(3). 'Relevant national standard' means a standard applicable to a relevant instrument (1) implementing a harmonised standard that has been published in the Official Journal C series; and (2) the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to the third sub-paragraph of European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 13.1; 'relevant normative document' means a normative document applicable to a relevant instrument, the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to the third sub-paragraph of art 13.2;

'normative document' means a document containing technical specifications adopted by the Organisation Internationale de Métrologie Légale, subject to the procedure stipulated in art 16.1, the reference of which is published by the Commission in the Official Journal pursuant to art 16.1(b); and 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation ('CEN'), the European Committee for Electrotechnical Standardisation ('CENELEC') or the European Telecommunications Standards Institute ('ETSI') or jointly by two or all of these organisations, at the request of the Commission pursuant to European Parliament and EC Council Directive 98/34 (OJ L204, 21.7.98, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, as amended by European Parliament and EC Council Directive 98/48 (OJ L217, 5.8.98, p 18), and prepared in accordance with the general guidelines agreed between the Commission and one or more of CEN, CENELEC and ETSI: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 2(1).

8 As to the CE marking see *ibid* reg 12(3)(a), Sch 4 paras 1, 4-5.

9 As to the M marking see *ibid* reg 12(3)(b), Sch 4 paras 2, 4-5.

10 As to the identification number of the notified body see *ibid* reg 12(3)(c), Sch 4 paras 3-5. 'Notified body' means (1) the Secretary of State; or (2) a United Kingdom notified body (ie a person designated under reg 7: see PARA 1198 post); and (3) for the purposes of reg 4(1)(c) (see head (3) in the text), reg 15(6) (see PARA 1201 post) and reg 17(1)(b) (see PARA 1190 post), a person designated by another member state, who has been notified to the European Commission and the other member states pursuant to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 11(1): Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 2(1).

11 'Conformity assessment procedure' means any procedure referred to in *ibid* reg 6: reg 2(1). The conformity assessment procedures are the procedures as follows: (1) B and F; (2) B and D; and (3) H1; and (a) 'B' means type examination, set out in European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), Annex B; (b) 'D' means declaration of conformity to type based on quality assurance of the production process, set out in Annex D; (c) 'F' means declaration of conformity to type based on product verification, set out in Annex F; and (d) 'H1' means declaration of conformity based on full quality assurance plus design examination, set out in Annex H1: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 6(1), (3). The manufacturer or his authorised representative must provide to the notified body carrying out the relevant conformity assessment procedure the technical documentation set out in Sch 3: reg 6(2). The technical documentation must render the design, manufacture and operation of the relevant instrument intelligible and must permit an assessment of its conformity with the appropriate requirements of the 2006 Regulations: Sch 3 para 1. It must be sufficiently detailed to ensure the definition of the metrological characteristics, the reproducibility of the metrological performances of produced relevant instruments when properly adjusted using appropriate intended means and the integrity of the instrument: Sch 3 para 2. It must include, in so far as relevant for assessment and identification of the type and/or instrument: (i) a general description of the instrument; (ii) conceptual design and manufacturing drawings and plans of components and circuits; (iii) manufacturing procedures to ensure consistent production; (iv) if applicable, a description of the electronic devices with drawings, diagrams, flow diagrams of the logic and general software information explaining their characteristics and operation; (v) descriptions and explanations necessary for the understanding of heads (ii)-(iv) supra, including the operation of the instrument; (vi) a list of the relevant national standards and/or relevant normative documents, applied in full or in part; (vii) descriptions of the solutions adopted to meet the essential requirements where the relevant national standards and/or relevant normative documents have not been applied; (viii) results of design calculations and examinations; (ix) the appropriate test results, where necessary, to demonstrate that the type and/or instrument is compliant with the requirements of the 2006 Regulations under declared rated operating conditions and under specified environmental disturbances and the durability specifications; and (x) the EC-type examination certificates or EC design examination certificates in respect of instruments containing parts identical to those in the design: Sch 3 para 3. The manufacturer must specify where seals and markings have been applied (Sch 3 para 4); and must indicate the conditions for compatibility with interfaces, where relevant (Sch 3 para 5).

12 *Ie* in accordance with *ibid* Sch 1 Pt 2 (para 19).

13 *Ibid* reg 4(1). Subject to Sch 1 Pt 2 para 19(2), measurements may be performed by means of any relevant instrument provided that the temperature range to which a relevant instrument is exposed is not wider than the range specified by the manufacturer in relation to that relevant instrument in accordance with Sch 1 Pt 1 para 3(1)(a), Table 1: Sch 1 Pt 2 para 19(1). Class A relevant instruments may not be used when operating outside the temperature range of an upper temperature limit of 30°C to a lower temperature limit of 5°C: Sch 1 Pt 2 para 19(2). The person responsible for installing the relevant instrument must determine the correct current range and assess the climatic environment, so that the relevant instrument is appropriate for the accurate measurement of consumption that is foreseen or foreseeable: Sch 1 Pt 2 para 19(3).

14 A person guilty of an offence under the 2006 Regulations is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: *ibid* reg 21. As to the standard scale see PARA 613 note 11 ante. As to

proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see *PARA 1206* post.

15 *Ibid* reg 4(2).

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1198. Designation of notified bodies.

The Gas and Electricity Markets Authority ('GEMA')¹, on the application of a person resident, incorporated or carrying on business in Great Britain², and the Northern Ireland Authority for Energy Regulation ('NIAER'), on the application of a person resident, incorporated or carrying on business in Northern Ireland, may designate that person to be a United Kingdom notified body³. GEMA (or, as the case may be, NIAER) must not, however, make such a designation unless it is satisfied that the person meets the notified body criteria⁴. A person who meets the criteria laid down in a national standard⁵ is to be presumed to meet that part of the notified body criteria which corresponds to the criteria in the national standard⁶.

A designation must be in writing⁷. It may be made subject to such conditions as may be specified in the designation, which may include conditions which:

- 2823 (1) are to apply upon or following termination of the designation;
- 2824 (2) require the use of test equipment for the purpose of conformity assessment appropriate to the relevant instrument⁸ being assessed; and
- 2825 (3) limit the description of any relevant instrument for which the person is designated⁹.

A designation may¹⁰ be for such period as may be specified in the designation¹¹. It must specify the conformity assessment procedures¹² and specific tasks, which may be framed by reference to any circumstances, which the person has been designated to carry out¹³; and may include a requirement to publish from time to time the scale of fees which the person charges¹⁴ or such information about the basis of calculation of such fees as may be specified¹⁵.

GEMA (except in relation to designations made by NIAER) and NIAER (in relation to designations made by it) must, from time to time, publish a list of notified bodies indicating, in the case of each United Kingdom notified body, the descriptions of any relevant instrument in respect of which that notified body is designated; and such a list may include information concerning any condition to which the designation of any United Kingdom notified body is subject¹⁶. GEMA (in relation to designations made by it) and NIAER (in relation to designations made by it) must also, from time to time, carry out an inspection of each United Kingdom notified body with a view to verifying that it:

- 2826 (a) meets the notified body criteria;
- 2827 (b) complies with any condition to which its designation is subject; and
- 2828 (c) complies with the relevant regulations¹⁷,

but, unless it appears that there are circumstances which make it necessary or expedient to do so, must not carry out an inspection within two years from the date of designation or of any later inspection¹⁸. GEMA or NIAER may charge any person fees to recover the full costs reasonably incurred by it in making a designation or in carrying out such an inspection¹⁹.

GEMA (in relation to designations made by it) or NIAER (in relation to designations made by it) may:

- 2829 (i) vary a designation made under the above provisions if:
 263
 389. (A) the United Kingdom notified body so requests; or
 390. (B) it appears to GEMA (or, as the case may be, NIAER) necessary or expedient to do so²⁰;
 264
 2830 (ii) terminate a designation so made:
 265
 391. (A) on the expiry of 90 days' notice in writing at the request of the United Kingdom notified body;
 392. (B) if it appears to GEMA (or, as the case may be, NIAER) that any condition of the designation is not complied with; or
 393. (C) if in the opinion of GEMA (or, as the case may be, NIAER) the United Kingdom notified body ceases to satisfy the notified body criteria²¹.
 266

Where GEMA or NIAER is minded to vary a designation pursuant to head (i)(B) above or to terminate a designation pursuant to head (ii)(B) or head (ii)(C) above, it must give notice in writing to the United Kingdom notified body of its reasons and give that notified body the opportunity to make representations within a period of 21 days from the date of that notice and consider any representations made to it within that period²². If a designation is terminated, GEMA (or, as the case may be, NIAER) may give such directions, either to the United Kingdom notified body the subject of the termination or to another United Kingdom notified body, for the purposes of making arrangements for the determination of outstanding applications, as it considers appropriate; and may, notwithstanding that power to give directions, authorise another United Kingdom notified body to take over the functions of the United Kingdom notified body the subject of the termination in respect of such cases as GEMA (or, as the case may be, NIAER) may specify²³.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 7(1). In exercising the power so conferred on it by reg 7(1), GEMA (or, as the case may be, NIAER) may (in addition to the matters of which it is required to satisfy itself pursuant to reg 7(2): see the text and note 4 infra) have regard to any matter appearing to it to be relevant: reg 7(5).

4 Ibid reg 7(2). 'Notified body criteria' means the criteria set out in ibid Sch 2 Pt 1 (paras 1-8): reg 2(1). Those criteria are as follows (Sch 2 Pt 1 paras 1-8)), ie:

- 57 (1) the body, its director and staff involved in conformity assessment tasks must not be the designer, manufacturer, supplier, installer or user of the relevant instrument that they inspect, nor the authorised representative of any of them; in addition, they may not be directly involved in the design, manufacture, marketing or maintenance of the relevant instrument, nor represent the parties engaged in these activities; but the preceding criterion does not preclude in any way the possibility of exchanges of technical information between the manufacturer and the body for the purposes of conformity assessment;
- 58 (2) the body, its director and staff involved in conformity assessment tasks must be free from all pressures and inducements, in particular financial inducements, that might influence their judgment or the results of their conformity assessment, especially from persons or groups of persons with an interest in the results of the assessments;

- 59 (3) the conformity assessment must be carried out with the highest degree of professional integrity and requisite competence in the field of metrology; should the body sub-contract specific tasks, it must first ensure that the sub-contractor meets the requirements of the 2006 Regulations, and in particular of Sch 1; and the body must keep the relevant documents assessing the sub-contractor's qualifications and the work carried out by him under those regulations at the disposal of GEMA (or NIAER, where that authority designates the body);
- 60 (4) the body must be capable of carrying out all the conformity assessment tasks for which it has been designated, whether those tasks are carried out by the body itself or on its behalf and under its responsibility; it must have at its disposal the necessary staff and must have access to the necessary facilities for carrying out in a proper manner the technical and administrative tasks entailed in conformity assessment;
- 61 (5) the body's staff must have:
52. (a) sound technical and vocational training, covering all conformity assessment tasks for which the body was designated;
52
53. (b) satisfactory knowledge of the rules governing the tasks which it carries out, and adequate experience of such tasks;
53
54. (c) the requisite ability to draw up the certificates, records and reports demonstrating that the tasks have been carried out;
54
- 62 (6) the impartiality of the body, its director and staff must be guaranteed; the remuneration of the body must not depend on the results of the tasks it carries out and the remuneration of the body's director and staff must not depend on the number of tasks carried out or on the results of such tasks;
- 63 (7) the body must satisfy GEMA (or NIAER, where that authority designates the body) that it has adequate civil liability insurance;
- 64 (8) the body's director and staff must be bound to observe professional secrecy with regard to all information obtained in the performance of their duties pursuant to the 2006 Regulations, except vis-à-vis the authority of GEMA (or NIAER, where that authority designates the body).
- 5 For these purposes, 'national standard' means a standard applicable to the designation of notified bodies (1) implementing a harmonised standard that has been published in the Official Journal; and (2) the reference of which is published in the United Kingdom by the Secretary of State or in another member state by the competent authority pursuant to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1), art 11.2: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 7(6). For the meaning of 'harmonised standard' see PARA 1197 note 7 ante.
- 6 Ibid reg 7(3).
- 7 Ibid reg 7(4)(a). 'In writing' includes text that is (1) transmitted by electronic means; (2) received in legible form; and (3) capable of being used for subsequent reference: reg 2(1).
- 8 For the meaning of 'relevant instrument' see PARA 1196 ante.
- 9 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 7(4)(b).
- 10 Ie subject to ibid reg 10: see the text and notes 20-23 infra.
- 11 Ibid reg 7(4)(c).
- 12 For the meaning of 'conformity assessment procedure' see PARA 1197 note 12 ante.
- 13 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 7(4)(d).
- 14 Ie pursuant to ibid reg 11. A United Kingdom notified body may charge such fees in connection with, or incidental to, the carrying out of conformity assessment procedures or specific tasks as it may determine: reg 11(1). Those fees must not, however, exceed the following: (1) the costs incurred or to be incurred by the United Kingdom notified body in performing the relevant function; and (2) an amount on account of profit which is reasonable in the circumstances having regard to the character and extent of the work done or to be done by that notified body on behalf of the applicant and the commercial rate normally charged on account of profit for

that work or similar work: reg 11(2). The power to charge fees includes the power to require the payment of fees or a reasonable estimate of such fees in advance of carrying out the work requested by the applicant: reg 11(3). Where any fees payable to a United Kingdom notified body pursuant to reg 11 remain unpaid 28 days after either the work has been completed or payment of the fees has been requested in writing, whichever is the later, the notified body may by 14 days' notice in writing provide that, unless the fees are paid before the expiry of the notice, the certificate or notification appropriate to the relevant conformity assessment procedure will be suspended until payment of the fees has been received: reg 11(4).

15 Ibid reg 7(4)(e).

16 Ibid reg 9(1).

17 It complies with the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679.

18 Ibid reg 9(2).

19 Ibid reg 11(5). Where, in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), GEMA, acting on behalf of NIAER, makes a designation under reg 7 or carries out an inspection under reg 9, GEMA may charge any person fees to recover the full costs reasonably incurred by it in making the designation or carrying out the inspection: reg 11(6).

20 Ibid reg 10(1).

21 Ibid reg 10(2).

22 Ibid reg 10(3).

23 Ibid reg 10(4).

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1199. Functions of notified bodies.

A notified body¹ must carry out the following functions².

It must³ assess an application made by a manufacturer⁴ for the issue of a certificate of conformity, a design or type examination certificate or a notification of approval of the manufacturer's quality system, in accordance with the Annex to the relevant European Directive⁵ which is applicable to the relevant conformity assessment procedure⁶ in respect of a relevant instrument⁷. In determining such an application, the notified body must have regard to the actual or usual environment of the relevant instrument and may have regard to any other standard or other technical criteria appearing to it to be relevant⁸. Where in the opinion of the notified body the relevant instrument to which an application relates is compliant with the essential requirements⁹, it must issue a certificate or notification in accordance with the prescribed procedure¹⁰; and where such a certificate or notification is issued by a United Kingdom notified body¹¹, it must send a copy to the Gas and Electricity Markets Authority ('GEMA'), or to the Northern Ireland Authority for Energy Regulation ('NIAER'), where that authority has designated the body¹². Where, however, in the opinion of the notified body, the relevant instrument to which an application relates is not compliant with the essential requirements, it must issue a notice to the applicant in accordance with the prescribed procedure¹³.

A notified body must not accept an application for a certificate or notification in respect of a relevant instrument unless the application is in writing¹⁴, in English or another language acceptable to that notified body, is accompanied by all relevant documentation, in which all writing is in English or another language acceptable to that notified body, and includes particulars of which applicable standards the manufacturer has applied or proposes to apply in respect of the instrument¹⁵. A notified body is not to be required to determine an application for a certificate or notification where the manufacturer has not:

- 2831 (1) granted the notified body access to a relevant instrument to which the application relates or the production facilities for the instrument, including, where applicable, the production facilities envisaged in relation to a representative instrument, to the extent that the notified body reasonably requests; and
- 2832 (2) made available to the notified body such information as it may reasonably require to determine the application¹⁶;

and a notified body is not to be required to carry out specified conformity assessment procedures and specific tasks¹⁷ if either the person making the application has not submitted with the application the amount of the fee which the notified body requires to be submitted with the application¹⁸ or the notified body reasonably believes that, having regard to the number of applications made to it pursuant to its designation which are outstanding, it will be unable to commence the required work within three months of receiving the application¹⁹.

A notified body may, in exercising its functions, either arrange for some other person to carry out any test, assessment or inspection on its behalf or require the applicant to satisfy another person with respect to any matter at the applicant's expense²⁰; but nothing in this provision

authorises a notified body to rely on the opinion of another person with regard to whether a relevant instrument is compliant with any of the essential requirements²¹.

A certificate or notification issued by a notified body must be in writing and, in addition to the requirements provided for in the conformity assessment procedures, it must be in English and must give the name and address of the applicant and, where the applicant is not the manufacturer, of the manufacturer²². It must be signed by or on behalf of the notified body and give the identification number²³ of the notified body²⁴; and must bear the date of issue and the number of the certificate or notification²⁵. It must also give particulars of the relevant instrument (where applicable, in relation to each variant) to which it relates sufficient to identify it, and must state whether the instrument to which it relates is a single item or a representative, or if it covers a number of variants of that instrument²⁶; and it must certify that the instrument to which it relates is compliant with the essential requirements²⁷.

A certificate or notification may be unconditional or may be subject to such conditions as the notified body considers appropriate²⁸. Such conditions may include:

- 2833 (a) a limitation on the environment for which the relevant instrument is stated to be suitable; or
- 2834 (b) a requirement that the instrument is only to be installed at a specific site²⁹.

The conditions so imposed may be varied³⁰ by the notified body which issued the certificate or notification and such variation may include the imposition of new conditions or the removal of conditions³¹.

The notified body which issued the certificate or notification must withdraw that certificate or notification in accordance with the following provisions if it appears that the relevant instrument to which it relates is not compliant with the essential requirements³². Where a notified body is minded to:

- 2835 (i) refuse to issue a certificate or notification;
- 2836 (ii) vary a certificate or notification, other than at the request of the person to whom it was given; or
- 2837 (iii) withdraw a certificate or notification,

it must give the applicant, or the person to whom the certificate or notification was given, a notice in writing:

- 2838 (A) giving reasons for the refusal, variation or withdrawal;
- 2839 (B) specifying the date on which the refusal, variation or withdrawal is to take effect; and
- 2840 (C) giving the applicant or person the opportunity to make representations within 21 days from the date of the notice and stating that the notified body must consider any representations made to it within that period by that applicant or person³³.

Where a notified body, having considered representations so made to it, remains of the opinion that an application for a certificate or notification should be refused, or that a certificate or notification should be varied or withdrawn, it must give notice in writing to the applicant or the person to whom the certificate or notification was given, and give that applicant or person information about the judicial remedies available to him³⁴.

1 For the meaning of 'notified body' see PARA 1197 note 10 ante.

- 2 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 8.
- 3 le subject to *ibid* Sch 2 para 10: see the text and notes 14-19 *infra*.
- 4 For the meaning of 'manufacturer' see PARA 1196 note 16 *ante*.
- 5 le the relevant Annex to European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).
- 6 For the meaning of 'conformity assessment procedure' see PARA 1197 note 11 *ante*.
- 7 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 2 para 9(1). For the meaning of 'relevant instrument' see PARA 1196 *ante*.
- 8 *Ibid* Sch 2 para 9(2).
- 9 For the meaning of 'the essential requirements' see PARA 1196 note 15 *ante*.
- 10 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 2 para 9(3). The certificate or notification must be issued in accordance with Sch 2 para 12 (see the text and notes 22-27 *infra*): Sch 2 para 9(3).
- 11 As to United Kingdom notified bodies see PARA 1198 *ante*.
- 12 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 2 para 9(5). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* *ante*.
- 13 *Ibid* Sch 2 para 9(4). The notice must be issued in accordance with Sch 2 para 15 (see the text and notes 33-34 *infra*): Sch 2 para 9(4).
- 14 For the meaning of 'in writing' see PARA 1198 note 7 *ante*.
- 15 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 2 para 10(1).
- 16 *Ibid* Sch 2 para 10(2).
- 17 le the functions referred to in *ibid* reg 7(4)(d): see PARA 1198 *ante*.
- 18 le pursuant to *ibid* reg 11: see PARA 1198 *ante*.
- 19 *Ibid* Sch 2 para 10(3).
- 20 *Ibid* Sch 2 para 11(1). Nothing in the relevant regulations precludes such other person from charging any fee in respect of any work so undertaken by him: Sch 2 para 11(3).
- 21 *Ibid* Sch 2 para 11(2).
- 22 *Ibid* Sch 2 para 12(a), (b).
- 23 As to the identification number see PARA 1197 note 10 *ante*.
- 24 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, Sch 2 para 12(c).
- 25 *Ibid* Sch 2 para 12(d).
- 26 *Ibid* Sch 2 para 12(e).
- 27 *Ibid* Sch 2 para 12(f).
- 28 *Ibid* Sch 2 para 13(1).
- 29 *Ibid* Sch 2 para 13(2).
- 30 le in accordance with *ibid* Sch 2 para 15: see the text and notes 33-34 *infra*.
- 31 *Ibid* Sch 2 para 13(3).

32 Ibid Sch 2 para 14.

33 Ibid Sch 2 para 15(1). Where a notice is given under Sch 2 para 15(1) or (2) by a United Kingdom notified body, it must send a copy to GEMA (or to NIAER, where that authority has designated the body): Sch 2 para 15(3).

34 Ibid Sch 2 para 15(2). See also note 33 *supra*.

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1200. Marking and identification requirements.

Where a relevant instrument¹ is compliant with the essential requirements², the manufacturer³ must affix the CE mark⁴ and the M mark⁵ to the instrument and the notified body⁶ which carries out the conformity assessment procedure⁷ in respect of that instrument must affix its identification number⁸ to the instrument, or may agree that the manufacturer is to do so on its behalf⁹. Any other marking may be affixed to the relevant instrument provided that the visibility and legibility of the CE marking, the M marking and the identification number of the notified body are not reduced¹⁰.

Where a relevant instrument falls within the scope of other European Directives¹¹ which provide for the affixing of the CE marking, the affixing of the CE marking under the above provisions indicates that the instrument is also presumed to be compliant with the requirements of those other Directives¹².

1 For the meaning of 'relevant instrument' see PARA 1196 ante.

2 For the meaning of 'the essential requirements' see PARA 1196 note 15 ante.

3 For the meaning of 'manufacturer' see PARA 1196 note 16 ante.

4 As to the CE mark see PARA 1197 note 8 ante.

5 As to the M mark see PARA 1197 note 9 ante.

6 For the meaning of 'notified body' see PARA 1197 note 10 ante.

7 For the meaning of 'conformity assessment procedure' see PARA 1197 note 11 ante.

8 As to the identification number see PARA 1197 note 10 ante.

9 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 12(1).

10 Ibid reg 12(2).

11 Ie Directives other than European Parliament and EC Council Directive 2004/22 (OJ L135, 30.4.2004, p 1).

12 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 13(1). Where reg 13(1) applies, the publication reference of such other Directives in the Official Journal must be given in the documents, notices or instructions required to accompany the relevant instrument: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 13(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/ (5) DISTRIBUTION, SUPPLY AND USE OF ELECTRICITY/ (v) Electricity Meters/B. COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS/(B) Requirements of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006/1201. Unauthorised application of authorised marks.

1201. Unauthorised application of authorised marks.

A person is guilty of an offence¹ if, in the case of an relevant instrument², he:

- 2841 (1) affixes an authorised mark³ to the instrument otherwise than in accordance with the relevant regulations⁴;
- 2842 (2) alters or defaces an authorised mark affixed to the instrument⁵;
- 2843 (3) removes an authorised mark affixed to the instrument; or
- 2844 (4) affixes any other marking to the instrument which is likely to deceive any person as to the meaning or form, or both, of an authorised mark⁶.

Where, however, the alteration or defacement of an authorised mark is occasioned solely in the course of the adjustment or repair of a relevant instrument by a person regularly engaged in the business of repair of such instruments, or by his authorised agent, that person or his authorised agent is not guilty of an offence under head (2) above⁷.

A person is also guilty of an offence⁸ if he places on the market⁹ or puts into use¹⁰ a relevant instrument:

- 2845 (a) which, to his knowledge, bears:
 - 267 394. (i) an authorised mark affixed otherwise than in accordance with the relevant regulations¹¹;
 - 395. (ii) an authorised mark that has been altered or defaced otherwise than in the circumstances referred to above¹²;
 - 396. (iii) any marking which is likely to deceive any person as to the meaning or form, or both, of an authorised mark; or
 - 268 2846 (b) from which, to his knowledge, an authorised mark has been removed¹³.

Where an offence under heads (1) to (4) or head (a) or head (b) above has been committed in respect of a relevant instrument which has not been put into use, the instrument, and any implement used in the commissioning of the offence, is liable to be forfeited¹⁴.

1 A person guilty of an offence under the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: *ibid* reg 21. As to the standard scale see PARA 613 note 11 ante. As to proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see PARA 1206 post.

2 For the meaning of 'relevant instrument' see PARA 1196 ante.

3 For these purposes, 'authorised mark' means the CE marking, the M marking or the identification number of the notified body which carried out the conformity assessment procedure in respect of the relevant instrument: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 15(6).

As to those markings and that number see PARA 1197 notes 8-10 ante; and for the meaning of 'conformity assessment procedure' see PARA 1197 note 11 ante.

4 Ie otherwise than in accordance with the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679. A reference in reg 15 to other provisions of those regulations includes a reference to corresponding provisions under the laws of other member states: reg 15(5). For the meaning of 'member state' for these purposes see PARA 1196 note 11 ante.

5 See, however, *ibid* reg 15(2); and the text and note 7 *infra*.

6 *Ibid* reg 15(1).

7 *Ibid* reg 15(2).

8 See note 1 *supra*.

9 For the meaning of 'place on the market' see PARA 1196 note 16 ante.

10 For the meaning of 'put into use' see PARA 1196 note 8 ante.

11 See note 4 *supra*.

12 Ie other than in the circumstances referred to in the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 15(2): see the text and note 7 *supra*.

13 *Ibid* reg 15(3).

14 *Ibid* reg 15(4).

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1202. Compliance notice procedures.

Where an enforcement authority¹ establishes that, in the case of a relevant instrument² that has been placed on the market³ or put into use⁴, the CE marking⁵ or the M marking⁶ has, or both have, been affixed unduly⁷, the following provisions have effect⁸. The enforcement authority must serve a compliance notice⁹ on the manufacturer¹⁰ or his authorised representative¹¹ which must:

- 2847 (1) be in writing¹²;
- 2848 (2) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- 2849 (3) state that the enforcement authority is of the opinion that the CE marking or the M marking has, or both have, been affixed unduly to the relevant instrument and give reasons for its opinion;
- 2850 (4) require the person on whom the notice is served to end the infringement under conditions specified in the notice;
- 2851 (5) specify the date, being not less than 21 days from the date of the notice, by which the infringement must be ended; and
- 2852 (6) warn that person that, where the non-conformity continues beyond the date specified in head (5) above, the enforcement authority may take further action¹³ in respect of that relevant instrument¹⁴.

1 The following authorities must enforce the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, ie: (1) the Gas and Electricity Markets Authority ('GEMA'), in relation to England and Wales; (2) the Northern Ireland Authority for Energy Regulation ('NIAER'), in relation to Northern Ireland; (3) GEMA, in relation to Northern Ireland, to the extent that any arrangements entered into in accordance with reg 25 provide that GEMA is to act on behalf of NIAER for, or in connection with, the carrying out of the functions conferred on NIAER under Pt 3 (regs 14-23); (4) any other third party designated to act on behalf of GEMA or (in relation to Northern Ireland) NIAER: reg 14(1).

2 For the meaning of 'relevant instrument' see PARA 1196 ante.

3 For the meaning of 'place on the market' see PARA 1196 note 16 ante.

4 For the meaning of 'put into use' see PARA 1196 note 8 ante.

5 As to the CE marking see PARA 1197 note 8 ante.

6 As to the M marking see PARA 1197 note 9 ante.

7 For these purposes, the CE marking is to be considered to have been affixed unduly if it is not compliant with the requirements of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 12(3)(a) (see PARA 1197 note 8 ante) and the M marking is to be considered to have been affixed unduly if it is not compliant with the requirements of reg 12(3)(b) (see PARA 1197 note 9 ante): reg 16(3).

8 Ibid reg 16(1).

9 Any document required or authorised by the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, to be served on a person may be so served (1) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; (2) if the person is a body

corporate, by serving it in accordance with head (1) supra on the secretary or clerk of that body corporate; or (3) if the person is a partnership, by serving it in accordance with head (1) supra on a partner or on a person having control or management of the partnership business: reg 26(1). For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (which relates to the service of documents by post) in its application to the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 26(1), the proper address of any person on whom a document is to be served by virtue of the 2006 Regulations is his last known address except that (a) in the case of service on a body corporate or its secretary or clerk, it is the address of the registered or principal office of the body corporate; and (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the principal office of the partnership; and for these purposes the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: reg 26(2).

Where an enforcement authority other than GEMA or NIAER serves a compliance notice, it must at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf): reg 16(4). Where GEMA, acting in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), serves a compliance notice, it must at the same time send a copy of the notice to NIAER: reg 16(5).

10 For the meaning of 'manufacturer' see PARA 1196 note 16 ante.

11 'Authorised representative' means a person who is established in a member state and is authorised by a manufacturer, in writing, to act on his behalf: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 2(1). For the meaning of 'member state' for these purposes see PARA 1196 note 11 ante.

12 For the meaning of 'in writing' see PARA 1198 note 7 ante.

13 Ie under the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 17: see PARA 1203 post.

14 Ibid reg 16(2).

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1203. Immediate enforcement action.

Where an enforcement authority¹ has reasonable grounds for considering that:

- 2853 (1) the manufacturer² or his authorised representative³ has failed to comply with a compliance notice⁴;
- 2854 (2) a relevant instrument⁵, which is placed on the market⁶ or put into use⁷, does not bear one or more of the CE marking⁸, the M marking⁹ and the identification number¹⁰ of the notified body¹¹ which carried out the conformity assessment procedure¹² in respect of that instrument; or
- 2855 (3) a relevant instrument which bears the marking and identification requirements referred to in head (2) above does not meet the essential requirements¹³ when placed on the market, or properly installed and put into use in accordance with the manufacturer's instructions,

the following provisions have effect¹⁴.

The enforcement authority must serve an enforcement notice¹⁵ on the manufacturer or his authorised representative which must:

- 2856 (a) be in writing¹⁶;
- 2857 (b) describe the relevant instrument to which it relates in a manner sufficient to identify that instrument;
- 2858 (c) specify, with reasons, the respects in which, in the opinion of the enforcement authority, the requirements of the relevant regulations¹⁷ have not been complied with;
- 2859 (d) specify the date, being not less than 21 days from the date of the notice, by which the person to whom the notice is given is required to comply with it; and
- 2860 (e) inform that person of the judicial remedies available to him and of the time limits to which those remedies are subject¹⁸.

Such a notice may:

- 2861 (i) require the relevant instrument to be withdrawn from the market; or
 - 2862 (ii) prohibit or restrict the placing on the market or putting into use of the relevant instrument; and
 - 2863 (iii) specify that unless steps are taken which ensure:
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- 397. (A) that the relevant instrument is compliant with the requirements of the relevant regulations; or
 - 398. (B) that the manufacturer or his authorised representative acts as required under head (i) or head (ii) above,
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any certificate or notification, issued by a notified body in accordance with the relevant conformity assessment procedure applicable to the relevant instrument that the instrument satisfies the essential requirements, may be withdrawn by that notified body¹⁹.

If, in the case of a certificate or notification granted by a United Kingdom notified body²⁰, the Gas and Electricity Markets Authority ('GEMA'), in relation to a notified body which it has designated, or the Northern Ireland Authority for Energy Regulation ('NIAER'), in relation to a notified body which it has designated, is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, GEMA (or, as the case may be, NIAER) must inform that notified body of that fact²¹; and if, in the case of a certificate or notification granted under the law of another member state²², GEMA or NIAER is of the opinion that consideration ought to be given to whether the certificate or notification should be withdrawn, it must inform the relevant competent authority of that fact²³.

1 For the meaning of 'enforcement authority' see PARA 1202 note 1 ante.

2 For the meaning of 'manufacturer' see PARA 1196 note 16 ante.

3 For the meaning of 'authorised representative' see PARA 1202 note 11 ante.

4 As to compliance notices see PARA 1202 ante.

5 For the meaning of 'relevant instrument' see PARA 1196 ante.

6 For the meaning of 'place on the market' see PARA 1196 note 16 ante.

7 For the meaning of 'put into use' see PARA 1196 note 8 ante.

8 As to the CE marking see PARA 1197 note 8 ante.

9 As to the M marking see PARA 1197 note 9 ante.

10 As to the identification number see PARA 1197 note 10 ante.

11 For the meaning of notified body' see PARA 1197 note 10 ante.

12 For the meaning of 'conformity assessment procedure' see PARA 1197 note 11 ante.

13 For the meaning of 'essential requirements' see PARA 1196 note 15 ante.

14 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 17(1).

15 'Enforcement notice' means a notice served in accordance with *ibid* reg 17(2) (see the text and notes 16-18 *infra*): reg 2(1). As to service of notices see PARA 1202 note 9 ante.

Where an enforcement authority other than the Gas and Electricity Markets Authority ('GEMA') or the Northern Ireland Authority for Energy Regulation ('NIAER') serves an enforcement notice, it must at the same time send a copy of the notice to GEMA (or to NIAER, if it is acting on its behalf): reg 17(4). Where GEMA, acting in accordance with reg 25 (which confers power on GEMA to act on behalf of NIAER), serves an enforcement notice, it must at the same time send a copy of the notice to NIAER: reg 17(5). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq* ante.

16 For the meaning of 'in writing' see PARA 1198 note 7 ante.

17 *Ie* the requirements of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1196 *et seq* ante, PARA 1204 *et seq* post.

18 *Ibid* reg 17(2).

19 *Ibid* reg 17(3).

20 For the meaning of 'United Kingdom notified body' see PARA 1197 note 10 ante.

21 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 17(6).

- 22 For the meaning of 'member state' for these purposes see PARA 1196 note 11 ante.
- 23 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 17(7).

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1204. Powers of entry and inspection.

Subject to the production if so requested of his credentials¹, an enforcement officer² may:

- 2864 (1) for the purpose of the relevant regulations³, at all reasonable times:
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399. (a) inspect and test, or remove for testing, any relevant instrument⁴ which has not been put into use⁵ in such manner as he considers appropriate;
400. (b) inspect and take copies of any document relating to such a relevant instrument; and
401. (c) enter any premises at which he has reasonable cause to believe there to be such a relevant instrument, not being premises used only as a private dwelling house⁶;
- 272
- 2865 (2) at any time, seize and detain:
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402. (a) a relevant instrument which he has reasonable cause to believe is liable to be forfeited under the relevant regulations⁷; and
403. (b) any document or goods which he has reason to believe may be required as evidence in proceedings for an offence under those regulations⁸.
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If a justice of the peace, on written information on oath, is satisfied that there are reasonable grounds to believe that any such relevant instrument or document as is mentioned in head (1) or head (2) above is on any premises, or that an offence under the relevant regulations⁹ has been, is being or is about to be committed on any premises, and is also satisfied either that:

- 2866 (i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or
- 2867 (ii) an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant under his hand, which is to continue in force for a period of one month, authorise the enforcement officer to enter the premises, if need be by force¹⁰.

An enforcement officer entering any premises by virtue of the above provisions may take such other persons and such equipment as may appear to him necessary, and on leaving such premises which he has entered by virtue of a warrant¹¹, being premises which are unoccupied or the occupier of which is temporarily absent, he must leave them as effectively secured against a trespasser as he found them¹². If an enforcement officer or other person who enters any workplace by virtue of the above provisions discloses to any person any information obtained by him in the workplace with regard to any secret manufacturing process or trade secret, he is guilty of an offence¹³, unless the disclosure was made in the performance of his

duty¹⁴. It is not, however, such an offence for a person to disclose information in circumstances where either the person from whom the information was received has consented to its disclosure, or the information is disclosed more than 50 years after it was received¹⁵.

Nothing in the above provisions authorises any person to stop any vehicle on a highway¹⁶.

A person is guilty of an offence¹⁷ if he:

- 2868 (A) wilfully obstructs an enforcement officer in the execution of any of his functions under the relevant regulations¹⁸; or
- 2869 (B) without reasonable cause fails to give that officer any assistance or information which the officer has reasonably required of him for the purpose of the performance by the enforcement authority of its functions under those regulations¹⁹.

A person is also guilty of an offence²⁰ if, in giving an enforcement officer such information as is mentioned in head (B) above, that person gives any information he knows to be false²¹. Nothing in the relevant regulations is, however, to be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege, or as authorising a person to take possession of any documents or records which are in the possession of a person who would be so entitled²²; and nothing in those regulations is to be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner²³.

1 For these purposes, 'credentials' means evidence of appointment or designation as an enforcement officer: Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 18(9).

2 'Enforcement officer' means a person appointed by an enforcement authority to act on its behalf to enforce the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: reg 2(1). For the meaning of 'enforcement authority' see PARA 1202 note 1 ante.

3 Ie for the purposes of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1196 et seq ante, PARAS 1205-1206 post.

4 For the meaning of 'relevant instrument' see PARA 1196 ante.

5 For the meaning of 'put into use' see PARA 1196 note 8 ante.

6 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 18(1).

7 Ie under the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679.

8 Ibid reg 18(2).

9 See note 7 supra.

10 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 18(3).

11 Ie under ibid reg 18(3): see the text and notes 9-10 supra.

12 Ibid reg 18(5).

13 A person guilty of an offence under the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: ibid reg 21. As to the standard scale see PARA 613 note 11 ante. As to proceedings for such an offence, the defence of due diligence and the liability of persons other than the principal offender see PARA 1206 post.

14 Ibid reg 18(6).

15 Ibid reg 18(7).

16 Ibid reg 18(8).

17 See note 13 supra.

18 See note 7 supra.

19 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 19(1).

20 See note 13 supra.

21 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 19(2).

22 Ibid reg 27(1).

23 Ibid reg 27(2). The Civil Evidence Act 1968 s 14(1) (as amended) (which relates to the privilege against self-incrimination: see CIVIL PROCEDURE vol 11 (2009) PARA 974) applies to the right conferred by the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 27(2) as it applies to the right described in the Civil Evidence Act 1968 s 14(1) (as amended): Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 27(3).

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1205. Review of decisions of enforcement authority.

Where a person is aggrieved¹ by a compliance notice² or an enforcement notice³ served by an enforcement authority⁴ other than the Gas and Electricity Markets Authority ('GEMA')⁵ or the Northern Ireland Authority for Energy Regulation ('NIAER'), that person may apply to GEMA (or to NIAER, where the enforcement authority is acting on NIAER's behalf) to review that notice⁶. Such an application must:

- 2870 (1) be in writing⁷;
- 2871 (2) state the grounds on which the application is made;
- 2872 (3) be sent to GEMA (or, as the case may be, NIAER) within 21 days from the date of the relevant compliance notice or enforcement notice⁸.

GEMA, or, as the case may be, NIAER, may:

- 2873 (a) hold an inquiry in connection with the notice which is the subject of its review; and
- 2874 (b) appoint an assessor for the purposes of assisting it with its review⁹;

and must, within a reasonable time, inform the aggrieved person and the enforcement authority in writing of its decision whether to uphold the decision of that authority, together with reasons for its decision¹⁰. Where GEMA or, as the case may be, NIAER, does not uphold any compliance notice or enforcement notice, it must give reasons for the withdrawal of that notice¹¹.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 As to compliance notices see PARA 1202 ante.

3 For the meaning of 'enforcement notice' see PARA 1203 note 15 ante.

4 For the meaning of 'enforcement authority' see PARA 1202 note 1 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante.

6 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 20(1).

7 For the meaning of 'in writing' see PARA 1198 note 7 ante.

8 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 20(2).

9 Ibid reg 20(3).

10 Ibid reg 20(4).

11 Ibid reg 20(5).

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1206. Further provisions with regard to offences.

No proceedings for an offence under the relevant regulations¹ may be instituted in England and Wales except by or on behalf of an enforcement authority².

In proceedings against a person for such an offence, it is³ a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence⁴. Where, however, in proceedings against a person for such an offence, the defence so provided involves an allegation that the commission of the offence was due to the act or default of another, or to reliance on information given by another, that person is not, without the leave of the court, to be entitled to rely on the defence, unless, not less than seven clear days before the hearing of the proceedings, he has served a notice⁵ on the person bringing the proceedings⁶. Such a notice must give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it⁷. Furthermore, a person is not to be entitled to rely on the defence so provided by reason of his reliance on information supplied by another, unless he shows it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to:

- 2875 (1) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- 2876 (2) whether he had any reason to disbelieve the information⁸.

Where the commission by a person of an offence under the relevant regulations⁹ is due to the act or default of another person in the course of any business of his, that other person is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person¹⁰. Where a body corporate¹¹ commits an offence and it is proved that the offence was committed:

- 2877 (a) with the consent or connivance of an officer of the body corporate¹²; or
- 2878 (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, is guilty of the offence¹³.

¹ I.e. under the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679: see PARA 1196 et seq ante.

² Ibid reg 14(2). For the meaning of 'enforcement authority' see PARA 1202 note 1 ante.

³ I.e. subject to ibid reg 22(2)-(4): see the text and notes 5-8 infra.

⁴ Ibid reg 22(1).

⁵ I.e. in accordance with ibid reg 22(3): see the text and note 7 infra. As to the service of notices see PARA 1202 note 9 ante.

6 Ibid reg 22(2).

7 Ibid reg 22(3). See, however, reg 27 (savings for certain privileges), cited in PARA 1204 ante.

8 Ibid reg 22(4).

9 See note 1 supra.

10 Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, SI 2006/1679, reg 23(1).

11 For these purposes, references to a 'body corporate' include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner: *ibid* reg 23(4).

12 For these purposes, a reference to an officer of a body corporate includes a reference to (1) a director, manager, secretary or other similar officer of the body corporate; (2) a person purporting to act as a director, manager, secretary or other similar officer; and (3) if the affairs of the body corporate are arranged by its members, a member: *ibid* reg 23(3). See also note 11 supra.

13 Ibid reg 23(2).

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(vi) Enforcement

A. ORDERS FOR SECURING COMPLIANCE WITH CERTAIN PROVISIONS

1207. Final and provisional orders.

Where the Gas and Electricity Markets Authority ('GEMA')¹ is satisfied that a licence holder² is contravening³, or is likely to contravene, any relevant condition⁴ or requirement⁵, the Authority must⁶ by a final order⁷ make such provision as is requisite for the purpose of securing compliance with that condition or requirement⁸. Where, however, it appears to the Authority:

- 2879 (1) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
- 2880 (2) that it is requisite that a provisional order⁹ be made,

the Authority must¹⁰, instead of taking steps towards the making of a final order, by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement¹¹. In determining for the purposes of head (2) above whether it is requisite that a provisional order be made, the Authority must have regard, in particular:

- 2881 (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
- 2882 (b) to the fact that the effect of the relevant statutory provisions¹² is to exclude the availability of any remedy, apart from under those provisions or for negligence, in respect of any contravention of a relevant condition or requirement¹³.

The Authority must¹⁴ confirm a provisional order, with or without modifications¹⁵, if:

- 2883 (i) it is satisfied that the licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
- 2884 (ii) the provision made by the order, with any modifications, is requisite for the purpose of securing compliance with that condition or requirement¹⁶.

The Authority must not, however, make a final order or make or confirm a provisional order in relation to a licence holder if it is satisfied that the general duties in relation to electricity imposed on it¹⁷ preclude the making or, as the case may be, the confirmation of the order, or that the most appropriate way of proceeding is under the Competition Act 1998¹⁸. Furthermore, the Authority is not required to make a final order or make or confirm a provisional order if it is satisfied:

- 2885 (A) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- 2886 (B) that the contraventions were or the apprehended contraventions are of a trivial nature¹⁹.

Where the Authority is satisfied as mentioned above²⁰, it must give notice that it is so satisfied to the licence holder²¹ and must publish a copy of the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them²².

A final or provisional order must require the licence holder, according to the circumstances of the case, to do, or not to do, such things as are specified in the order or are of a description so specified²³. It takes effect at such time, being the earliest practicable time, as is determined by or under the order²⁴ and may be revoked at any time by the Authority²⁵.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.

4 'Relevant condition', in relation to a licence holder, means any condition of his licence: Electricity Act 1989 s 25(8).

5 'Relevant requirement', in relation to a licence holder, means any duty or other requirement imposed on him by or under *ibid* s 9 (see PARA 1065 ante), ss 16-23 (as amended) (see PARA 1094 et seq ante), s 32-32C (as amended) (see PARA 1219 et seq post), s 40 (as amended) (see PARA 1134 ante), s 40A (as added) (see PARA 1135 ante), s 42 (as amended) (see PARA 1138 ante), s 42A (as added) (see PARA 1136 ante), as from a day to be appointed, s 342AB (as prospectively added) (see PARA 708 ante), s 42C (as added) (see PARA 1140 ante), s 43A or s 43B (as added) (see PARA 1143 ante) or under the Utilities Act 2000 s 27(4)(b) (prospectively repealed) (order to comply with a direction under s 24: see PARA 727 ante) (or, as from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), s 25(5) (directions to comply with requirements under s 24)) or s 43, s 46 or s 47 (complaints): Electricity Act 1989 s 25(8) (definition amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 28 and, as from a day to be appointed, by the Consumers, Estate Agents and Redress Act 2007 ss 25(8), 45(4), 52(2), Sch 2 para 2, Sch 5 para 2; at the date at which this title states the law, no such day had been appointed and ss 24, 25, 43, 45-47, 52, Schs 2, 5 were not in force). Every requirement or other duty imposed on a licence holder under the Energy Act 2004 s 184 or s 185 (as amended) is to be treated as a relevant requirement: see ss 184(12), 185(13); and PARAS 1278-1279 post.

6 *Ie* subject to the Electricity Act 1989 s 25(2), (5) (as amended), s 25(5A) (as added) (see the text and note 19 *infra*) and s 26 (as amended) (procedural requirements: see PARA 1208 post).

7 'Final order' means an order under *ibid* s 25 (as amended) other than a provisional order: s 25(8).

8 *Ibid* s 25(1) (amended by the Utilities Act 2000 s 60(1), (2); and by virtue of s 3(2)).

9 'Provisional order' means an order under the Electricity Act 1989 s 25 (as amended) which, if not previously confirmed in accordance with s 25(4) (as amended), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order: s 25(8).

10 *Ie* subject to *ibid* s 25(5), (5A) (as respectively amended and added): see the text and notes 18-19 *infra*.

11 *Ibid* s 25(2) (amended by the Utilities Act 2000 s 60(1), (3); and by virtue of s 3(2)).

12 *Ie* the provisions of the Electricity Act 1989 s 25 (as amended) and s 27 (as amended) (see PARA 1210 post).

13 *Ibid* s 25(3) (s 25(3)-(5), (6), (7) amended by virtue of the Utilities Act 2000 s 3(2)).

14 *Ie* subject to *ibid* s 25(5), (5A) (as respectively amended and added) and to s 26 (as amended).

- 15 For the meaning of 'modifications' see PARA 1035 note 3 ante.
- 16 Electricity Act 1989 s 25(4) (as amended (see note 13 supra); also amended by the Utilities Act 2000 s 60(1), (3)).
- 17 Ie the duties imposed by the Electricity Act 1989 ss 3A-3C (as added and amended): see PARAS 1041-1043 ante.
- 18 Ibid s 25(5) (as amended) (see note 13 supra); also amended by the Utilities Act 2000 ss 60(1), (4), 108, Sch 6 Pt II paras 24, 27, Sch 8; the Competition Act 1998 s 54(3), Sch 10 para 12(5)). As to proceedings under the Competition Act 1998 see COMPETITION.
- 19 Electricity Act 1989 s 25(5A) (added by the Utilities Act 2000 s 60(1), (5)).
- 20 Ie as mentioned in the Electricity Act 1989 s 25(5), (5A) (as respectively amended and added): see the text and notes 17-19 supra. As from a day to be appointed under the Consumers, Estate Agents and Redress Act 2007 s 66(2), the Authority need be satisfied as mentioned in either the Electricity Act 1989 s 25(5) (as amended) or s 25(5A) (as added): see the Consumers, Estate Agents and Redress Act 2007 s 63(1), Sch 7 paras 7, 9 (not in force).
- 21 Electricity Act 1989 s 25(6)(a) (as amended (see note 13 supra); also amended by the Utilities Act 2000 s 60(1), (3) and, as from a day to be appointed (see note 20 supra) by the Consumers, Estate Agents and Redress Act 2007 Sch 7 paras 7, 9: see note 20 supra). For the meaning of 'notice' see PARA 1047 note 11 ante. As to the service of notices and documents see ibid s 109; and PARA 1307 post.
- 22 Electricity Act 1989 s 25(6)(b) (as amended: see note 13 supra). As to publication by the Authority see PARA 1045 note 6 ante.
- 23 Ibid s 25(7)(a).
- 24 Ibid s 25(7)(b).
- 25 Ibid s 25(7)(c) (as amended: see note 13 supra). As to the validity and effect of orders see s 27 (as amended); and PARA 1210 post. As to the powers of the Authority to require information see s 28 (as amended); and PARA 1214 post. For the obligation of the Authority to keep a register of orders and notices under s 25(6) see s 49(2) (as amended); and PARA 1046 ante.

UPDATE

1207 Final and provisional orders

NOTE 5--Definition of 'relevant requirement' further amended: Energy Act 2008 Sch 5 para 3.

NOTE 20--Consumers, Estate Agents and Redress Act 2007 Sch 7 paras 7, 9 in force 1 October 2008: SI 2008/2550.

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1208. Procedural requirements for making final, or confirming provisional, order.

Before making a final order¹ or confirming a provisional order², the Gas and Electricity Markets Authority ('GEMA')³ must give notice⁴:

- 2887 (1) stating that it proposes to make or confirm the order and setting out its effect; and
- 2888 (2) setting out the relevant condition⁵ or requirement⁶ for the purpose of securing compliance with which the order is to be made or confirmed, the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions⁷ of that condition or requirement, and the other facts which, in the Authority's opinion, justify the making or confirmation of the order⁸; and
- 2889 (3) specifying the period, not being less than 21 days from the date of publication of the notice, within which representations or objections to the proposed order or confirmation of the order may be made⁹;

and the Authority must consider any representations or objections which are duly made and not withdrawn¹⁰. Such a notice must be given:

- 2890 (a) by publishing it in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them¹¹; and
- 2891 (b) by serving a copy of the notice and a copy of the proposed order, or of the order proposed to be confirmed, on the licence holder to whom the order relates¹².

The Authority must not make a final order, or confirm a provisional order, with modifications¹³ except:

- 2892 (i) with the consent of the licence holder; or
- 2893 (ii) after complying with the following requirements¹⁴, namely that the Authority:

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- 404. (A) must serve on the licence holder to whom the order relates such notice as appears to the Authority requisite of its proposal to make or confirm the order with modifications;
- 405. (B) must specify the period, not being less than 21 days from the service of the notice, within which representations or objections to the proposed modifications may be made; and
- 406. (C) must consider any representations or objections which are duly made and not withdrawn¹⁵.

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As soon as practicable after making a final order or confirming a provisional order, the Authority must serve a copy of the order on the licence holder to whom the order relates and

must publish the order in such manner as the Authority considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it¹⁶.

1 For the meaning of 'final order' see PARA 1207 note 7 ante.

2 For the meaning of 'provisional order' see PARA 1207 note 9 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For the meaning of 'notice' see PARA 1047 note 11 ante. As to service of notices see the Electricity Act 1989 s 109; and PARA 1307 post.

5 For the meaning of 'relevant condition' see PARA 1207 note 4 ante.

6 For the meaning of 'relevant requirement' see PARA 1207 note 5 ante.

7 For the meaning of 'contravention' see PARA 1070 note 20 ante.

8 Electricity Act 1989 s 26(1)(a), (b) (s 26(1)-(5) amended by virtue of the Utilities Act 2000 s 3(2)).

9 Electricity Act 1989 s 26(1)(c) (as amended (see note 8 supra); also amended by the Utilities Act 2000 s 60(1), (6)).

10 Electricity Act 1989 s 26(1) (as amended: see note 8 supra).

11 Ibid s 26(2)(a) (as amended: see note 8 supra). As to publication by the Authority see PARA 1045 note 6 ante.

12 Ibid s 26(2)(b) (as amended: see note 8 supra). For the meaning of 'licence holder' see PARA 1041 note 12 ante.

13 For the meaning of 'modifications' see PARA 1035 note 3 ante.

14 Electricity Act 1989 s 26(3) (as amended: see note 8 supra).

15 Ibid s 26(4) (as amended (see note 8 supra); also amended by the Utilities Act 2000 s 60(1), (6)).

16 Ibid s 26(5) (as amended: see note 8 supra).

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1209. Revocation of final or provisional order.

Before revoking a final order¹ or a provisional order² which has been confirmed, the Gas and Electricity Markets Authority ('GEMA')³ must give notice⁴ stating that the Authority proposes to revoke the order and setting out its effect and specifying the time, not being less than 28 days from the date of publication of the notice, within which representations or objections to the proposed revocation may be made⁵. The Authority must consider any representations or objections which are duly made and not withdrawn⁶. If, after giving such a notice, the Authority decides not to revoke the order to which the notice relates, it must give notice of its decision⁷.

A notice under the above provisions must be given by publishing it in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the licence holder⁸ to whom the order relates⁹.

1 For the meaning of 'final order' see PARA 1207 note 7 ante.

2 For the meaning of 'provisional order' see PARA 1207 note 9 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For the meaning of 'notice' see PARA 1047 note 11 ante. As to service of notices see the Electricity Act 1989 s 109; and PARA 1307 post.

5 Electricity Act 1989 s 26(6)(a), (b) (s 26(6)-(8) amended by virtue of the Utilities Act 2000 s 3(2)).

6 Electricity Act 1989 s 26(6) (as amended: see note 5 supra).

7 Ibid s 26(7) (as amended: see note 5 supra).

8 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

9 Electricity Act 1989 s 26(8) (as amended: see note 5 supra). As to publication by the Authority see PARA 1045 note 6 ante.

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1210. Validity and effect of final and provisional orders.

If the licence holder¹ to whom a final² or provisional order³ relates is aggrieved by the order and desires to question its validity⁴ on the ground that its making or confirmation was not within the statutory powers of the Gas and Electricity Markets Authority ('GEMA')⁵ or that any of the procedural requirements⁶ have not been complied with, he may make an application to the High Court⁷. The application must be made within 42 days from the date of service on the licence holder of a copy of the order⁸.

On any such application the court may quash the order or any provision of the order if satisfied that its making or confirmation was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements⁹.

The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it¹⁰ and where a duty is so owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person¹¹. In any proceedings so brought against a licence holder it is a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order¹². Compliance with any final or provisional order is also enforceable by civil proceedings by the Authority for an injunction or any other appropriate relief¹³.

1 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

2 For the meaning of 'final order' see PARA 1207 note 7 ante.

3 For the meaning of 'provisional order' see PARA 1207 note 9 ante.

4 Except as provided by the Electricity Act 1989 s 27 (as amended) (see the text and notes 1-3 supra, 5-13 infra), the validity of a final or provisional order may not be questioned by any legal proceedings whatever: s 27(3). As to ouster clauses generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

5 Ie within the powers of the Authority under *ibid* s 25 (as amended): see PARA 1207 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Ie the procedural requirements under *ibid* s 26 (as amended): see PARA 1208 ante.

7 *Ibid* s 27(1), (8).

8 *Ibid* s 27(1).

9 *Ibid* s 27(2).

10 *Ibid* s 27(4). For the meaning of 'contravention' see PARA 1070 note 20 ante.

11 *Ibid* s 27(5).

12 *Ibid* s 27(6).

13 *Ibid* s 27(7) (amended by virtue of the Utilities Act 2000 s 3(2)). This is without prejudice to any right which any person may have by virtue of the Electricity Act 1989 s 27(5) (see the text and note 11 supra) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order: s 27(7).

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B. PENALTIES UNDER THE ELECTRICITY ACT 1989

1211. Statement of policy with respect to penalties.

The Gas and Electricity Markets Authority ('GEMA')¹ must prepare and publish a statement of policy with respect to the imposition of penalties² and the determination of their amount³. Publication under these provisions must be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them⁴.

The Authority may revise its statement of policy and where it does so it must publish the revised statement⁵. The Authority must undertake such consultation as it considers appropriate when preparing or revising its statement of policy⁶.

In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention⁷ or failure the Authority must have regard to its statement of policy most recently published at the time when the contravention or failure occurred⁸.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 As to the power to impose penalties see PARA 1212 post.

3 Electricity Act 1989 s 27B(1) (s 27B added by the Utilities Act 2000 s 59(1)).

4 Electricity Act 1989 s 27B(4) (as added: see note 3 supra).

5 Ibid s 27B(3) (as added: see note 3 supra).

6 Ibid s 27B(5) (as added: see note 3 supra).

7 For the meaning of 'contravention' see PARA 1070 note 20 ante.

8 Electricity Act 1989 s 27B(2) (as added: see note 3 supra).

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1212. Power to impose penalties.

Where the Gas and Electricity Markets Authority ('GEMA')¹ is satisfied that a licence holder² has contravened³ or is contravening any relevant condition⁴ or requirement⁵, or has failed or is failing to achieve any prescribed standard of performance⁶, the Authority may, subject to the statutory time limits⁷, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case⁸. The Authority must not, however, impose such a penalty on a licence holder where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998⁹.

Before so imposing a penalty on a licence holder the Authority must give notice¹⁰:

- 2894 (1) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- 2895 (2) setting out the relevant condition or requirement or the standard of performance in question;
- 2896 (3) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- 2897 (4) specifying the period, not being less than 21 days from the date of publication of the notice, within which representations or objections with respect to the proposed penalty may be made,

and must consider any representations or objections which are duly made and not withdrawn¹¹.

Before varying any proposal stated in a notice under head (1) above, the Authority must give notice¹² setting out the proposed variation and the reasons for it and specifying the period, not being less than 21 days from the date of publication of the notice, within which representations or objections with respect to the proposed variation may be made; and must consider any representations or objections which are duly made and not withdrawn¹³.

As soon as practicable after imposing a penalty, the Authority must give notice¹⁴:

- 2898 (a) stating that it has imposed a penalty on the licence holder and its amount;
- 2899 (b) setting out the relevant condition or requirement or the standard of performance in question;
- 2900 (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
- 2901 (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid¹⁵.

The licence holder may, within 21 days of the date of service on him of a notice under heads (a) to (d) above, make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid¹⁶.

No penalty imposed by the Authority under the above provisions may exceed 10 per cent of the turnover of the licence holder, determined in accordance with provisions specified in an order made by the Secretary of State¹⁷. For these purposes, the turnover of the licence holder is the applicable turnover¹⁸ for the business year¹⁹ preceding the date of the notice²⁰ proposing the penalty²¹. Where, however, the business year preceding the date of the notice does not equal 12 months the turnover is the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year²². Where there is no preceding business year the turnover is the applicable turnover of the licence holder for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls²³; and where in the application of that provision the licence holder has applicable turnover for a period of less than 12 months the turnover is the amount which bears the same proportion to the applicable turnover during the period for which he has applicable turnover as 12 months does to that period²⁴.

Any sums received by the Authority by way of penalty under the above provisions must be paid into the Consolidated Fund²⁵.

Where a penalty so imposed, or any portion of it, has not been paid by the date on which it is required to be paid, and either no application relating to the penalty has been made to the court²⁶ during the period within which such an application can be made, or such an application has been made and determined, the Authority may recover from the licence holder, as a civil debt due to the Authority, any of the penalty and any interest which has not been paid²⁷.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.

4 For the meaning of 'relevant condition' see PARA 1207 note 4 ante.

5 For the meaning of 'relevant requirement' see PARA 1207 note 5 ante.

6 Ie any standard of performance prescribed under the Electricity Act 1989 s 39 (as amended) or s 39A (as added): see PARAS 1110-1111 ante. For the meaning of 'prescribed' see PARA 1096 note 11 ante; and as to the prescribed standards see PARA 1112 et seq ante.

7 Ie subject to ibid s 27C (as added) (time limits on the imposition of penalties). Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period (1) the notice under s 27A(3) (as added) (see heads (1)-(4) in the text) relating to the penalty is served on the licence holder under s 27A(7) (as added) (see note 10 infra); or (2) a notice relating to the contravention or failure is served on the licence holder under s 28(2) (as amended) (see PARA 1214 post): s 27C(1) (ss 27A-27F added by the Utilities Act 2000 s 59(1)). Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under the Electricity Act 1989 s 27A(3) (as added) was served on the licence holder under s 27A(7) (as added): (a) within three months from the confirmation of the provisional order or the making of the final order; or (b) where the provisional order is not confirmed, within six months from the making of the provisional order: s 27C(2) (as so added). For the meanings of 'final order' and 'provisional order' see PARA 1207 notes 7, 9 ante.

8 Ibid s 27A(1) (as added: see note 7 supra). The power of the Authority under s 27A(1) (as so added) is not exercisable in respect of any contravention or failure before the commencement of the Utilities Act 2000 s 59 (ie 1 October 2001: see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule): Electricity Act 1989 s 27A(11) (as so added).

9 Ibid s 27A(2) (as added: see note 7 supra). As to proceedings under the Competition Act 1998 see COMPETITION.

10 Any notice required to be given under ibid s 27A (as added) must be given (1) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; (2) by serving a copy of the notice on the licence holder; and (3) by serving a copy of the notice on the Gas and Electricity Consumer Council: s 27A(7) (as added: see note 7 supra). For the meaning of 'notice' see PARA 1047 note 11 ante; and as to service of notices see PARA 1307 post. As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

11 Ibid s 27A(3) (as added: see note 7 supra).

12 See note 10 supra.

13 Electricity Act 1989 s 27A(4) (as added: see note 7 supra).

14 See note 10 supra.

15 Electricity Act 1989 s 27A(5) (as added: see note 7 supra).

16 Ibid s 27A(6) (as added: see note 7 supra).

If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (as amended) (see CIVIL PROCEDURE vol 12 (2009) PARA 1149): Electricity Act 1989 s 27D(1) (as added: see note 7 supra). If an application is made under s 27A(6) (as added) in relation to a penalty, the penalty is not required to be paid until the application has been determined (s 27D(2) (as so added)); and if the Authority grants such an application in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under s 27A(6) (as added), the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately (s 27D(3) (as so added)).

17 Ibid s 27A(8) (as added: see note 7 supra). No such order may be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament: s 27A(9) (as so added). As to the Secretary of State see PARA 601 note 1 ante; and as to the exercise of this power to make an order see the Electricity and Gas (Determination of Turnover for Penalties) Order 2002, SI 2002/1111; and the text and notes 18-24 infra.

18 For the meaning of 'applicable turnover' see PARA 973 note 18 ante.

19 For the meaning of 'business year' see PARA 973 note 19 ante.

20 Ie the notice under the Electricity Act 1989 s 27A(3) (as added): see heads (1)-(4) in the text.

21 Electricity and Gas (Determination of Turnover for Penalties) Order 2002, SI 2002/1111, reg 3(1).

22 Ibid reg 3(2).

23 Ibid reg 3(3).

24 Ibid reg 3(4).

25 Electricity Act 1989 s 30A(10) (as added: see note 7 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

26 Ie under ibid s 27E (as added): see PARA 1213 post.

27 Ibid s 27F (as added: see note 7 supra).

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1213. Appeals.

If the licence holder¹ on whom a penalty is imposed² is aggrieved by:

- 2902 (1) the imposition of the penalty;
- 2903 (2) the amount of the penalty; or
- 2904 (3) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the licence holder may make an application to the High Court under these provisions³. Such an application must be made:

- 2905 (a) within 42 days from the date of service on the licence holder of a notice stating that a penalty has been imposed⁴; or
- 2906 (b) where the application relates to a decision of the Gas and Electricity Markets Authority ('GEMA') on an application by the licence holder to specify different dates by which different portions of the penalty are to be paid⁵, within 42 days from the date the licence holder is notified of the decision⁶.

On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the specified grounds⁷, the court:

- 2907 (i) may quash the penalty;
- 2908 (ii) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
- 2909 (iii) in the case of an application under head (3) above, may substitute for the date or dates imposed by the Authority an alternative date or dates⁸.

The specified grounds are that:

- 2910 (A) the imposition of the penalty was not within the statutory power of the Authority⁹;
- 2911 (B) any of the relevant procedural requirements¹⁰ have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
- 2912 (C) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid¹¹.

If an application is made under these provisions in relation to a penalty, the penalty is not required to be paid until the application has been determined¹². Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable¹³; and where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before

the determination of the application under these provisions it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable¹⁴.

Except as so provided, the validity of a penalty may not be questioned by any legal proceedings whatever¹⁵.

1 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

2 As to the imposition of penalties see PARA 1212 ante.

3 Electricity Act 1989 s 27E(1), (9)(a) (s 27E added by the Utilities Act 2000 s 59(1)).

4 Ie a notice under ibid s 27A(5) (as added): see PARA 1212 ante at heads (a)-(d) in the text.

5 Ie an application under ibid s 27A(6) (as added): see PARA 1212 ante. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Ibid s 27E(2) (as added: see note 3 supra).

7 Ie the grounds falling within ibid s 27E(4) (as added): see heads (A)-(C) in the text.

8 Ibid s 27E(3) (as added: see note 3 supra).

9 Ie the power under ibid s 27A (as added): see PARA 1212 ante.

10 Ie any of the requirements of ibid s 27A(3)-(5) or (7) (as added): see PARA 1212 ante.

11 Ibid s 27E(4) (as added: see note 3 supra).

12 Ibid s 27E(5) (as added: see note 3 supra).

13 Ibid s 27E(6) (as added: see note 3 supra).

14 Ibid s 27E(7) (as added: see note 3 supra).

15 Ibid s 27E(8) (as added: see note 3 supra). As to ouster clauses generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 21.

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C. POWER TO REQUIRE INFORMATION

1214. Power to require information etc.

Where it appears to the Gas and Electricity Markets Authority ('GEMA')¹ that a licence holder²:

- 2913 (1) may be contravening³, or may have contravened, any relevant condition⁴ or requirement⁵; or
- 2914 (2) may be failing, or may have failed, to achieve any prescribed standard of performance⁶,

the Authority may, for any purpose connected with such of its enforcement functions⁷ as are exercisable in relation to that matter, serve a notice⁸ on any person⁹. Such a notice signed by the Authority may:

- 2915 (a) require the person on whom it is served to produce at a specified time and place, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- 2916 (b) require that person, if he is carrying on a business, to furnish to the Authority, at the time and place and in the form and manner specified in the notice, such information¹⁰ as may be specified or described in the notice¹¹.

Where a licence¹² has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Authority, having regard to the general duties imposed on it¹³, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Authority may, with the consent of the Secretary of State¹⁴, by notice in writing:

- 2917 (i) require the licence holder to produce, at a time and place specified in the notice, to the Authority, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- 2918 (ii) require the licence holder to furnish to the Authority, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished¹⁵.

No person may, however, be required under the above provisions to produce any documents or records which he could not be compelled to produce in civil proceedings in the High Court, or in complying with any requirement for the furnishing of information to give any information which he could not be compelled to give in evidence in any such proceedings¹⁶.

A person who without reasonable excuse fails to do anything required of him by a notice under heads (a) and (b) or heads (i) and (ii) above is liable on summary conviction to a fine not

exceeding level 5 on the standard scale¹⁷ and a person who intentionally alters, suppresses or destroys any document or record which he has been required by any such notice to produce is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine¹⁸. If a person makes default in complying with such a notice, the High Court may, on the application of the Authority, make such order as it thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application must be borne by the person in default or by any officers of a company or other association who are responsible for its default¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante.

3 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.

4 For the meaning of 'relevant condition' see PARA 1207 note 4 ante.

5 For the meaning of 'relevant requirement' see PARA 1207 note 5 ante.

6 Ie any standard of performance prescribed under the Electricity Act 1989 s 39 (as amended) or s 39A (as added): see PARAS 1110-1111 ante. For the meaning of 'prescribed' see PARA 1096 note 11 ante. As to the prescribed standards see PARA 1112 et seq ante.

7 Ie the functions of the Authority under ibid ss 25 (as amended) (see PARA 1207 ante) or ss 27A-27F (as added) (see PARAS 1211-1213 ante).

8 For the meaning of 'notice' see PARA 1047 note 11 ante; and as to the service of notices and documents see ibid s 109; and PARA 1307 post.

9 Ibid s 28(1) (amended by the Utilities Act 2000 s 59(2)).

10 For the meaning of 'information' see PARA 1044 note 10 ante.

11 Electricity Act 1989 s 28(2) (amended by virtue of the Utilities Act 2000 s 3(2)).

12 For the meaning of 'licence' see PARA 1041 note 12 ante.

13 Ie the duties imposed by the Electricity Act 1989 ss 3A-3C (as added and amended): see PARAS 1041-1043 ante.

14 As to the Secretary of State see PARA 601 note 1 ante.

15 Electricity Act 1989 s 28(2A) (added by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 29(1), (2)).

16 Electricity Act 1989 ss 27(8), 28(3) (s 28(3) amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 29(1), (3)).

17 Electricity Act 1989 s 28(4) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 29(1), (4)). As to the standard scale see PARA 613 note 11 ante.

18 Electricity Act 1989 s 28(5) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 29(1), (5)). As to the statutory maximum see PARA 689 note 2 ante.

19 Electricity Act 1989 ss 27(8), 28(6) (s 28(6) amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 29(1), (6)). For the offence of making false statements see the Electricity Act 1989 s 59 (as amended); and PARA 1305 post.

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(6) PROTECTION OF THE PUBLIC INTEREST

(i) Fuel Sources and Fuel Stocks

A. INTRODUCTION

1215. Fuel sources and fuel stocks; in general.

A number of statutory provisions are concerned with the provision of electricity from renewable sources. The promotion of microgeneration under the Climate Change and Sustainable Energy Act 2006¹ and the imposition of climate change levy by the Finance Act 2000² have already been discussed³. The following are discussed below:

- 2919 (1) controls on the fuelling of new and converted power stations by crude liquid petroleum, petroleum products or natural gas under the Energy Act 1976⁴;
- 2920 (2) the imposition of the renewables obligation by the amendments to the Electricity Act 1989 made by the Utilities Act 2000⁵; and
- 2921 (3) transitional arrangements and savings with regard to the supply of electricity from non-fossil fuel sources⁶ and the imposition of the fossil fuel levy by the Electricity Act 1989⁷.

Also discussed in this section of this title are the powers conferred on the Secretary of State by the Electricity Act 1989 to give directions with regard to fuel stocks at certain power stations⁸.

The offshore production of renewable energy is discussed in a later part of this title⁹, as is nuclear energy¹⁰.

1 See the Climate Change and Sustainable Energy Act 2006 ss 4-10; and PARAS 619 et seq, 1077 ante.

2 See the Finance Act 2000 s 30, Sch 6 (as amended); and PARA 661 et seq ante.

3 See notes 1-2 supra.

4 See PARAS 1216-1218 post.

5 See PARA 1219 et seq post.

6 See PARA 1240 post.

7 See PARA 1241 et seq post.

8 See PARA 1248 post.

9 See PARA 1310 et seq post.

10 See PARA 1337 et seq post.

UPDATE

1215-1219 Fuel sources and fuel stocks; in general ... Power to impose obligation in connection with electricity from renewable sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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B. FUELLING OF NEW AND CONVERTED POWER STATIONS

1216. Proposals for electricity generating stations to be fuelled by crude liquid petroleum, petroleum products or natural gas.

A person who proposes to carry out works for the establishment of an electricity generating station to be fuelled by crude liquid petroleum, any petroleum product¹ or natural gas², or for the conversion of an electricity generating station with a view to its being so fuelled, must, unless his case is excepted by order of the Secretary of State³, give written notice of his proposal to the Secretary of State⁴. If the Secretary of State thinks it expedient having regard to current energy policies, he may direct that a proposal so notified is not to be carried out or is to be carried out only in accordance with conditions specified in the direction⁵.

The cases excepted by order of the Secretary of State⁶ may be those where either (1) the plant is of less than a specified capacity or it is used only for specified purposes⁷; or (2) such other circumstances obtain as make it unnecessary in his opinion for him to be given notice⁸.

These provisions do not affect the specified provision of the Electricity Act 1989⁹ whereby the Secretary of State's consent may be required for the construction of power stations and related matters¹⁰.

1 For the meaning of 'petroleum product' see PARA 603 note 4 ante.

2 For the meaning of 'natural gas' see PARA 603 note 3 ante.

3 Ie under the Energy Act 1976 s 14(4): see heads (1)-(2) in the text. As to the Secretary of State see PARA 601 note 1 ante; and as to the making of orders see PARA 603 note 2 ante.

4 Energy Act 1976 s 14(1). As to offences in connection with these provisions see PARA 1218 post.

5 Ibid s 14(3). As to the giving of directions generally see PARA 604 note 3 ante.

6 See ibid s 14(4).

7 Ibid s 14(4)(a). Notice need not be given to the Secretary of State under s 14(1) in any case where the plant to be installed or converted in the electricity generating station to which the proposed works relate will have a capacity such that the generating capacity of the station, when established or converted, will be less than 10 megawatts: Electricity Generating Stations (Fuel Control) Order 1987, SI 1987/2175, art 2.

8 Energy Act 1976 s 14(4)(b).

9 Ie the Electricity Act 1989 s 36 (as amended): see PARA 1249 post.

10 Energy Act 1976 s 14(6) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 22).

UPDATE

1215-1219 Fuel sources and fuel stocks; in general ... Power to impose obligation in connection with electricity from renewable sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/B. FUELLING OF NEW AND CONVERTED POWER STATIONS/1217. Proposed contracts for the supply of natural gas to electricity generating stations.

1217. Proposed contracts for the supply of natural gas to electricity generating stations.

A person who proposes to enter into contractual or other arrangements for obtaining a supply of natural gas¹ as a fuel for an electricity generating station² or to extend the duration of any such arrangements³ must, unless the arrangements fall within the scope of a general authority granted by order of the Secretary of State⁴, give written notice of his proposal to the Secretary of State⁵, who, if he thinks it expedient having regard to current energy policies, may direct that a proposal so notified is not to be carried out or is to be carried out only in accordance with conditions specified in the direction⁶.

The Secretary of State may by order grant authority for these purposes for fuel supply arrangements of any description specified in the order⁷, and notice need not be given to him of any proposals for arrangements falling within the scope of such an authority⁸.

These provisions do not affect the specified provision of the Electricity Act 1989⁹ whereby the Secretary of State's consent may be required for the construction of power stations and related matters¹⁰.

1 For the meaning of 'natural gas' see PARA 603 note 3 ante.

2 As to the establishment or conversion of generating stations fuelled by natural gas see PARA 1216 ante.

3 Ie whether such arrangements were made before or after the date of the passing of the Energy Act 1976 (ie 22 November 1976): s 14(2)(b).

4 Ie under ibid s 14(5) (see the text and note 6 infra) and s 4(3) (see PARA 606 the text to note 13 ante). For offences in respect of breaches of this provision see PARA 1218 post. As to the Secretary of State see PARA 601 note 1 ante.

5 Ibid s 14(2).

6 Ibid s 14(3). As to the giving of directions generally see PARA 604 note 3 ante.

7 Ibid s 14(5). As to the making of orders generally see PARA 603 note 2 ante. In exercise of the power so conferred, the Secretary of State has made: (1) the Electricity Generating Stations (Fuel Control) Order 1987, SI 1987/2175, which came into force on 27 January 1988 (art 1); (2) the Electricity Generating Stations (Gas Contracts) Order 1995, SI 1995/2450, which came into force on 16 October 1995 (art 1). Authority is given for any person (1) to enter into contractual or other arrangements for obtaining a supply of natural gas as fuel for an electricity generating station with a generating capacity of less than 10 megawatts; and (2) to extend the duration of any such arrangements, whenever made, without giving notice to the Secretary of State under the Energy Act 1976 s 14(2): Electricity Generating Stations (Fuel Control) Order 1987, SI 1987/2175, art 3. Authority is also given for any fuel supply arrangements the duration of which is expressly limited to a period not exceeding 12 months: Electricity Generating Stations (Gas Contracts) Order 1995, SI 1995/2450, art 2.

8 Energy Act 1976 s 14(2).

9 Ie the Electricity Act 1989 s 36 (as amended): see PARA 1249 post.

10 Energy Act 1976 s 14(6) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 22).

UPDATE

1215-1219 Fuel sources and fuel stocks; in general ... Power to impose obligation in connection with electricity from renewable sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1218. Offences relating to supplies of natural gas etc to power stations.

A person who without reasonable excuse fails when so required¹ to notify the Secretary of State² of proposals to establish an electricity generating station to be fuelled by crude liquid petroleum, any petroleum product or natural gas³, or to convert an existing station to be so fuelled⁴, or to enter into or extend contractual or other arrangements to obtain a supply of natural gas as a fuel for an electricity generating station⁵, is guilty of an offence⁶. A person who without reasonable excuse carries out such proposals in contravention of, or of conditions specified in, a direction of the Secretary of State is also guilty of an offence⁷. In either case such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁸ and on conviction on indictment to a fine⁹.

1 For cases in which notification is not required see PARA 1216 note 7 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 See the Energy Act 1976 s 14(1)(a). For the meanings of 'petroleum product' and 'natural gas' see PARA 603 notes 3-4 ante.

4 See *ibid* s 14(1)(b).

5 See *ibid* s 14(2). For the cases in which notification is not required see PARA 1217 note 7 ante.

6 *Ibid* s 18(2)(a) (amended by the Oil and Gas (Enterprise) Act 1982 s 37, Sch 4).

7 Energy Act 1976 s 14(3), s 18(2)(a) (as amended: see note 6 *supra*).

8 *Ibid* s 19(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to offences by corporations see PARA 613 ante. As to the standard scale see PARA 613 note 11 ante.

9 Energy Act 1976 s 19(2)(b), (c). As to administration and enforcement generally see PARA 609 et seq ante.

UPDATE

1215-1219 Fuel sources and fuel stocks; in general ... Power to impose obligation in connection with electricity from renewable sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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C. THE RENEWABLES OBLIGATION

(A) SECRETARY OF STATE'S POWER TO IMPOSE RENEWABLES OBLIGATION

1219. Power to impose obligation in connection with electricity from renewable sources.

The Secretary of State¹ may by order² impose on each electricity supplier³ falling within a specified description⁴ (a 'designated electricity supplier') an obligation to do what is set out in heads (1) to (3) below, and that obligation is referred to⁵ as the 'renewables obligation'⁶. The renewables obligation is⁷ that the designated electricity supplier must, by each day specified in the order⁸, have produced to the Gas and Electricity Markets Authority ('GEMA')⁹ evidence of a kind so specified showing:

- 2922 (1) that it has supplied¹⁰ to customers in Great Britain¹¹ during a period specified in the order such amount of electricity generated¹² by using renewable sources¹³ as is so specified in relation to such a supplier; or
- 2923 (2) that another electricity supplier has done so, or that two or more others have done so; or
- 2924 (3) that, between them, they have done so¹⁴.

If the order applies only to electricity suppliers in part of Great Britain, it may specify that the only electricity supplied which counts towards discharging the renewables obligation is electricity supplied to customers in that part of Great Britain¹⁵. Evidence of the supply or other use of electricity may not be produced more than once in relation to the same electricity¹⁶; and in the case of electricity generated by a generating station¹⁷ fuelled or driven partly by renewable sources and partly by fossil fuel, only the proportion attributable to the renewable sources can count¹⁸ towards discharging the renewables obligation¹⁹.

Before making an order, the Secretary of State must consult:

- 2925 (a) the Authority;
- 2926 (b) the Gas and Electricity Consumer Council²⁰;
- 2927 (c) the electricity suppliers to whom the proposed order would apply;
- 2928 (d) such generators of electricity from renewable sources as he considers appropriate; and
- 2929 (e) such other persons, if any, as he considers appropriate²¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 No such order may be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament: Electricity Act 1989 s 32(9) (s 32 substituted by the Utilities Act 2000 s 62, subject to savings: see PARA 1239 post).

3 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

4 For these purposes, 'specified' means specified in the order: Electricity Act 1989 s 32(8) (as substituted: see note 2 supra). The descriptions of electricity supplier upon which an order may impose the renewables obligation are those supplying electricity (1) in Great Britain; (2) in England and Wales; or (3) in Scotland, excluding such categories of supplier (if any) as are specified: s 32(2) (as so substituted).

5 Ie in ibid s 32 (as substituted and amended) (see the text and notes 1-4 supra, 6-21 infra) and ss 32A-32C (as added and amended) (see PARAS 1220-1222 post).

6 Ibid s 32(1) (as substituted: see note 2 supra). In the exercise of this power the Secretary of State has made the Renewables Obligation Order 2006, SI 2006/1004 (as amended), which came into force on 1 April 2006 and extends to England and Wales only: see art 1. For the provisions of that Order see PARA 1223 et seq post. The 2006 Order revokes and replaces the Renewables Obligation Order 2005, SI 2005/926. For transitional provisions see the Renewables Obligation Order 2006, SI 2006/1004, art 32.

7 Ie subject to the provisions of the Electricity Act 1989 s 32 (as substituted and amended) (see the text and notes 1-6 supra, 8-21 infra) and ss 32A-32C (as added and amended) (see PARAS 1220-1222 post).

8 See ibid s 32(8) (as substituted), cited in note 4 supra.

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 For the meaning of 'supply' and cognate expressions see PARA 1041 note 9 ante.

11 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

12 For these purposes, and the purposes of the Electricity Act 1989 32A-32C (as added and amended) (see PARAS 1220-1222 post) 'generated' means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions are to be construed accordingly: s 32(8A) (added by the Energy Act 2004 s 119(3)). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

13 For these purposes, 'renewable sources' means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel; 'fossil fuel' means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products; and 'natural gas' and 'petroleum products' have the same meanings as in the Energy Act 1976 (see PARA 603 notes 3-4 ante): Electricity Act 1989 s 32(8) (as substituted: see note 2 supra).

14 Ibid s 32(3) (as substituted (see note 2 supra); amended by the Energy Act 2004 s 115(1), 119(1)). If an electricity supplier produces a certificate to the Authority that certifies matters within the Electricity Act 1989 s 32B(2) or s 32(2ZA) (as added) (see PARA 1221 post at heads (2), (ii) in the text), it is to count for the purposes of s 32(3) (as substituted and amended) as sufficient evidence of the facts certified: s 32B(3) (added by the Utilities Act 2000 s 64; amended by the Energy Act 2004 s 116(1), (6); the Climate Change and Sustainable Energy Act 2006 s 23(1), (8)).

15 Electricity Act 1989 s 32(4) (as substituted: see note 2 supra).

16 Ibid s 32(5) (as substituted (see note 2 supra); amended by the Climate Change and Sustainable Energy Act 2006 s 24(1)).

17 For the meaning of 'generating station' see PARA 1041 note 6 ante.

18 Ie subject to the Electricity Act 1989 s 32A(1)(g) (as added): see PARA 1220 post.

19 Ibid s 32(6) (as substituted: see note 2 supra).

20 As to the establishment of the Gas and Electricity Consumer Council see PARA 716 ante; and as to the prospective abolition of the Council and the transfer of its functions to the new National Consumer Council to be established under the Consumers, Estate Agents and Redress Act 2007 see PARA 716 the text and notes 12-13 ante.

21 Electricity Act 1989 s 32(7) (amended by the Energy Act 2004 s 119(2)). These consultation requirements may be satisfied (1) in the case of an order containing provision made by virtue of the Energy Act 2004 s 119, by consultation that took place wholly or partly before the commencement of s 119 (ie 5 October 2004: see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1); (2) in the case of an order containing provision made by virtue of the Climate Change and Sustainable Energy Act 2006 s 23 (which amends the Electricity Act 1989 s 32B (as added) (see PARA 1221 post) or s 24 (see note 16 supra; and PARA

1220 note 27 post) by consultation that took place wholly or partly before the commencement of s 23 or s 24 (ie 21 August 2006: see s 28(1)): Energy Act 2004 s 119(7); Climate Change and Sustainable Energy Act 2006 s 24(4).

UPDATE

1215-1219 Fuel sources and fuel stocks; in general ... Power to impose obligation in connection with electricity from renewable sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1219-1222 Secretary of State's Power to impose Renewables Obligation

The Secretary of State may make a renewables obligation order: Electricity Act 1989 s 32(1) (ss 32-32M substituted for ss 32-32C by Energy Act 2008 s 37). A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a 'designated electricity supplier'): Electricity Act 1989 s 32(4). The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified: s 32(5). 'The relevant part of Great Britain' means in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales): Electricity Act 1989 s 32M(1). For the purposes of the definition of 'the relevant part of Great Britain', the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland: Electricity Act 1989 s 32M(3). The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain: s 32(6). Section 32(6) is subject to ss 32A-32M: s 32(7).

A renewables obligation order may make provision generally in relation to the renewables obligation: see Electricity Act 1989 s 32A. A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ('a renewables obligation certificate') to (1) the operator of a generating station, (2) an electricity supplier or a Northern Ireland supplier, or (3) if the order so provides, a person of any other description specified in the order: see Electricity Act 1989 s 32B. Supplemental provision is made for the purposes of s 32B: see Electricity Act 1989 s 32C. A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances: see Electricity Act 1989 s 32D. Transitional and saving provision is made for the purposes of s 32D: see Electricity Act 1989 s 32E. A renewables obligation order may provide that (a) in such cases as may be specified in the order, and (b) subject to such conditions as may be so specified, an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate: see Electricity Act 1989 s 32F (amended by SI 2009/556). A renewables obligation order may provide (i) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and (ii) that an

electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period: see Electricity Act 1989 s 32G. The amounts received by the Authority by virtue of s 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order: see Electricity Act 1989 s 32H. A renewables obligation order may provide for amounts received by the Authority by virtue of s 32G to be used by the Authority (A) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under ss 32-32M, or (B) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under the Energy (Northern Ireland) Order 2003, SI 2003/419 arts 52-55F: see Electricity Act 1989 s 32I (amended by SI 2009/556). A renewables obligation order may provide for the Authority to require (aa) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation; (bb) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person: see Electricity Act 1989 s 32J. A renewables obligation order may make general provision about a number of matters, including transitional provisions: see Electricity Act 1989 s 32K (amended by SI 2009/556). The procedure for making an order is set out: see Electricity Act 1989 s 32L.

Supplemental provision is made: see Energy Act 2008 s 38.

1219 Power to impose obligation in connection with electricity from renewable sources

NOTE 6--SI 2006/1004 replaced: Renewables Obligation Order 2009, SI 2009/785.

NOTES 14, 16, 21--Energy Act 2004 s 116 and Climate Change and Sustainable Energy Act 2006 ss 23, 24 repealed: Energy Act 2008 Sch 6.

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1220. Provision that may be made by order imposing the renewables obligation; in general.

An order imposing the renewables obligation¹ may make provision generally in relation to the renewables obligation imposed by the order, and may in particular specify:

- 2930 (1) different obligations for successive periods of time²;
- 2931 (2) that only electricity generated³ using specified⁴ descriptions of renewable source⁵ is to count towards discharging the obligation, or that such electricity is to count only up to a specified amount⁶;
- 2932 (3) that only electricity generated by specified descriptions of generating station⁷ is to count towards discharging the obligation, or that such electricity is to count only up to a specified amount⁸;
- 2933 (4) that a specified minimum amount of electricity generated as mentioned in head (2) or head (3) above is to be counted towards the discharge of the renewables obligation⁹;
- 2934 (5) how the amount of electricity supplied¹⁰ by an electricity supplier¹¹, whether generally or to particular customers or descriptions of customer, is to be determined¹²;
- 2935 (6) how the relevant proportion¹³ is to be determined¹⁴;
- 2936 (7) the consequences for the discharge of the renewables obligation if a generating station fuelled or driven partly by renewable sources and partly by fossil fuel¹⁵ uses more than a specified proportion of fossil fuel during a specified period, which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation¹⁶;
- 2937 (8) that specified information, or information of a specified nature, is to be given¹⁷ to the Gas and Electricity Markets Authority ('GEMA')¹⁸ and the form in which it is to be given¹⁹.

An order may, in relation to any specified period ('the current period'):

- 2938 (a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period²⁰;
- 2939 (b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period²¹;
- 2940 (c) specify how much later the later period referred to in head (a) or head (b) above may be²²;
- 2941 (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in head (a) or head (b) above²³;

2942 (e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period²⁴.

An order may make different provision for different cases or circumstances, different provision in relation to different suppliers, and different provision in relation to generating stations of different descriptions, if the Secretary of State²⁵ is of the opinion that no supplier²⁶ would by virtue of the differences be unduly disadvantaged in competing with other suppliers²⁷.

An order may provide for the Authority to require an electricity supplier to provide it with information, or with information of a particular kind, which is in its opinion relevant to the question whether the supplier is discharging, or has discharged, the renewables obligation²⁸. That information must be given to the Authority in whatever form it requires²⁹; but no person is to be required by virtue of these provisions to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court³⁰.

An order may make further provision as to the functions of the Authority in relation to the matters dealt with by the order³¹.

1 Ie an order under the Electricity Act 1989 s 32 (as substituted and amended): see PARA 1219 ante.

2 Ibid s 32A(1)(a) (s 32A added by the Utilities Act 2000 s 63).

3 For the meaning of 'generated' for these purposes see PARA 1219 note 12 ante.

4 For the meaning of 'specified' see PARA 1219 note 4 ante.

5 For the meaning of 'renewable sources' 1219 note 13 ante.

6 Electricity Act 1989 s 32A(1)(b) (as added: see note 2 supra).

7 For the meaning of 'generating station' see PARA 1041 note 6 ante.

8 Electricity Act 1989 s 32A(1)(c) (as added: see note 2 supra).

9 Ibid s 32A(1)(d) (as added: see note 2 supra).

10 For the meaning of 'supply' and cognate expressions see PARA 1041 note 10 ante.

11 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

12 Electricity Act 1989 s 32A(1)(e) (as added: see note 2 supra).

13 Ie the proportion referred to in ibid s 32(6) (as substituted) (see PARA 1219 the text and notes 16-18 ante) or in the definition of 'renewable sources' in s 32(8) (as substituted) (see PARA 1219 note 13 ante).

14 Ibid s 32A(1)(f) (as added: see note 2 supra).

15 Ie a generating station of the type mentioned in ibid s 32(6) (as substituted). For the meaning of 'fossil fuel' see PARA 1219 note 13 ante.

16 Ibid s 32A(1)(g) (as added: see note 2 supra).

17 Ie in addition to the evidence referred to in ibid s 32(3) (as substituted and amended): see PARA 1219 the text and notes 7-14 ante.

18 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

19 Electricity Act 1989 s 32A(1)(h) (as added: see note 2 supra).

20 Ibid s 32A(2)(a) (as added: see note 2 supra).

- 21 Ibid s 32A(2)(b) (as added: see note 2 supra).
- 22 Ibid s 32A(2)(c) (as added: see note 2 supra).
- 23 Ibid s 32A(2)(d) (as added: see note 2 supra).
- 24 Ibid s 32A(2)(e) (as added: see note 2 supra).
- 25 As to the Secretary of State see PARA 601 note 1 ante.
- 26 For these purposes, 'supplier' means an electricity supplier or a Northern Ireland supplier: Electricity Act 1989 s 32A(3) (added by the Energy Act 2004 s 119(5)). 'Northern Ireland supplier' means an electricity supplier within the meaning of the Energy (Northern Ireland) Order 2003, SI 2003/419, Pt 7: Electricity Act 1989 s 32(8A) (added by the Energy Act 2004 s 119(3)).
- 27 Electricity Act 1989 s 32A(3) (as added (see note 2 supra); amended by the Energy Act 2004 s 119(4); the Climate Change and Sustainable Energy Act 2006 s 24(2)).
- 28 Electricity Act 1989 s 32A(4) (as added: see note 2 supra).
- 29 Ibid s 32A(5) (as added: see note 2 supra).
- 30 Ibid s 32A(6) (as added: see note 2 supra).
- 31 Ibid s 32A(7) (as added (see note 2 supra); amended by the Energy Act 2004 s 119(6)).

UPDATE

1219-1222 Secretary of State's Power to impose Renewables Obligation

The Secretary of State may make a renewables obligation order: Electricity Act 1989 s 32(1) (ss 32-32M substituted for ss 32-32C by Energy Act 2008 s 37). A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a 'designated electricity supplier'): Electricity Act 1989 s 32(4). The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified: s 32(5). 'The relevant part of Great Britain' means in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales): Electricity Act 1989 s 32M(1). For the purposes of the definition of 'the relevant part of Great Britain', the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland: Electricity Act 1989 s 32M(3). The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain: s 32(6). Section 32(6) is subject to ss 32A-32M: s 32(7).

A renewables obligation order may make provision generally in relation to the renewables obligation: see Electricity Act 1989 s 32A. A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ('a renewables obligation certificate') to (1) the operator of a generating station, (2) an electricity supplier or a Northern Ireland supplier, or (3) if the order so provides, a person of any other description specified in the order: see Electricity Act 1989 s 32B. Supplemental provision is made for the purposes of s 32B: see Electricity Act 1989 s 32C. A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to

different cases or circumstances: see Electricity Act 1989 s 32D. Transitional and saving provision is made for the purposes of s 32D: see Electricity Act 1989 s 32E. A renewables obligation order may provide that (a) in such cases as may be specified in the order, and (b) subject to such conditions as may be so specified, an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate: see Electricity Act 1989 s 32F (amended by SI 2009/556). A renewables obligation order may provide (i) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and (ii) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period: see Electricity Act 1989 s 32G. The amounts received by the Authority by virtue of s 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order: see Electricity Act 1989 s 32H. A renewables obligation order may provide for amounts received by the Authority by virtue of s 32G to be used by the Authority (A) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under ss 32-32M, or (B) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under the Energy (Northern Ireland) Order 2003 arts 52-55F: see Electricity Act 1989 s 32I (amended by SI 2009/556). A renewables obligation order may provide for the Authority to require (aa) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation; (bb) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person: see Electricity Act 1989 s 32J. A renewables obligation order may make general provision about a number of matters, including transitional provisions: see Electricity Act 1989 s 32K (amended by SI 2009/556). The procedure for making an order is set out: see Electricity Act 1989 s 32L.

Supplemental provision is made: see Energy Act 2008 s 38.

1220 Provision that may be made by order imposing the renewables obligation; in general

NOTE 27--Climate Change and Sustainable Energy Act 2006 s 24 repealed: Energy Act 2008 Sch 6.

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1221. Green certificates.

An order imposing the renewables obligation¹ may provide for the Gas and Electricity Markets Authority ('GEMA')² to issue from time to time, in accordance with such criteria, if any, as are specified in the order, a certificate to the operator of a generating station³, to an electricity supplier⁴ or to a Northern Ireland supplier⁵ or, if the order so provides, to a person of any other description specified in the order⁶. A certificate is to certify the matters within head (1) or head (2) below⁷, namely:

2943 (1) the following matters:

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407. (a) that the generating station or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources⁸ the amount of electricity stated in the certificate; and

408. (b) that it has been supplied to customers in Great Britain⁹, or the part of Great Britain stated in the certificate¹⁰; or

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2944 (2) the following matters:

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409. (a) that the generating station or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate;

410. (b) that the generating station in question is not a generating station mentioned in the specified statutory provision relating to Northern Ireland¹¹; and

411. (c) that the electricity has been supplied to customers in Northern Ireland¹².

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If, however, the order provides that a certificate may certify the matters within heads (i) to (iv) below, then the certificate must certify those matters¹³, namely:

2945 (i) the following matters:

281

412. (A) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate; and

413. (B) that it has been supplied to customers in Great Britain, or the part of Great Britain stated in the certificate¹⁴; or

282

2946 (ii) the following matters:

283

414. (A) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate;

415. (B) that none of them is a generating station mentioned in the specified statutory provision relating to Northern Ireland¹⁵; and

416. (c) that the electricity has been supplied to customers in Northern Ireland¹⁶; or
 284
 2947 (iii) the following matters:
 285
 417. (A) that the generating station, or, in the case of a certificate issued otherwise
 than to the operator of a generating station, a generating station specified in the
 certificate, has generated from renewable sources the amount of electricity stated in
 the certificate; and
 418. (B) that the electricity has been used in a permitted way¹⁷; or
 286
 2948 (iv) the following matters:
 287
 419. (A) that two or more generating stations have, between them, generated from
 renewable sources the amount of electricity stated in the certificate; and
 420. (B) that the electricity has been used in a permitted way¹⁸.
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An order imposing the renewables obligation must prohibit the issue of a certificate certifying matters within head (2) or head (ii) above where the Northern Ireland authority¹⁹ has notified GEMA that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland²⁰. It must require the revocation of such a certificate if the Northern Ireland authority so notifies GEMA at a time between the issue of the certificate and its production for the purposes of provision made by virtue of²¹ the following provision²².

An order imposing the renewables obligation may provide that in such cases as may be specified in the order, and subject to such conditions as may be so specified, an electricity supplier may, to the extent provided for in accordance with the order, discharge its renewables obligation or its obligation in relation to a particular period by the production to the Authority of a certificate that certifies matters within head (2) above or any of heads (ii) to (iv) above²³. An order imposing that obligation may also provide that, in such cases as may be specified in the order, and subject to such conditions as may be so specified, an electricity supplier may, to the extent provided for in accordance with the order, discharge its renewables obligation, or its obligation in relation to a particular period, by the production to GEMA of a Northern Ireland certificate²⁴.

1 le an order under the Electricity Act 1989 s 32 (as substituted and amended): see PARA 1219 ante.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For the meaning of 'generating station' see PARA 1041 note 6 ante.

4 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

5 For the meaning of 'Northern Ireland supplier' see PARA 1220 note 26 ante.

6 Electricity Act 1989 s 32B(1) (s 32B added by the Utilities Act 2000 s 64; the Electricity Act 1989 s 32B(1) amended by the Energy Act 2004 s 116(1), (2); the Climate Change and Sustainable Energy Act 2006 s 23(1), (2)).

7 le the matters within the Electricity Act 1989 s 32B(2), (2A) (as added and amended): s 32B(1A) (added by the Energy Act 2004, s 116(1), (3)).

8 For the meanings of 'generated' and 'renewable sources' for these purposes see PARA 1219 notes 12-13 ante.

9 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

10 Electricity Act 1989 s 32B(2) (as added (see note 6 supra); amended by the Energy Act 2004 s 116(1), (4) (a); the Climate Change and Sustainable Energy Act 2006 s 23(1), (4); and by virtue of s 24(3)).

11 *Ie* the Energy (Northern Ireland) Order 2003, SI 2003/419, art 54(1).

12 Electricity Act 1989 s 32B(2A) (added by the Energy Act 2004 s 116(1), (5); amended by the Climate Change and Sustainable Energy Act 2006 s 23(1), (4)). References for these purposes to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of 'supply' in the Electricity (Northern Ireland) Order 1992, SI 1992/231, art 3: Electricity Act 1989 s 32B(5) (added by the Energy Act 2004 s 116(1), (7)).

13 *Ie* the matters within the Electricity Act 1989 s 32B(2ZA), (2AA), (2AB) or (2AC) (as added): 32B(1A) (as added (see note 7 supra); amended for these purposes by the Climate Change and Sustainable Energy Act 2006, s 23(1), (3)).

14 Electricity Act 1989 s 32B(2ZA) (added by the Climate Change and Sustainable Energy Act 2006 s 23(1), (5)).

15 See note 11 supra.

16 Electricity Act 1989 s 32B(2AA) (s 32B(2AA)-(2AE) added by the Climate Change and Sustainable Energy Act 2006 s 23(1), (6)).

17 Electricity Act 1989 s 32B(AB) (as added: see note 16 supra). For these purposes, and the purposes of s 32B(2AC) (as added) (see head (iv) in the text), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if (1) it is used in one of the ways mentioned in s 32B(2AE) (as added); and (2) that way is specified in the order as a permitted way either in relation to all generating stations, or in relation to generating stations of that description: s 32B(2AD) (as so added). Those ways are: (a) being consumed by the operator of the generating station or generating stations by which it was generated; (b) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated; (c) being used, as respects part, as mentioned in head (a) supra and, as respects the remainder, as mentioned in head (b) supra; (d) being used, as respects part, as mentioned in head (a), head (b) or head (c) supra and, as respects the remainder, by being supplied to customers in Great Britain or customers in Northern Ireland, or both: s 32B(2AE) (as so added).

18 *Ibid* s 32B(2AC) (as added: see note 16 supra). See also note 17 supra.

19 'Northern Ireland Authority' means the Northern Ireland Authority for Energy Regulation: *ibid* s 32(8A) (added by the Energy Act 2004 s 119(3)).

20 Electricity Act 1989 s 32B(2B)(a) (added by the Energy Act 2004 s 116(1), (5); amended by the Climate Change and Sustainable Energy Act 2006 s 23(1), (7)).

21 *Ie* by virtue of the Electricity Act 1989 s 32B(4) (as added and amended): see the text and note 23 infra.

22 Electricity Act 1989 s 32B(2B)(b) (as added: see note 20 supra).

23 *Ibid* s 32B(4) (added by the Energy Act 2004 s 116(1), (7); amended by the Climate Change and Sustainable Energy Act 2006 s 23(1), (9)).

24 Electricity Act 1989 s 32BA(1) (added by the Energy Act 2004 s 117(1)). For this purpose, 'Northern Ireland certificate' means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of the Energy (Northern Ireland) Order 2003, SI 2003/419, art 54, in an order under art 52 (renewables obligations for Northern Ireland suppliers): Electricity Act 1989 s 32BA(2) (as so added).

UPDATE

1219-1222 Secretary of State's Power to impose Renewables Obligation

The Secretary of State may make a renewables obligation order: Electricity Act 1989 s 32(1) (ss 32-32M substituted for ss 32-32C by Energy Act 2008 s 37). A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a 'designated electricity supplier'): Electricity Act 1989 s 32(4). The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those

supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified: s 32(5). 'The relevant part of Great Britain' means in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales): Electricity Act 1989 s 32M(1). For the purposes of the definition of 'the relevant part of Great Britain', the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland: Electricity Act 1989 s 32M(3). The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain: s 32(6). Section 32(6) is subject to ss 32A-32M: s 32(7).

A renewables obligation order may make provision generally in relation to the renewables obligation: see Electricity Act 1989 s 32A. A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ('a renewables obligation certificate') to (1) the operator of a generating station, (2) an electricity supplier or a Northern Ireland supplier, or (3) if the order so provides, a person of any other description specified in the order: see Electricity Act 1989 s 32B. Supplemental provision is made for the purposes of s 32B: see Electricity Act 1989 s 32C. A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances: see Electricity Act 1989 s 32D. Transitional and saving provision is made for the purposes of s 32D: see Electricity Act 1989 s 32E. A renewables obligation order may provide that (a) in such cases as may be specified in the order, and (b) subject to such conditions as may be so specified, an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate: see Electricity Act 1989 s 32F (amended by SI 2009/556). A renewables obligation order may provide (i) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and (ii) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period: see Electricity Act 1989 s 32G. The amounts received by the Authority by virtue of s 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order: see Electricity Act 1989 s 32H. A renewables obligation order may provide for amounts received by the Authority by virtue of s 32G to be used by the Authority (A) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under ss 32-32M, or (B) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under the Energy (Northern Ireland) Order 2003 arts 52-55F: see Electricity Act 1989 s 32I (amended by SI 2009/556). A renewables obligation order may provide for the Authority to require (aa) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation; (bb) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether

a renewables obligation certificate is, or was or will in future be, required to be issued to the person: see Electricity Act 1989 s 32J. A renewables obligation order may make general provision about a number of matters, including transitional provisions: see Electricity Act 1989 s 32K (amended by SI 2009/556). The procedure for making an order is set out: see Electricity Act 1989 s 32L.

Supplemental provision is made: see Energy Act 2008 s 38.

1221 Green certificates

TEXT AND NOTES--Energy Act 2004 s 116 and Climate Change and Sustainable Energy Act 2006 ss 23, 24 repealed: Energy Act 2008 Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(A) Secretary of State's Power to impose Renewables Obligation/1222. Payment as alternative to complying with an order imposing the renewables obligation.

1222. Payment as alternative to complying with an order imposing the renewables obligation.

An order imposing the renewables obligation¹ may provide:

- 2949 (1) that an electricity supplier² may, in whole or in part, discharge its renewables obligation³ by making a payment to the Gas and Electricity Markets Authority ('GEMA')⁴ before the day specified as the day by which evidence must be produced for the statutory purposes⁵; and
- 2950 (2) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the day so specified is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of such period beginning with that day as may be specified in the order⁶.

The order may make provision:

- 2951 (a) as to the sum which for the purposes of heads (1) and (2) above is to correspond to the supply⁷ of a given amount of electricity;
- 2952 (b) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the time by which evidence had to be produced for the statutory purposes⁸;
- 2953 (c) for different sums or rates falling within head (a) or head (b) above in relation to different periods;
- 2954 (d) for different such sums or rates in relation to electricity generated⁹ in different ways specified in the order¹⁰; and
- 2955 (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order, which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or such data in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards¹¹.

An order imposing the renewables obligation may provide that, where a renewables obligation is one in relation to which provision made by virtue of head (2) above applies in the case of the electricity supplier who is subject to the obligation, and the period ending with such day, after the day by which the obligation had to be complied with, as may be specified in or determined under the order has not expired, the taking of steps¹² in respect of a contravention¹³ by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order¹⁴.

An order imposing the renewables obligation may also provide that, in a case in which the amount received by the Authority or by the Northern Ireland authority¹⁵ by way of discharge payments¹⁶ for a period falls short of the amount due in respect of that period¹⁷, every person who was subject to a renewables obligation for the relevant period¹⁸ or for a subsequent period

specified in or determined under the order, and who is of a description so specified or determined, must, by the time and in the circumstances so specified or determined, make a payment, or further payment, to the Authority of an amount calculated in the manner so specified or determined¹⁹. Such an order may not, however, by virtue of that provision²⁰, confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period:

- 2956 (i) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction²¹ applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period; or
- 2957 (ii) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period²².

The amounts received by the Authority by virtue of the above provisions must be paid by it to electricity suppliers²³ in accordance with a system of allocation specified in an order imposing the renewables obligation²⁴; and the system of allocation specified in the order may provide for payments to specified categories of electricity supplier only²⁵.

1 le an order under the Electricity Act 1989 s 32 (as substituted and amended): see PARA 1219 ante.

2 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

3 References for these purposes to an electricity supplier's renewables obligation include references to its renewables obligation in relation to a particular period: Electricity Act 1989 s 32C(6) (s 32C(6)-(8) added by the Energy Act 2004 s 115(5)).

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 le for the purposes of the Electricity Act 1989 s 32(3) (as substituted and amended): see PARA 1219 ante.

6 Ibid s 32C(1) (s 32C added by the Utilities Act 2000 s 65; the Electricity Act 1989 s 32C(1) amended by the Energy Act 2004 s 115(2)).

7 For the meaning of 'supply' see PARA 1041 note 10 ante.

8 See note 5 supra.

9 For the meaning of 'generate' for these purposes see PARA 1219 note 12 ante.

10 Eg such as those referred to in the Electricity Act 1989 s 32A(1)(b), (c) (as added): see PARA 1220 ante at heads (2)-(3) in the text.

11 Ibid s 32C(2) (as added (see note 6 supra); amended by the Energy Act 2004 s 115(3)).

12 le under the Electricity Act 1989 s 27A (as added) (penalties): see PARA 1212 ante.

13 For the meaning of 'contravention' see PARA 1070 note 20 ante.

14 Electricity Act 1989 s 32C(2A) (s 32C(2A)-(2D) added by the Energy Act 2004 s 115(4)).

15 For the meaning of 'the Northern Ireland Authority' see PARA 1221 note 19 ante.

16 'Discharge payment', in relation to a period, means (1) a payment by virtue of the Electricity Act 1989 s 32C(1)(a) (as substituted) (see head (1) in the text), for discharging (in whole or in part) an electricity supplier's renewables obligation for that period; (2) so much of a payment by virtue of s 32C(1)(b) (as substituted) (see head (2) in the text) for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before

the day mentioned in s 32C(1)(b) (as substituted); or (3) so much of any payment to the Northern Ireland authority as corresponds, in relation to a Northern Ireland obligation for that period, to anything falling within head (1) or head (2) supra: s 32C(8) (as added: see note 3 supra). For these purposes, 'Northern Ireland obligation' means a renewables obligation of a Northern Ireland supplier under the Energy (Northern Ireland) Order 2003, SI 2003/419, art 52: Electricity Act 1989 s 32C(8) (as so added). For the meaning of 'Northern Ireland supplier' see PARA 1221 note 19 ante.

17 For these purposes: (1) the amount received by GEMA by way of discharge payments for a period falls short of the amount due in respect of that period; and (2) the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period, if, and to the extent that, GEMA or (as the case may be) the Northern Ireland authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Northern Ireland obligation for that period, so far as it was not otherwise discharged, had been discharged by payment: *ibid* s 32C(7) (as added: see note 3 supra).

18 For these purposes, 'the relevant period': (1) in relation to a shortfall in amounts received by GEMA by way of discharge payments for a period, means that period; and (2) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period: *ibid* s 32C(8) (as added: see note 3 supra).

19 *Ibid* s 32C(2B) (as added: see note 14 supra). The provision that may be made by virtue of s 32(2B) (as so added) includes (1) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen; and (2) provision that ss 25-28 (as amended) (enforcement: see PARA 1207 et seq ante) are to apply in relation to a requirement imposed by virtue of s 32C(2B) (as added) on a person who is not a licence holder as if he were a licence holder: s 32C(2D) (as so added). For the meaning of 'licence holder' see PARA 1041 note 12 ante.

20 *Ie* by virtue of *ibid* s 32C(2B) (as added): see the text and notes 15-19 supra.

21 *Ie* by virtue of *ibid* s 32C(2A) (as added): see the text and notes 12-14 supra.

22 *Ibid* s 32C(2C) (as added: see note 14 supra).

23 The references in *ibid* s 32C(3), (4) (as respectively substituted and added) to electricity suppliers include references to persons who are Northern Ireland suppliers: s 32C(5) (added by the Energy Act 2004 s 118(1)).

24 Electricity Act 1989 s 32C(3) (substituted by the Energy Act 2004 s 115(4)).

25 Electricity Act 1989 s 32C(4) (as added: see note 6 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(a) The Renewables Obligation and its Amount/1223. The renewables obligation; amount of the renewables obligation.

(B) THE RENEWABLES OBLIGATION ORDER 2006

(a) *The Renewables Obligation and its Amount*

UPDATE

1219-1222 Secretary of State's Power to impose Renewables Obligation

The Secretary of State may make a renewables obligation order: Electricity Act 1989 s 32(1) (ss 32-32M substituted for ss 32-32C by Energy Act 2008 s 37). A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a 'designated electricity supplier'): Electricity Act 1989 s 32(4). The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified: s 32(5). 'The relevant part of Great Britain' means in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales): Electricity Act 1989 s 32M(1). For the purposes of the definition of 'the relevant part of Great Britain', the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland: Electricity Act 1989 s 32M(3). The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain: s 32(6). Section 32(6) is subject to ss 32A-32M: s 32(7).

A renewables obligation order may make provision generally in relation to the renewables obligation: see Electricity Act 1989 s 32A. A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ('a renewables obligation certificate') to (1) the operator of a generating station, (2) an electricity supplier or a Northern Ireland supplier, or (3) if the order so provides, a person of any other description specified in the order: see Electricity Act 1989 s 32B. Supplemental provision is made for the purposes of s 32B: see Electricity Act 1989 s 32C. A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances: see Electricity Act 1989 s 32D. Transitional and saving provision is made for the purposes of s 32D: see Electricity Act 1989 s 32E. A renewables obligation order may provide that (a) in such cases as may be specified in the order, and (b) subject to such conditions as may be so specified, an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate: see Electricity Act 1989 s

32F (amended by SI 2009/556). A renewables obligation order may provide (i) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and (ii) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period: see Electricity Act 1989 s 32G. The amounts received by the Authority by virtue of s 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order: see Electricity Act 1989 s 32H. A renewables obligation order may provide for amounts received by the Authority by virtue of s 32G to be used by the Authority (A) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under ss 32-32M, or (B) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under the Energy (Northern Ireland) Order 2003 arts 52-55F: see Electricity Act 1989 s 32I (amended by SI 2009/556). A renewables obligation order may provide for the Authority to require (aa) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation; (bb) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person: see Electricity Act 1989 s 32J. A renewables obligation order may make general provision about a number of matters, including transitional provisions: see Electricity Act 1989 s 32K (amended by SI 2009/556). The procedure for making an order is set out: see Electricity Act 1989 s 32L.

Supplemental provision is made: see Energy Act 2008 s 38.

1223. The renewables obligation; amount of the renewables obligation.

The renewables obligation is that, subject to the specified provisions¹, each designated electricity supplier² must before each specified day³ produce to the Gas and Electricity Markets Authority ('GEMA')⁴ evidence showing:

- 2958 (1) that it has supplied to customers in Great Britain⁵ during the obligation period⁶ to which the specified day relates such amount of electricity generated from eligible renewable sources⁷ as is determined⁸; or
- 2959 (2) that another electricity supplier has done so, or that two or more others have done so; or
- 2960 (3) that, between them, they have done so⁹.

The evidence referred to is certificates issued by the Authority under and certifying the matters in the specified statutory provisions¹⁰, provided that such certificates relate to electricity generated from eligible renewable sources¹¹. Such a certificate is to be regarded as produced to the Authority as the required evidence, or part of the required evidence, in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a ROC¹², the ROC identifier¹³. The Authority may¹⁴ draw up procedural guidelines for the production of certificates as the evidence or part of the evidence required under heads (1) to (3) above¹⁵.

An electricity supplier has a renewables obligation in respect of an obligation period if it supplies electricity in England and Wales at any time during that period regardless of whether it supplies electricity in England and Wales for the whole of that period¹⁶.

The amount of electricity referred to in head (1) above, in respect of an obligation period, is such amount of electricity as equals the relevant percentage¹⁷ of all the electricity supplied by the designated electricity supplier to customers in England and Wales during the obligation period, as determined by reference to:

- 2961 (a) the estimated figures, for its total sales of electricity to customers in England and Wales for each of the 12 periods of approximately one month falling wholly or mainly within the obligation period, which are furnished to the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry) and the Authority¹⁸, together with
- 2962 (b) any additional or updated figures for such sales as are furnished to the Authority¹⁹, such amount being rounded to the nearest whole megawatt hour with any exact half megawatt hour being rounded upwards²⁰.

Each designated electricity supplier must furnish to the Department for Business, Enterprise and Regulatory Reform, and to the Authority, the estimated figures relating to its total sales of electricity to customers in England and Wales during an obligation period by no later than 1 June immediately following the end of the obligation period²¹. By no later than 1 July immediately following the end of an obligation period, each designated electricity supplier must inform the Authority of the amount of electricity which it has supplied to customers in England and Wales during the obligation period²² and the amount in megawatt hours of its renewables obligation in respect of the obligation period²³. In furnishing the information so specified, the designated electricity supplier must have regard to any sales figures, which it has provided, or intends to provide, to the Department for Business, Enterprise and Regulatory Reform for statistical purposes and publication in 'Energy Trends'²⁴.

For the above purposes, the relevant percentage is the percentage of total supplies set out below with respect to the specified obligation periods:

- 2963 (i) from 1 April 2006 to 31 March 2007, 6.7 per cent;
- 2964 (ii) from 1 April 2007 to 31 March 2008, 7.9 per cent;
- 2965 (iii) from 1 April 2008 to 31 March 2009, 9.1 per cent;
- 2966 (iv) from 1 April 2009 to 31 March 2010, 9.7 per cent;
- 2967 (v) from 1 April 2010 to 31 March 2011, 10.4 per cent;
- 2968 (vi) from 1 April 2011 to 31 March 2012, 11.4 per cent;
- 2969 (vii) from 1 April 2012 to 31 March 2013, 12.4 per cent;
- 2970 (viii) from 1 April 2013 to 31 March 2014, 13.4 per cent;
- 2971 (ix) from 1 April 2014 to 31 March 2015, 14.4 per cent;
- 2972 (x) from 1 April 2015 to 31 March 2016, 15.4 per cent; and
- 2973 (xi) for each subsequent period of 12 months ending with the period of 12 months ending on 31 March 2027, 15.4 per cent²⁵.

1 The subject to the Renewables Obligation Order 2006, SI 2006/1004, arts 11, 12, 13, 13A and 14 (as amended): see PARAS 1226-1227 post.

2 'Designated electricity supplier' means any electricity supplier supplying electricity in England and Wales: *ibid* art 2(1). For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

3 'Specified day', in relation to an obligation period, means 1 September immediately following it: *ibid* art 2(1).

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

6 'Obligation period' means any of the periods referred to in the Renewables Obligation Order 2006, SI 2006/1004, arts 2(1), 4(1), Sch 1 col 1 (see heads (i)-(xi) in the text): art 2(1).

7 For the meaning of 'eligible renewable sources' see ibid art 5; and PARA 1224 post.

8 Ie under ibid art 4: see the text and notes 17-25 infra.

9 Ibid art 3(1) (art 3(1), (2) amended by SI 2007/1078).

10 Ie the Electricity Act 1989 s 32B(2) or s 32B(2ZA) (as added): see PARA 1221 ante.

11 Renewables Obligation Order 2006, SI 2006/1004, art 3(2) (as amended: see note 9 supra).

12 'ROC' means a certificate issued by the Authority under the Electricity Act 1989 s 32B (as added and amended) (see PARA 1221 ante) and pursuant to the Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

13 Ibid art 3(3). 'ROC identifier' has the meaning given by Sch 2 para 2 (see PARA 1230 post): art 2(1).

14 Ie without prejudice to ibid art 3(3).

15 Ibid art 3(4).

16 Ibid art 3(5).

17 'The relevant percentage' means, in respect of an obligation period, the percentage set out in ibid Sch 1 col 2 against the reference to that obligation period in Sch 1 col 1: art 4(2). See heads (i)-(xi) in the text.

18 Ie under ibid art 4(4): see the text and note 21 infra.

19 Ie under ibid art 4(5)(a): see the text and note 22 infra.

20 Ibid art 4(1), (3).

21 Ibid art 4(4).

22 Ibid art 4(5)(a).

23 Ibid art 4(5)(b).

24 Ibid art 4(6).

25 Ibid Sch 1.

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(b) Electricity from Renewable Energy Sources/1224. Eligible renewable sources.

(b) Electricity from Renewable Energy Sources

1224. Eligible renewable sources.

Electricity is¹ to be considered to have been generated from eligible renewable sources to the extent that it has been generated from renewable sources² and provided that it has not been generated by an excluded generating station³. The following are excluded generating stations:

- 2974 (1) large hydro generating stations⁴ except those first commissioned after 1 April 2002;
- 2975 (2) generating stations, other than micro hydro generating stations⁵, which were first commissioned before 1 January 1990 and where the main components have not been renewed⁶ since 31 December 1989;
- 2976 (3) generating stations located outside the United Kingdom⁷, except generating stations which are not located on land and which are directly and exclusively connected to a transmission or distribution network located in Northern Ireland⁸; and
- 2977 (4) generating stations generating electricity under certain arrangements or additional arrangements referred to in the specified statutory provision⁹ applying in Northern Ireland¹⁰.

A generating station is not an excluded generating station by virtue of head (2) above in any month during which it is fuelled partly by fossil fuel¹¹ and partly by biomass¹², and by no other fuel¹³. Nor is it an excluded generating station by virtue of that head in any month during which it is fuelled wholly by biomass, if prior to 1 April 2003 at least 75 per cent of the energy content¹⁴ of the fuel by which it was fuelled was derived from fossil fuel and during no month, being a month after March 2004, after the first month during which it was fuelled wholly by biomass has the energy content of the fuel by which it was fuelled been derived as to more than 75 per cent from fossil fuel¹⁵.

Where:

- 2978 (a) a qualifying arrangement¹⁶ ('the applicable qualifying arrangement') provided for the building of a generating station at a specified location ('the location');
- 2979 (b) the applicable qualifying arrangement was terminated due to the operator of the generating station to which it applied having committed an unremedied breach of it; and
- 2980 (c) the last period in the tables contained in Schedule 1 to the Non-Fossil Fuel Order¹⁷ which relates to the applicable qualifying arrangement has not expired,

then a generating station which is situated at the location¹⁸ and to which the applicable qualifying arrangement applied at the time it was commissioned¹⁹, or which is owned or operated by a person who was a party to the applicable qualifying arrangement (or who is a

connected person²⁰ or a linked person²¹ in relation to any such party), is to be an excluded generating station²². Where an extant qualifying arrangement ('the applicable qualifying arrangement') provides for the building of a generating station ('the specified station') at a specified location ('the location') and the specified station has not been commissioned, then a generating station which is situated at the location and which is owned or operated by a person who is a party to the applicable qualifying arrangement (or is a connected person or a linked person in relation to any such party), is also to be an excluded generating station²³. These provisions excluding a generating station do not, however, apply to a station which during the month in question generates only electricity which is sold pursuant to another extant qualifying arrangement²⁴.

A generating station is also to be an excluded generating station in any month during which it is fuelled wholly or partly by waste²⁵ unless:

- 2981 (i) the only waste or wastes by which it is fuelled in that month is or are biomass or liquids comprised wholly or mainly of hydrocarbon compounds;
- 2982 (ii) all the waste by which it is fuelled in that month which is not biomass has first been manufactured into fuel which is in either a gaseous or liquid form, or both, by means of plant and equipment using advanced conversion technologies²⁶ only; or
- 2983 (iii) the generating station is a qualifying combined heat and power generating station²⁷.

A generating station is to be an excluded generating station:

- 2984 (A) in any month during which it is fuelled partly by fossil fuel and partly by any other fuel, or fuels, other than biomass²⁸;
- 2985 (B) after 31 March 2016, in any month during which it is fuelled partly by fossil fuel and partly by biomass and by no other fuel²⁹;
- 2986 (C) in any month during which it is fuelled wholly or partly by peat³⁰;
- 2987 (D) in any month during which it is fuelled wholly or partly by any substance derived directly or indirectly from coal, lignite, natural gas³¹ or crude liquid petroleum³² unless that substance is a substance derived directly or indirectly from any of the above-mentioned substances which is created for the purpose of being used as a fuel³³ or it is waste or a component of biomass³⁴;
- 2988 (E) in any month during which it is fuelled wholly or partly by waste where all the waste which is neither biomass nor liquids comprised wholly or mainly of hydrocarbon compounds is or is derived directly or indirectly from one or more of the substances³⁵ referred to in head (D) above³⁶.

1 le subject to the Renewables Obligation Order 2006, SI 2006/1004, art 9: see PARA 1225 post.

2 For the meaning of 'renewable sources' see PARA 1219 note 13 ante.

3 Renewables Obligation Order 2006, SI 2006/1004, art 5(1). For the meaning of 'generating station' see PARA 1041 note 6 ante.

4 For these purposes, 'hydro generating station' means a generating station which is wholly or mainly driven by water (other than a generating station driven by tidal flows, waves, ocean currents or geothermal sources) and the 'generating station' extends to all turbines supplied by the same civil works, except that any turbine driven by a compensation flow supplied by those civil works where there is a statutory obligation to maintain such compensation flow in a natural water course is to be regarded as a separate hydro generating station; and 'large hydro generating station' means a hydro generating station which has, or has had at any time since 1 April 2002, a declared net capacity of more than 20 megawatts: *ibid* art 2(1). For the purposes of this definition of 'hydro generating station', the 'civil works' which are to be regarded as supplying a particular turbine ('the relevant turbine') are all the man-made weirs, man-made structures and man-made works for holding water which are located on the inlet side of the relevant turbine, but excluding any such weirs, structures or works

which supply another turbine before water is supplied to the weirs, structures and works which supply the relevant turbine: art 2(2).

'Declared net capacity' means the highest generation of electricity (calculated by adding together the highest generation of electricity at the main terminals of each alternator and dynamo) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant: art 2(1).

5 For these purposes, 'micro hydro generating station' means a hydro generating station which (1) has a declared net capacity of 1.25 megawatts or less; (2) has always been in private ownership and operation; and (3) has never generated electricity under an arrangement which has ever been a qualifying arrangement as defined in the Electricity Act 1989 s 33 (as s 33 was originally enacted): Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

6 For the purposes of *ibid* art 5(2)(b) (see head (2) in the text), the main components of a generating station are only to be regarded as having been renewed since 31 December 1989 where (1) in the case of a hydro generating station, the following parts have been installed in the generating station after 31 December 1989 and were not used for the purpose of electricity generation prior to that date: (a) either all the turbine runners or all the turbine blades or the propeller; and (b) either all the inlet guide vanes or all the inlet guide nozzles; or (2) in the case of any other generating station, all the boilers and turbines (driven by any means including wind, water, steam or gas) have been installed in the generating station after 31 December 1989 and were not used for the purpose of electricity generation prior to that date: art 5(5).

7 For these purposes, the expression 'the United Kingdom' includes the territorial sea of the United Kingdom and waters in any area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172): Renewables Obligation Order 2006, SI 2006/1004, art 2(1). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

8 'On land', in relation to the location of a generating station, means wholly or partly on land above mean high water level: *ibid* art 2(1). 'Transmission and distribution network' means any transmission system or any distribution system or both (as transmission system is defined and distribution system is used in the definition of 'distribute', in the Electricity Act 1989 s 4(4) (as amended) (see PARA 1041 notes 5-6 ante) in Great Britain or any equivalent system in another country or in Northern Ireland: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

9 *Ie* the Electricity (Northern Ireland) Order 1992, SI 1992/231, art 35(1).

10 Renewables Obligation Order 2006, SI 2006/1004, art 5(2).

11 In *ibid* art 8 and in arts 5, 7, 14, Sch 3 'fossil fuel' means (1) coal, lignite, natural gas (as defined in the Energy Act 1976: see PARA 603 note 3 ante) or crude liquid petroleum; (2) anything which is derived directly or indirectly from any of the substances referred to in head (1) *supra* which (except as mentioned below) is created for the purpose of being used as a fuel, other than anything (not being a liquid comprised wholly or mainly of hydrocarbon compounds), which is or is derived directly or indirectly from any of the substances referred to in head (1) *supra*, which is waste or a component of biomass; and for the purposes of head (2) *supra* a liquid comprised wholly or mainly of hydrocarbon compounds need not be created for the purpose of being used as a fuel: Renewables Obligation Order 2006, SI 2006/1004, art 8(1)(a). For the meaning of 'waste' see note 25 *infra*; and for the meaning of 'biomass' see note 12 *infra*.

12 'Biomass' means fuel used in a generating station of which at least 90% of the energy content (measured over such period and with such frequency as the Gas and Electricity Markets Authority ('GEMA') deems appropriate) is derived from plant or animal matter or substances derived directly or indirectly therefrom (whether or not such matter or substances are waste) and includes agricultural, forestry or wood wastes or residues, sewage and energy crops (provided that such plant or animal matter is not or is not derived directly or indirectly from fossil fuel) provided that: (1) this definition does not include any substance that, at the time it is used as fuel in a generating station, is a fraction of any mixture of wastes that, taken as a whole, is not itself biomass; and (2) in determining any period over which and frequency with which measurement must take place for the purposes of this definition, the Authority may take into account such matters as it thinks fit, including the length of time for which the fuel has been used by the generating station or by other generating stations: *ibid* art 2(1). 'Plant', with reference to crops or plant matter, includes shrubs and trees: art 2(1). For the meaning of 'energy content' see note 14 *infra*. As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

For the purposes of the Renewables Obligation Order 2006, SI 2006/1004 (as amended), any fuel used in a generating station (not being biomass) must be treated as biomass if (a) it is one of at least two fuels (not being fossil fuels within the meaning of art 8 (see note 11 *supra*)) used to fuel that generating station (whether or not those fuels are the only ones so used); and (b) at least 90% of the total energy content of those fuels (measured over such period and with such frequency as the Authority deems appropriate) is derived from

material which is of such a nature that, if 90% of the energy content of a single fuel was so derived, that fuel would constitute biomass: art 2(1A) (art 2(1A), (1B) added by SI 2007/1078). Accordingly, any reference in the 2006 Order to biomass is to be construed as a reference to biomass or fuel which is treated as biomass: Renewables Obligation Order 2006, SI 2006/1004, art 2(1B) (as so added).

13 Ibid art 5(3). For the purposes of arts 5, 7 and 14 and in Sch 3, in determining whether a generating station is fuelled by a particular fuel regard is to be had only to fuel which it uses to generate electricity: art 8(2). For those purposes, fossil fuel or waste which a generating station uses for (1) the ignition of gases of low or variable calorific value; (2) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature; (3) emission control; or (4) standby generation or the testing of standby generation capacity, must only be treated as comprising fuel used to generate electricity in any month in which the combined energy content of the fossil fuel or waste, or both, which the generating station uses for those purposes exceeds 10% of the energy content of the energy sources by which it is fuelled: art 8(3). For those purposes, and in art 8, 'standby generation' means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station: art 8(1)(c).

14 'Energy content' of a fuel means the gross calorific value of that fuel (as expressed by weight or by volume) multiplied by the weight or volume of that fuel: ibid art 2(1).

15 Ibid art 5(4).

16 'Qualifying arrangement' means (except in the definition of 'micro hydro generating station' (see note 5 supra) and in ibid Sch 3 (conditions of eligibility for NIROCs)) an arrangement which was originally made pursuant to a Non-Fossil Fuel Order (and includes any replacement of such an arrangement where that replacement was made pursuant to an order made under the Utilities Act 2000 s 67: see PARA 1239 post): Renewables Obligation Order 2006, SI 2006/1004, art 2(1). 'Non-Fossil Fuel Order' means (except where used in Sch 3) any of the following orders: the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994, SI 1994/3259; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998, SI 1998/2353; and corresponding orders relating to Scotland: see the Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

17 I.e. the tables contained in the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994, SI 1994/3259, Sch 1; the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248, Sch 1; or the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998, SI 1998/2353, Sch 1: see note 16 supra.

18 For these purposes, a generating station is to be regarded as being situated at a location provided for by an extant qualifying arrangement whether it is situated wholly or partly at that location: Renewables Obligation Order 2006, SI 2006/1004, art 6(8).

19 'Commissioned' means the completion of a process of such procedures and tests as from time to time constitute usual industry standards and practices for commissioning a generating station in order to demonstrate that the generating station is capable of commercial operation: ibid art 2(1).

20 'Connected person', in relation to an owner or operator of a generating station, or a party to a qualifying arrangement, means a person connected to him within the meaning of the Income and Corporation Taxes Act 1988 s 839 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

21 For the purposes of ibid art 6(2), (4), in relation to a person who is a party to the applicable qualifying arrangement ('the first person'), another person ('the second person') is a 'linked person' where the second person has given or has arranged to give or has ensured or has arranged to ensure that the first person is given, a financial or other inducement relating to any right or interest in, or in respect of, the construction or operation of a generating station at the location: art 6(6). The references in art 6(6) to the first person and the second person include any person who is a connected person in relation to either of them: art 6(7).

22 Ibid art 6(1), (2).

23 Ibid art 6(3), (4).

24 Ibid art 6(5).

25 In ibid art 8 and in arts 5, 7, 14, Sch 3 'waste' is to be regarded as including anything derived directly or indirectly from waste (as that term is defined in art 2(1)): art 8(1)(b). 'Waste' has the meaning given to it in the Environmental Protection Act 1990 s 75(2) (substituted by the Environment Act 1995 Sch 22 para 88 and subsequently amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 623), but does not

include gas derived from landfill sites or gas produced from the treatment of sewage: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

26 'Advanced conversion technologies' means gasification, pyrolysis or anaerobic digestion, or any combination thereof; 'gasification' means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following, ie oxides of carbon, methane and hydrogen; 'pyrolysis' means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid; and 'anaerobic digestion' means the bacterial fermentation of organic material in the absence of free oxygen: ibid art 2(1).

27 Ibid art 7(1). 'Combined heat and power generating station' means a station producing electricity that is (or may be) operated for purposes including the supply to any premises of (1) heat produced in association with electricity; or (2) steam produced from, or air or water heated by, such heat; 'qualifying combined heat and power generating station' means a combined heat and power generating station which is fuelled wholly or partly by waste and which has been accredited under CHPQA; 'accreditation' means accreditation as a generating station capable of generating electricity from eligible renewable sources; and 'CHPQA' means the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 published by the former Department of the Environment, Transport and the Regions: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

28 Ibid art 7(2).

29 Ibid art 7(5).

30 Ibid art 7(6).

31 Ie within the meaning of the Energy Act 1976: see PARA 603 note 3 ante.

32 Ie from any of the substances referred to in the Renewables Obligation Order 2006, SI 2006/1004, art 8(1)(a)(i): see note 11 head (1) supra.

33 Ie is a substance falling within ibid art 8(1)(a)(ii): see note 11 head (2) supra.

34 Ibid art 7(7).

35 See note 32 supra.

36 Renewables Obligation Order 2006, SI 2006/1004, art 7(8).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

UPDATE

1224 Eligible renewable sources

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(b) Electricity from Renewable Energy Sources/1225. Calculation of amount of electricity generated from eligible renewable sources.

1225. Calculation of amount of electricity generated from eligible renewable sources.

The amount of electricity generated by a generating station¹ which is to be regarded as having been generated from eligible renewable sources² in any month is to be calculated³ by multiplying the renewable output of that generating station in that month by a proportion which is equal to the proportion which the net output of that generating station in that month bears to the gross output⁴ of that generating station in that month⁵. For the purposes of that calculation:

- 2989 (1) 'the renewable output' is⁶ such amount as is obtained by deducting from the gross output of that generating station in that month the amount of electricity which has been generated in that month from fossil fuel⁷; and
- 2990 (2) 'the net output' is such amount as is obtained by deducting from the gross output of that generating station in that month the input electricity⁸ of that generating station in that month⁹.

In the case of a generating station fuelled wholly or partly by biomass, 10 per cent of the electricity generated from biomass in any month must be treated as having been generated from fossil fuel unless the operator of the generating station satisfies the Gas and Electricity Markets Authority ('GEMA')¹⁰ that during that month a lesser percentage of the energy content¹¹ of the biomass derives from fossil fuel, in which case that lesser percentage must be treated as having been generated from fossil fuel¹².

In calculating 'the renewable output' in the case of a generating station fuelled partly by fossil fuel and partly by another fuel or fuels the amount of electricity which has been generated from fossil fuel is to be determined according to the respective energy contents of the fuels used¹³.

Where the operator of a generating station (or, where ROCs¹⁴ relating to electricity generated in whole or in part by that generating station are issued to an agent¹⁵, that agent and not the operator) satisfies the Authority that in any month the input electricity of the generating station does not exceed 0.5 per cent of its gross output, no input electricity is to be deducted from the gross output in calculating the net output of the generating station for that month and, accordingly, the net output is to be equal to the gross output in that month¹⁶.

In the case of a qualifying combined heat and power generating station¹⁷, the renewable output is to be such amount as is obtained by:

- 2991 (a) deducting from the gross output of that generating station in that month the amount of electricity which has been generated in that month from fossil fuel; and
- 2992 (b) multiplying the figure resulting from that calculation by the relevant proportion¹⁸, namely by a proportion which is equal to the proportion which the qualifying power output¹⁹ of the qualifying combined heat and power generating station bears to the total power output²⁰ of that generating station²¹.

- 1 For the meaning of 'generating station' see PARA 1041 note 6 ante.
- 2 'Eligible renewable sources' has the meaning given to it in the Renewables Obligation Order 2006, SI 2006/1004, art 5 (see PARA 1224 ante): art 2(1).
- 3 Ie subject to ibid art 9(3), (5): see the text and notes 10-12, 14-16 infra.
- 4 For these purposes, 'gross output' means, in relation to any month, the total amount of electricity generated by a generating station in that month: ibid art 9(7)(b).
- 5 Ibid art 9(1).
- 6 Ie subject to ibid art 9(6): see the text and notes 17-18 infra.
- 7 For these purposes, 'fossil fuel' has the meaning given to it by the Electricity Act 1989 s 32 (as substituted and amended) (see PARA 1219 note 13 ante) except that the expression also includes any substance which is derived directly or indirectly from fossil fuel (whether or not such substance is waste or a component of biomass): Renewables Obligation Order 2006, SI 2006/1004, art 9(7)(a). For the meaning of 'biomass' see PARA 1224 note 12 ante.
- 8 For these purposes, 'input electricity' means, in relation to any month, all the electricity used by a generating station in that month (whether or not it is generated by the generating station and whether or not it is used while the generating station is generating electricity) for a purpose directly relating to the operation of that generating station, including fuel handling, fuel preparation, maintenance and pumping water: ibid art 9(7)(c). In the case of a generating station fuelled wholly or partly by hydrogen (not being fossil fuel), 'input electricity' also includes any electricity in respect of which ROCs are or have been issued or which was not generated from eligible renewable sources that is used to produce the hydrogen by which that station is fuelled, regardless of where or by whom the hydrogen is produced: art 9(7)(d). For the meaning of 'ROC' see PARA 1223 note 12 ante.
- 9 Ibid art 9(2).
- 10 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 11 For the meaning of 'energy content' see PARA 1224 note 14 ante.
- 12 Renewables Obligation Order 2006, SI 2006/1004, art 9(3).
- 13 Ibid art 9(4).
- 14 As to ROCs see PARA 1228 et seq post.
- 15 Ie by virtue of the Renewables Obligation Order 2006, SI 2006/1004, art 15A (as added): see PARA 1229 post.
- 16 Ibid art 9(5) (amended by SI 2007/1078).
- 17 For the meaning of 'qualifying combined heat and power generating station' see PARA 1224 note 27 ante.
- 18 Renewables Obligation Order 2006, SI 2006/1004, art 9(6).
- 19 For these purposes, 'qualifying power output' has the meaning given to it in CHPQA: Renewables Obligation Order 2006, SI 2006/1004, art 9(7)(e). For the meaning of 'CHPQA' see PARA 1224 note 27 ante.
- 20 For these purposes, 'total power output' has the meaning given to it in CHPQA: Renewables Obligation Order 2006, SI 2006/1004, art 9(7)(e).
- 21 See ibid art 9(7)(f).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(c) Alternative Ways of Discharging Renewables Obligation/1226. Buy-out payments to the Gas and Electricity Markets Authority and payments by the Authority out of the buy-out fund.

(c) Alternative Ways of Discharging Renewables Obligation

1226. Buy-out payments to the Gas and Electricity Markets Authority and payments by the Authority out of the buy-out fund.

Instead of producing certificates¹, a designated electricity supplier² may discharge, in whole or in part, its renewables obligation³ in relation to a particular obligation period⁴ by making a payment to the Gas and Electricity Markets Authority ('GEMA')⁵ before the specified day⁶ relating to that obligation period⁷. The payment to be so made is⁸ £33.24 for each megawatt hour of electricity generated from eligible renewable sources for which the designated electricity supplier does not produce certificates⁹ or NIROCs¹⁰ ('the buy-out price')¹¹. If, however, in the case of the calendar year 2006 or any subsequent calendar year, the annual retail prices index¹² for that year ('the later year') is higher or lower than that for the previous year, the buy-out price relating to the obligation period beginning on 1 April immediately following the later year must be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year¹³. When the buy-out price is so calculated, the result must be rounded to the nearest penny, with any exact half of a penny being rounded upwards¹⁴.

The aggregate of the amounts received by the Authority under the above provisions in respect of an obligation period ('the relevant obligation period') (together with any interest thereon received by the Authority) is referred to as 'the buy-out fund'¹⁵. The Authority must pay out the buy-out fund, by 1 November immediately following the relevant obligation period, in accordance with the prescribed system¹⁶ of allocation¹⁷. The buy-out fund relating to a relevant obligation period must be divided amongst the United Kingdom suppliers¹⁸ who meet one or more of the applicable conditions¹⁹ so that each such United Kingdom supplier receives a proportion of the buy-out fund calculated in accordance with the following provision²⁰. The proportion of the buy-out fund which each United Kingdom supplier is so entitled to receive is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates it has produced²¹ bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority for Energy Regulation in respect of the relevant obligation period, or any period contemporaneous with the relevant obligation period, in discharge of any renewables obligation imposed²² in accordance with the relevant statutory provisions²³.

1 Ie pursuant to the Renewables Obligation Order 2006, SI 2006/1004, art 3: see PARA 1223 ante.

2 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.

3 As to the renewables obligation see the Renewables Obligation Order 2006, SI 2006/1004, art 3; and PARA 1223 ante.

4 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

- 6 For the meaning of 'specified day' see PARA 1223 note 3 ante.
- 7 Renewables Obligation Order 2006, SI 2006/1004, art 11(1).
- 8 Ie subject to ibid art 11(3), (4): see the text and notes 12-14 infra.
- 9 Ie pursuant to ibid art 3 (see PARA 1223 ante), art 13 (as substituted) (see PARA 1227 post) or art 13A (as added) (see PARA 1227 post).
- 10 Ie pursuant to ibid art 12: see PARA 1227 post. 'NIROC' means a certificate issued by the Northern Ireland Authority for Energy Regulation under the Energy (Northern Ireland) Order 2003, SI 2003/419, art 54 and pursuant to a NIRO order and, save where the context otherwise requires, includes a replacement NIROC; 'NIRO order' means any order made pursuant to art 52; and 'replacement NIROC' means a NIROC issued in accordance with the provisions of a NIRO order to replace another NIROC: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).
- 11 Ibid art 11(2) (amended by SI 2007/1078).
- 12 'Retail prices index' means (1) the general index of retail prices (for all items) published by the Office of National Statistics; or (2) where the index is not published for a year, any substituted index or figures published by that Office: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).
- 13 Ibid art 11(3).
- 14 Ibid art 11(4).
- 15 Ibid art 22(1).
- 16 Ie the system of allocation specified in ibid art 22(3)-(7): see the text and notes 18-23 infra.
- 17 Ibid art 22(2).
- 18 'United Kingdom supplier' means a designated electricity supplier, an electricity supplier supplying electricity in Scotland or a Northern Ireland supplier: ibid art 2(1). 'Northern Ireland supplier' means an electricity supplier within the meaning of the Energy (Northern Ireland) Order 2003, SI 2003/419, Pt 7: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).
- 19 Ie the conditions referred to in ibid art 22(4), (5) and (6). The applicable condition for a designated electricity supplier is that, in respect of the relevant obligation period, it has complied (in whole or in part) with its renewables obligation by producing qualifying certificates to the Authority: art 22(4). 'Qualifying certificate' means a certificate issued pursuant to an order made under the Electricity Act 1989 s 32 (as substituted and amended) (see PARA 1219 ante) and which relates to electricity produced from eligible renewable sources, or an eligible NIROC: art 2(1). For the meaning of 'eligible renewable sources' see art 5; and PARA 1224 ante; and for the meaning of 'eligible NIROC' see PARA 1227 note 6 post. As to the applicable condition for an electricity supplier supplying electricity in Scotland see art 22(5); and as to the applicable condition for a Northern Ireland supplier see art 22(6).
- 20 Ibid art 22(3).
- 21 Ie as mentioned in ibid art 22(4), (5) or (6): see note 19 supra.
- 22 Ie by the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland provision.
- 23 Renewables Obligation Order 2006, SI 2006/1004, art 22(7).

UPDATE

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

1226 Buy-out payments to the Gas and Electricity Markets Authority and payments by the Authority out of the buy-out fund

NOTE 12--Office of National Statistics replaced by Statistics Board: see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 605.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(c) Alternative Ways of Discharging Renewables Obligation/1227. Green certificates.

1227. Green certificates.

A designated electricity supplier¹ may discharge up to 25 per cent of its renewables obligation² in respect of an obligation period³ by producing to the Gas and Electricity Markets Authority ('GEMA')⁴ green certificates issued by the Authority⁵ and eligible NIROCs⁶ relating to electricity supplied in the immediately preceding obligation period⁷. In respect of any obligation period which falls:

- 2993 (1) from 1 April 2006 until 31 March 2011, no more than 10 per cent; and
- 2994 (2) from 1 April 2011 until 31 March 2016, no more than 5 per cent,

of a designated electricity supplier's renewables obligation may be satisfied by the production of such certificates issued by the Authority and eligible NIROCs issued in respect of generating stations⁸ which during the month to which a certificate or NIROC relates, have been fuelled partly by fossil fuel⁹ and partly by biomass¹⁰, and by no other fuel¹¹. In the case, however, of certificates or NIROCs issued in respect of a generating station which, during the month to which those certificates or NIROCs relate, has been fuelled partly by fossil fuel¹² and partly by biomass consisting in whole or in part of energy crops¹³, and no other fuel, the limits set out in heads (1) and (2) above do not apply to the production of those certificates or NIROCs if and to the extent that they state the amount of electricity which is attributable to the energy crops¹⁴. A designated electricity supplier must not produce to the Authority a green certificate¹⁵ or a NIROC which has previously been or is simultaneously produced¹⁶ to the Northern Ireland Authority for Energy Regulation¹⁷.

Subject to the above provisions, instead of producing certificates pursuant to the prescribed requirements for evidence¹⁸, a designated electricity supplier may discharge, in whole or in part, its renewables obligation in relation to a particular obligation period by producing to the Authority in accordance with heads (a) to (c) below:

- 2995 (a) eligible NIROCs issued in respect of electricity that has been supplied to customers during that obligation period¹⁹;
- 2996 (b) certificates issued by the Authority and certifying the following matters:
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- 421. (i) that the generating station or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, that the generating station in question is not a generating station mentioned in the specified statutory provision relating to Northern Ireland²⁰ and that the electricity has been supplied to customers in Northern Ireland²¹; or
- 422. (ii) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, that none of them is a generating station mentioned in the specified statutory provision relating to Northern Ireland²² and that the electricity has been supplied to customers in Northern Ireland²³,

- 2997 provided that such certificates relate to electricity generated from eligible
renewable sources²⁴;
- 2998 (c) by producing to the Authority certificates issued by the Authority and
certifying the following matters²⁵:
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423. (i) that the generating station, or, in the case of a certificate issued otherwise
than to the operator of a generating station, a generating station specified in the
certificate, has generated from renewable sources the amount of electricity stated in
the certificate and that the electricity has been used in a permitted way²⁶; or
424. (ii) that two or more generating stations have, between them, generated from
renewable sources the amount of electricity stated in the certificate and that the
electricity has been used in a permitted way²⁷.
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- 1 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.
- 2 As to the renewables obligation see the Renewables Obligation Order 2006, SI 2006/1004, art 3; and PARA 1223 ante.
- 3 For the meaning of 'obligation period' see PARA 1223 note 6 ante.
- 4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 5 I.e. certificates issued under the Electricity Act 1989 s 32B (as added and amended): see PARA 1221 ante.
- 6 'Eligible NIROC' means a NIROC that satisfies the conditions for eligibility set out in the Renewables Obligation Order 2006, SI 2006/1004, art 2(1), Sch 3 (paras 1-26): art 2(1). For the meaning of 'NIROC' see PARA 1226 note 10 ante.
- 7 Ibid art 14(1).
- 8 For the meaning of 'generating station' see PARA 1041 note 6 ante.
- 9 I.e. as defined in the Renewables Obligation Order 2006, SI 2006/1004, art 8(1): see PARA 1224 note 11 ante. See also art 8(2), (3), cited in PARA 1224 note 11 ante.
- 10 For the meaning of 'biomass' see PARA 1224 note 12 ante.
- 11 Renewables Obligation Order 2006, SI 2006/1004, art 14(2) (amended by SI 2007/1078).
- 12 See note 9 supra.
- 13 'Energy crops' means a plant crop planted after 31 December 1989 which is grown primarily for the purpose of being used as fuel or which is one of the following (1) *miscanthus giganteus*; (2) *salix* (also known as short rotation coppice willow); (3) *populus* (also known as short rotation coppice poplar): Renewables Obligation Order 2006, SI 2006/1004, art 2(1) (definition amended by SI 2007/1078). For the meaning of 'plant' see PARA 1224 note 12 ante.
- 14 Renewables Obligation Order 2006, SI 2006/1004, art 14(2A) (added by SI 2007/1078).
- 15 I.e. a certificate issued under the Electricity Act 1989 s 32B (as added and amended): see PARA 1221 ante.
- 16 I.e. under a NIRO order. For the meaning of 'NIRO order' see PARA 1226 note 10 ante.
- 17 Renewables Obligation Order 2006, SI 2006/1004, art 14(3).
- 18 I.e. pursuant to ibid art 3: see PARA 1223 ante.
- 19 Ibid art 12(1). A NIROC referred to in art 12(1) is to be regarded as produced to the Authority in respect of an obligation period where, before the specified day relating to that period, the Authority receives, from the designated electricity supplier which is treated as holding the NIROC for the purposes of the NIRO order under which it was issued, a notification in writing identifying the NIROC to be so produced and giving its NIROC identifier: art 12(2). Without prejudice to art 12(2), the Authority may draw up procedural guidelines for the

production of NIROCs under art 12: art 12(3). 'NIROC identifier' means an identifier unique to a NIROC determined by the Northern Ireland Authority for Energy Regulation ('the Northern Ireland authority') and containing the following information (or reference to that information in coded format): (1) the month and year during which the electricity was generated; (2) the location of the generating station; (3) a description of the generating station including reference to the source or sources of fuel used to generate electricity by that generating station; (4) the date of issue of the NIROC; and (5) a number allocated to a NIROC by the Northern Ireland authority in accordance with a NIRO order: Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

20 Ie the Energy (Northern Ireland) Order 2003, SI 2003/419, art 54(1).

21 Ie the matters in the Electricity Act 1989 s 32B(2A) (as added and amended): see PARA 1221 ante at head (2) in the text.

22 See note 20 supra.

23 Ie the matters in the Electricity Act 1989 s 32B(2AA) (as added): see PARA 1221 ante at head (ii) in the text.

24 Renewables Obligation Order 2006, SI 2006/1004, art 13(1) (amended by SI 2007/1078). A certificate referred to in the Renewables Obligation Order 2006, SI 2006/1004, art 13(1) (as so amended) is to be regarded as produced to the Authority in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a ROC, the ROC identifier: art 13(2). Without prejudice to art 13(2), the Authority may draw up procedural guidelines for the production of certificates under art 13 (as amended): art 13(3). For the meaning of 'ROC' see PARA 1223 note 12 ante. 'ROC identifier' means an identifier unique to the ROC determined by the Authority and containing the following information (or reference to that information in coded format): (1) the month and year during which the electricity was generated; (2) the location of the generating station; (3) a description of the generating station including reference to the eligible renewable source or sources used to generate electricity by that generating station; (4) the date of issue of the ROC; and (5) the ROC sequence number determined by the Authority in accordance with art 18(1)(a) or 20(5) (see PARAS 1228, 1231 post): art 2(1), Sch 2 para 2(b).

25 See *ibid* art 13A(1) (art 13A added by SI 2007/1078). A certificate referred to in the Renewables Obligation Order 2006, SI 2006/1004, art 13A(1) (as so added) is to be regarded as produced to the Authority in respect of an obligation period where before the specified day relating to that period the Authority receives from the designated electricity supplier which holds the certificate a notification in writing identifying the certificate to be produced for that purpose and, in the case of a ROC, the ROC identifier: art 13A(2) (as so added). Without prejudice to art 13A(2) (as so added), the Authority may draw up procedural guidelines for the production of certificates under art 13A (as added): art 13A(3) (as so added).

26 Ie the matters in the Electricity Act 1989 s 32B(2AB) (as added): see PARA 1221 ante at head (iii) in the text. See further note 27 *infra*.

27 Ie the matters in *ibid* s 32B(2AC) (as added) (see PARA 1221 ante at head (iv) in the text): Renewables Obligation Order 2006, SI 2006/1004, art 13A(1) (as added: see note 25 supra). For the purposes of the Electricity Act 1989 s 32B(2AB), (2AC) (as added), electricity generated by any generating station is used in a permitted way if it is used in one of the ways mentioned in s 32B(2AE) (as added) (see PARA 1221 note 17 ante): Renewables Obligation Order 2006, SI 2006/1004, art 13A(4) (as so added).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')/1228. Obligation to issue ROCs.

(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')

1228. Obligation to issue ROCs.

Where each of the relevant criteria¹ has been met, having regard as necessary to the prescribed requirements², the Gas and Electricity Markets Authority ('GEMA')³ must issue ROCs⁴, in accordance with the prescribed procedure⁵ in relation to a generating station⁶ in respect of each month of each obligation period⁷ in which electricity has been generated by the generating station from eligible renewable sources⁸, whether or not for the whole of that month⁹. Except as provided for below¹⁰, ROCs must be issued to the operator of the generating station by which the relevant electricity was generated in a particular month¹¹.

Where, however, electricity is required to be generated by a generating station from eligible renewable sources under a qualifying arrangement¹² or in compliance with such an arrangement to be made available to the nominated person¹³ ('the relevant output'), ROCs must be issued as set out below¹⁴. Where the nominated person is entitled to the relevant output under or in compliance with a qualifying arrangement, ROCs must be issued to electricity suppliers¹⁵ notified to the Authority by the nominated person as being purchasers of the relevant output and to each in such quantities as are appropriate to the amount of the relevant output which the nominated person notifies the Authority each has purchased, subject to the total amount of ROCs available to be so issued¹⁶. Where one or more electricity suppliers are entitled to the relevant output under a qualifying arrangement, ROCs must be issued to those electricity suppliers, each in proportion to its entitlement¹⁷.

The Authority must, when issuing ROCs (other than replacement ROCs which must be issued in accordance with the prescribed procedure¹⁸):

- 2999 (1) allocate a number ('the ROC sequence number') to each ROC issued;
- 3000 (2) allocate ROC sequence numbers sequentially in ascending numerical order to all the ROCs issued in respect of electricity generated from eligible renewable sources by a particular generating station in a particular month; and
- 3001 (3) in the case of a generating station which in a particular month generates electricity from eligible renewable sources under or in compliance with a qualifying arrangement, issue ROCs in respect of that month:

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425. (a) firstly to the electricity suppliers to whom the relevant provision set out above¹⁹ applies in that month on the basis of information provided to it by the nominated person; and

426. (b) thereafter, in the event that the generating station generates any electricity from eligible renewable sources in that month other than under a qualifying arrangement or which in that month is not required in compliance with such an arrangement to be made available to the nominated person, to the operator of that generating station²⁰.

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Where it issues ROCs²¹ the Authority must:

- 3002 (i) determine²² the amount of electricity which is to be regarded as having been generated from eligible renewable sources by a generating station in a particular month ('the relevant month');
- 3003 (ii) deduct from the amount so determined any electricity in respect of which in the relevant month any of the relevant criteria²³ were not satisfied;
- 3004 (iii) determine the amount of electricity which results from the calculations in heads (i) and (ii) above and round the amount so determined to the nearest megawatt hour (with any exact half megawatt hour being rounded upwards);
- 3005 (iv) determine the number of ROCs which it is appropriate to issue for the amount of electricity determined pursuant to head (iii) above on the basis that one ROC represents one megawatt hour of electricity; and
- 3006 (v) issue the appropriate number of ROCs determined pursuant to head (iv) above to the operator of the generating station or to the electricity supplier as specified²⁴ above²⁵.

ROCs in respect of the relevant month must be issued no earlier than the relevant date²⁶.

Where the Authority makes a determination under head (i) above on the basis of figures provided to it²⁷ or accepted by it²⁸ and the Authority subsequently becomes aware of figures which it considers to be more accurate, the Authority may, where it considers appropriate, accept the later figures and make new determinations under heads (i) to (iv) above²⁹. It must, where the new determination under head (iv) above differs from the original determination under that head, either:

- 3007 (A) if it has not already issued ROCs under head (v) above, issue ROCs under that head in accordance with the new determination;
- 3008 (B) revoke ROCs in accordance with the prescribed procedure³⁰ where it has issued too many; or
- 3009 (C) issue additional ROCs in accordance with head (v) above where it has issued too few³¹.

Where two or more generating stations constitute a group for the prescribed purposes³², the Authority is entitled to issue a ROC in respect of electricity generated by those generating stations if, and only if, the amount of electricity generated by each of them, calculated in accordance with heads (i) and (ii) above, is added together and rounded in accordance with head (iii) above, that rounded amount is stated in the ROC, and the ROC certifies the specified³³ matters³⁴.

1. The criteria in the Renewables Obligation Order 2006, SI 2006/1004, art 16 (as amended). The criteria for issue of ROCs referred to in art 15 (as amended) (see the text and notes 2-17 *infra*) and issue of replacement ROCs referred to in art 20(4) (see PARA 1231 *post*) are those detailed in art 16(2)-(10) (art 16(2), (4), (7), (8) (10) amended, art 16(8A), (8B), (9A) added, and art 16(9) substituted by SI 2007/1078): Renewables Obligation Order 2006, SI 2006/1004, art 16(1). There are a total of 12 such criteria, relating to:

- 65 (1) previous confirmation in writing that the generating station to which the ROC relates has been granted accreditation (see art 16(2) (as so amended));
- 66 (2) the provision of prescribed information to the Authority which it is satisfied is accurate and reliable (see art 16(3); and for the meaning of 'in writing' see PARA 1229 note 7 *post*);
- 67 (3) in the case of a ROC certifying the matters within the Electricity Act 1989 s 32B(2) (as added and amended), s 32B(2ZA), (2A) or (2AA) (as added) (see PARA 1221 *ante* at heads (1)-(2), (i)-(ii) in the text), the provision of a declaration by the operator of the generating station containing prescribed matters (see the Renewables Obligation Order 2006, SI 2006/1004, art 16(4) (as so amended));

- 68 (4) where the electricity has been generated on land in Northern Ireland and supplied to customers in Great Britain, the provision by the operator of the generating station of evidence of prescribed matters (see art 16(5));
- 69 (5) where the electricity was not generated on land in Great Britain or in Northern Ireland and was supplied to customers in Great Britain, the provision by the operator of the generating station of evidence of prescribed matters (see art 16(6));
- 70 (6) in the case of a ROC certifying the matters within the Electricity Act 1989 32B(2A) or (2AA) (as added) (see PARA 1221 ante at heads (2), (ii) in the text) and which relates to electricity which was generated by a generating station which, at the time the electricity was generated, was not directly and exclusively connected to a transmission or distribution network in Northern Ireland, the provision by the operator of the generating station of satisfactory evidence of prescribed matters (see the Renewables Obligation Order 2006, SI 2006/1004, art 16(7) (as so amended));
- 71 (7) in the case of a ROC certifying the matters within the Electricity Act 1989 32B(2A) or (2AA) (as added) which relates to electricity which was generated by a generating station which, at the time the electricity was generated, was directly and exclusively connected to a transmission or distribution network in Northern Ireland, the provision by the operator of the generating station of satisfactory evidence of prescribed matters (see the Renewables Obligation Order 2006, SI 2006/1004, art 16(8) (as so amended));
- 72 (8) conditions to be met in the case of a ROC certifying the matters within the Electricity Act 1989 s 32B(2ZA), (2AA) or (2AC) (as added) (see PARA 1221 ante at heads (i), (ii), (iv) in the text) (see the Renewables Obligation Order 2006, SI 2006/1004, art 16(8A) (as so added));
- 73 (9) in the case of a ROC certifying the matters within the Electricity Act 1989 32B(2AB) or (2AC) (as added) (see PARA 1221 ante at heads (iii)-(iv) in the text) the provision by the operator of the generating station of a declaration that the electricity generated by the generating station has been used in a permitted way (see the Renewables Obligation Order 2006, SI 2006/1004, art 16(8B) (as so added));
- 74 (10) whether the electricity in respect of which the ROC is to be issued is not or does not include electricity in respect of which a ROC has already been issued and not revoked (see art 16(9) (as so substituted));
- 75 (11) whether the electricity in respect of which the ROC is to be issued has been measured accurately (see art 16(9A) (as so added));
- 76 (12) whether the Authority is prohibited from issuing a ROC on any of the grounds set out in art 17(2) or has refused to issue a ROC on any of the grounds set out in art 17(3) (see note 2 infra) (see art 16(10) (as so amended)).

2 The requirements in *ibid* arts 17, 17A (art 17A as added) (supplemental provisions with regard to the criteria for issuing ROCs). The Authority must not issue a ROC (1) in respect of any electricity generated by a particular generating station in a particular month if it has previously issued a certificate under the Electricity Act 1989 s 32B (as added and amended) in respect of any such electricity other than under the 2006 Order, whether or not any such certificate previously issued has been revoked; or (2) certifying the matters within the Electricity Act 1989 s 32B(2A) (as added), where the Northern Ireland Authority for Energy Regulation has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland: Renewables Obligation Order 2006, SI 2006/1004, art 17(2). The Authority may refuse to issue a ROC in any case where the Authority: (a) except in the case of a ROC certifying the matters within the Electricity Act 1989 32B(2A) (as added), considers that the declaration in the Renewables Obligation Order 2006, SI 2006/1004, art 16(4) (as amended) (see note 1 head (3) *supra*) is not accurate in relation to the electricity in respect of which the Authority is considering issuing the ROC; (b) except in the case of a ROC certifying the matters within the Electricity Act 1989 32B(2A) (as added), has reason to believe that the electricity in respect of which the Authority is considering issuing the ROC was consumed in circumstances which resulted in the electricity not having been supplied by an electricity supplier to customers in Great Britain; or (c) is not satisfied that the operator of the generating station has, during the relevant month, complied with any condition to which accreditation of the relevant generating station is subject: Renewables Obligation Order 2006, SI 2006/1004, art 17(3). Article 17(1) supplements art 16(4) (as amended) and art 17(4) supplements art 16(3) (see note 1 head (2) *supra*). As to art 17A (as added) see PARA 1229 post.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For the meaning of 'ROC' see PARA 1223 note 12 ante.

5 le the procedure set out in the Renewables Obligation Order 2006, SI 2006/1004, art 18: see the text and notes 18-31 *infra*.

6 For the meaning of 'generating station' see PARA 1041 note 6 *ante*.

7 For the meaning of 'obligation period' see PARA 1223 note 6 *ante*.

8 For the meaning of 'eligible renewable sources' see the Renewables Obligation Order 2006, SI 2006/1004, art 5; and PARA 1224 *ante*.

9 *Ibid* art 15(1) (art 15(1), (2) amended by SI 2007/1078).

10 le in the Renewables Obligation Order 2006, SI 2006/1004, art 15(3)-(5) (see note 22 *infra*), art 15A (as added) (see PARA 1229 *post*).

11 *Ibid* art 15(2) (as amended: see note 9 *supra*).

12 For the meaning of 'qualifying arrangement' see PARA 1224 note 16 *ante*.

13 'Nominated person' has the same meaning for these purposes as is given to it in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended) (see PARA 1240 *post*): Renewables Obligation Order 2006, SI 2006/1004, art 2(1).

14 *Ibid* art 15(3).

15 For the meaning of 'electricity supplier' see PARA 1065 note 7 *ante*.

16 Renewables Obligation Order 2006, SI 2006/1004, art 15(4). Where a ROC, if issued, will be issued to an electricity supplier pursuant to art 15(4) or (5), the references in art 16(4) (see note 1 head (3) *supra*) to the operator of the generating station are to be treated as references to that electricity supplier; but art 16(4)(c) does not apply: art 17(1).

17 *Ibid* art 15(5).

18 le in accordance with *ibid* art 20(4)(b), (5): see PARA 1231 *post*.

19 le *ibid* art 15(4) or (5).

20 *Ibid* art 18(1).

21 le pursuant to *ibid* Pt 5 (arts 15-21) (as amended): see the text and notes 1-20 *supra*, 22-31 *infra*; and PARA 1229 *et seq post*.

22 le pursuant to *ibid* art 9: see PARA 1225 *ante*. Subject to art 18(4), (5) and (6), for the purpose of art 18(2) (a) (see head (i) in the text), the Authority must use in the case of the amounts for 'gross output' and 'input electricity' (as those two expressions are defined in art 9(7)) either (1) the most accurate figures for those amounts which are provided to the Authority at the end of the second month following the end of the relevant month ('the relevant date'); or (2) where the operator of the generating station satisfies the Authority by the relevant date that it will never be possible for it to provide accurate figures, such figures as are estimated by the operator by the relevant date on a basis agreed in advance by the Authority: art 18(3). Where figures are neither provided under art 18(3)(a) nor estimated under art 18(3)(b), the Authority may, in circumstances which it considers exceptional, accept figures which the operator of the generating station provides after the relevant date: art 18(4). Where figures are provided under art 18(3)(a) or accepted under art 18(4) and, before the Authority makes a determination under art 18(2)(a), the Authority becomes aware of figures which it considers to be more accurate, the Authority may, where it considers appropriate, accept the later figures and make determinations under art 18(2)(a)-(d) (see heads (i)-(iv) in the text) on the basis of the later figures: art 18(5).

23 le the relevant criteria in *ibid* art 16 (as amended): see note 1 *supra*.

24 le in *ibid* art 15 (as amended): see the text and notes 1-17 *supra*.

25 *Ibid* art 18(2).

26 *Ibid* art 18(7). As to the relevant date see note 22 head (1) *supra*.

27 le under *ibid* art 18(3)(a): see note 22 head (1) *supra*.

28 le under ibid art 18(4) or (5): see note 22 supra.

29 Ibid art 18(6)(a).

30 le in accordance with ibid art 20: see PARA 1231 post.

31 Ibid art 18(6)(b).

32 Two or more generating stations constitute a group for these purposes where (1) they have been accredited as generating stations capable of generating electricity from the same eligible renewable source; (2) in respect of each of them the same person has been appointed to act as agent under art 15A (as added) (see PARA 1229 post); and (3) in respect of electricity generated by them, entitlement to ROCs is determined in the same way (either on a monthly basis or on an annual basis, depending on whether a notice has been given to the Authority under art 21(2) (see PARA 1232 post) or not): ibid art 17B(3) (art 17B added by SI 2007/1078).

33 le the matters within the Electricity Act 1989 s 32B(2ZA), (2AA) or (2AC) (as added): see PARA 1221 ante at heads (i), (ii), (iv) in the text.

34 Renewables Obligation Order 2006, SI 2006/1004, art 17B(1) (as added: see note 32 supra).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')/1229. Issue of ROCs to agents.

1229. Issue of ROCs to agents.

An operator of a generating station¹ with a declared net capacity² of 50 kilowatts or less may³ appoint an agent to receive any ROC⁴ which relates to electricity generated, in whole or in part, by that generating station (a 'relevant ROC')⁵. Where he does so, he must notify the Gas and Electricity Markets Authority ('GEMA')⁶ in writing⁷ of the agent's name and address⁸. Once the Authority has received such a notification, it must issue any relevant ROC to that agent⁹.

Where the operator or agent wishes to terminate the agent's appointment, the operator or, as the case may be, the agent must give written notice of the intended termination to the Authority¹⁰. Where notice is so given and received by the Authority, the termination takes effect¹¹ at the end of the obligation period¹² during which it is given; until the expiration of that obligation period, the Authority must continue to issue any relevant ROCs to the agent¹³. Notwithstanding that provision, after the expiration of that obligation period the Authority must continue to issue relevant ROCs to the agent where those ROCs relate to electricity generated during that obligation period¹⁴. The above provisions¹⁵ do not, however, apply in any case where the Authority is satisfied, by evidence produced to it, that owing to exceptional circumstances the termination should take effect on a date before the end of the obligation period during which the notice is given, in which case the termination takes effect on that date¹⁶.

Where any provision of the Renewables Obligation Order 2006¹⁷ requires or permits something to be done by, to or in respect of an agent appointed under these provisions and the agent's appointment is terminated before that thing is done, references to that agent, however framed, are to be construed:

- 3010 (1) where a successor to him has been appointed under the above provisions, as references to that successor;
- 3011 (2) in any other case, to the operator of the generating station for whom he acted before his appointment was terminated¹⁸.

Where a ROC is to be issued to an agent by virtue of the above provisions, certain of the relevant criteria¹⁹ and the procedural provisions for its issue²⁰ apply with appropriate modifications²¹.

Where an agent appointed under the above provisions acts for two or more generating stations which constitute a group for the prescribed purposes²², he must provide the Authority with:

- 3012 (a) a figure representing the amount of electricity which he believes should be stated in any ROC to be issued in respect of that group; and
- 3013 (b) the data which led him to arrive at that figure²³.

1 For the meaning of 'generating station' see PARA 1041 note 6 ante.

2 For the meaning of 'declared net capacity' see PARA 1224 note 4 ante.

3 le subject to the Renewables Obligation Order 2006, SI 2006/1004, art 15A(3)-(5) (as added): see the text and notes 9-13 infra.

4 For the meaning of 'ROC' see PARA 1223 note 12 ante.

5 Renewables Obligation Order 2006, SI 2006/1004, art 15A(1) (arts 15A, 17A-17B added by SI 2007/1078).

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 Any reference in the Renewables Obligation Order 2006, SI 2006/1004 (as amended), to the provision of information 'in writing' includes the provision of such information by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication: art 2(3).

8 Ibid art 15A(2) (as added: see note 5 supra).

9 Ibid art 15A(3) (as added: see note 5 supra).

10 Ibid art 15A(4) (as added: see note 5 supra).

11 le subject to ibid art 15A(6) (as added): see the text and note 14 infra.

12 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

13 Renewables Obligation Order 2006, SI 2006/1004, art 15A(5) (as added: see note 5 supra).

14 Ibid art 15A(6) (as added: see note 5 supra).

15 le ibid art 15A(5), (6) (as added): see the text and notes 11-14 supra.

16 Ibid art 15A(7) (as added: see note 5 supra).

17 le the Renewables Obligation Order 2006, SI 2006/1004 (as amended): see PARA 1223 et seq ante, PARA 1230 et seq post.

18 Ibid art 15A(8) (as added: see note 5 supra).

19 le ibid art 16(2), (4)-(8) (as amended), art 16(8B) (as added): see PARA 1228 note 1 ante.

20 le ibid art 18(3)(b), (4): see PARA 1228 ante.

21 See ibid art 17A(1)-(4) (as added: see note 5 supra).

22 le for the purposes of ibid s 17B (as added): see PARA 1228 note 32 ante.

23 Ibid art 17B(2) (as added: see note 5 supra).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')/1230. The ROC register.

1230. The ROC register.

The Gas and Electricity Markets Authority ('GEMA')¹ must establish and maintain a register of ROCs² ('the register') which is to be conclusive as to whether or not a ROC subsists and as to the person who is for the time being its registered holder³. The Authority must maintain the register, which may be in electronic form, at any of its premises⁴.

A ROC comprises a register entry of its particulars⁵ and is to be regarded as being issued at the point when those particulars are entered in the register by the Authority⁶. The Authority must ensure that the register contains, by way of entries made in it:

- 3014 (1) an accurate record of the particulars of each ROC as issued by the Authority, amended to reflect any change of registered holder⁷ which may occur, and which remains eligible to be produced as evidence⁸; and
- 3015 (2) in addition to the record of the particulars of each ROC, a list of the names of all persons who are either the registered holder of a ROC or, although not at that time the registered holder of a ROC, have notified the Authority that they wish an entry to be made and maintained in respect of them as prospective registered holders of ROCs⁹.

Only the registered holder of a ROC may use it as the evidence or as part of the evidence required from him in discharge of his renewables obligation¹⁰ and a ROC may not be used by its registered holder or by any other person as the evidence or as part of the evidence so required from any person other than the registered holder¹¹.

Where a ROC is issued¹² or a replacement ROC is issued¹³ or a substitute is recorded as the registered holder¹⁴, the Authority must notify the registered holder (in the case of a ROC or a replacement ROC being issued) and the former and new registered holder (in the case of a substitution) in writing within five banking days of the issue or substitution having taken place¹⁵. The substitute is not to be the registered holder of the ROC until such time as the particulars of the ROC recorded in the register identify him as such¹⁶.

The register may be amended by a decision of the Authority:

- 3016 (a) where the Authority is satisfied that an entry in the register has been obtained by fraud;
- 3017 (b) where a decision of a court of competent jurisdiction or the operation of law requires the amendment of the register;
- 3018 (c) in any other case where by reason of any error or omission on the part of the Authority it is necessary to amend the register¹⁷.

The contents of the register, including the entries referred to in head (2) above, must be available for inspection by the public on request at reasonable notice during the Authority's working hours and at the request of any person the Authority must provide a written statement of any entry on the register including any entry referred to in head (2) above¹⁸. Where any

person considers that an entry maintained in respect of him under that head should be amended or deleted, he may apply to the Authority in writing requesting that the entry be amended or deleted¹⁹.

The Authority must delete from the register any ROC which:

- 3019 (i) has been revoked²⁰;
- 3020 (ii) has been produced²¹ as evidence or as part of the evidence required to discharge the renewables obligation²²;
- 3021 (iii) is no longer eligible to be produced as evidence or as part of the evidence so required;
- 3022 (iv) the registered holder requests should be deleted; or
- 3023 (v) the Northern Ireland Authority for Energy Regulation ('the Northern Ireland authority') has notified the Authority has been produced to the Northern Ireland authority by a Northern Ireland supplier²³ under a NIRO order²⁴;

and where it is so deleted, the ROC cannot thereafter be produced as the evidence or part of the evidence required²⁵ to discharge the renewables obligation²⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'ROC' see PARA 1223 note 12 ante.

3 Renewables Obligation Order 2006, SI 2006/1004, art 19(1). 'Registered holder' means the person to whom the Authority issues the ROC or, where the Authority has amended the register in dealing with a request for substitution in accordance with Sch 2 para 6, the substitute: see arts 2(1), 19(2), Sch 2 para 2(a). A person may only be the registered holder of a ROC or have an entry made and maintained in respect of him under art 19(4)(b) if he provides to the Authority in writing: (1) evidence of his identity; and (2) details of persons authorised to act on his behalf in respect of the production of ROCs as the evidence or part of the evidence required under art 3(1) and in respect of requests for amendments to be made to the register as provided for in Sch 2: Sch 2 para 3.

4 Ibid Sch 2 para 1. The Authority may from time to time draw up procedural guidelines for itself and others to assist it in maintaining the register and carrying out its functions in respect thereof: Sch 2 para 4. In any procedural guidelines which it produces the Authority must provide details of its usual working hours: Sch 2 para 13.

5 Particulars of a ROC comprise the name of the registered holder and the ROC identifier: see ibid Sch 2 para 2(a), (b). For the meaning of 'ROC identifier' see PARA 1227 note 24 ante.

6 Ibid art 19(3).

7 Where the registered holder of a ROC and a person whom he wishes to be the substitute require in respect of a particular ROC that the register be amended, by substituting for the name of the registered holder the name of a second person ('the substitute') (who must be a person whose name is included on the list maintained pursuant to ibid art 19(4)(b)): (1) the registered holder and the person whom he wishes to be the substitute must each submit to the Authority in writing requests which are identical in all material respects and which include the ROC identifier of the ROC to which the request relates; and (2) the Authority must, within 10 banking days in any August, and in all other instances, within five banking days, after the banking day on which it is first in receipt at the commencement of its working hours of requests which comply with head (1) supra, amend the particulars of the ROC recorded in the register to show the substitute as the registered holder: Sch 2 para 6. Where the Authority receives in writing a request for substitution it must inform both the registered holder of the ROC and the substitute named therein that the request has been received and, in the event that the requests from the registered holder of the ROC and the person whom he wishes to be the substitute are not identical in all material respects or do not include the ROC identifier of the ROC, must draw this to their attention: Sch 2 para 7. 'Banking day' means a day on which banks are generally open in the City of London excluding Saturdays or Sundays: art 2(1).

8 le pursuant to ibid art 3 (see PARA 1223 ante) or art 13 (see PARA 1227 ante).

9 Ibid art 19(4).

- 10 Ie under ibid art 3(1): see PARA 1223 ante.
- 11 Ibid art 19(5).
- 12 Ie in accordance with ibid art 15: see PARA 1228 ante.
- 13 Ie in accordance with ibid art 20: see PARA 1231 post.
- 14 Ie pursuant to ibid Sch 2 para 6: see note 6 supra.
- 15 Ibid Sch 2 para 8.
- 16 Ibid Sch 2 para 9.
- 17 Ibid Sch 2 para 10.
- 18 Ibid Sch 2 para 11.
- 19 Ibid Sch 2 para 12.
- 20 See note 13 supra.
- 21 Ie in accordance with the Renewables Obligation Order 2006, SI 2006/1004, art 3(3) (see PARA 1223 ante) or art 13 (see PARA 1227 ante).
- 22 Ie under ibid art 3(1): see PARA 1223 ante.
- 23 Ie within the meaning of the Energy (Northern Ireland) Order 2003, SI 2003/419, Pt 7.
- 24 For the meaning of 'NIRO order' see PARA 1226 note 10 ante.
- 25 See note 22 supra.
- 26 Renewables Obligation Order 2006, SI 2006/1004, Sch 2 para 5.

**1223-1238 The renewables obligation; amount of the renewables obligation ...
Preliminary accreditation and accreditation of generating stations**

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')/1231. Revocation of ROCs.

1231. Revocation of ROCs.

The Gas and Electricity Markets Authority ('GEMA')¹:

- 3024 (1) must, where in respect of any electricity generated by a generating station² in a particular month it is satisfied that the declaration provided to it³ is false or that a ROC⁴ was issued on the basis of any fraudulent behaviour, statement or undertaking on the part of the operator of that generating station or any connected person⁵, revoke all ROCs issued in respect of that generating station in that month⁶;
- 3025 (2) must revoke any ROC certifying the specified matters⁷ where the Northern Ireland Authority for Energy Regulation has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland⁸;
- 3026 (3) must, in accordance with the prescribed procedure⁹, revoke any ROC where it is otherwise satisfied that the ROC is inaccurate¹⁰;
- 3027 (4) may, in accordance with the prescribed procedure¹¹, revoke any ROC where:
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427. (a) the Authority is no longer satisfied that the ROC should have been issued;
428. (b) the Authority has reasonable doubts as to the accuracy or reliability of the information upon which the Authority relied prior to the issue of the ROC; or
429. (c) the Authority has been unable, due to a failure or refusal by any person (whether inside or outside England and Wales) to provide the Authority with any information reasonably requested by it, to check the accuracy of either the ROC or any information which the Authority relied upon prior to the issue of the ROC¹²; and
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- 3028 (5) must¹³, in reaching a decision as to the inaccuracy of a ROC for the purposes of head (3) above and in exercising its powers to revoke a ROC pursuant to head (4) above, disregard any changes to the amounts for 'gross output' and 'input electricity'¹⁴ which were used by it¹⁵ to determine the amount of electricity to be regarded as having been generated from eligible renewable sources¹⁶ by a particular generating station in a particular month¹⁷.

Head (5) above does not, however, apply where the Authority has accepted later figures¹⁸ and made¹⁹ new determinations²⁰.

Where the Authority revokes ROCs in accordance with head (3) or head (4) above, it must:

- 3029 (i) revoke the appropriate number of ROCs from those issued in respect of the generating station in respect of a particular month in descending numerical order of ROC sequence number²¹; and
- 3030 (ii) delete from the register²² those ROCs previously allocated the highest ROC sequence numbers and remaining on the register in advance of those with lower ROC sequence numbers,

and in determining the number of ROCs which it is appropriate to revoke it must proceed on the basis that one ROC represents one megawatt hour of electricity, with any exact half megawatt hour being rounded upwards²³.

Where the Authority has revoked a ROC it must as soon as practicable give notice in writing²⁴ of such revocation to the registered holder²⁵ of the ROC at the time of revocation²⁶. Other than when a ROC has been revoked in accordance with head (1) above, the Authority may, in circumstances where it considers it appropriate to do so, issue a replacement ROC in accordance with the prescribed procedures²⁷, provided that it is satisfied that each of the relevant criteria²⁸ is met, having regard as necessary to the prescribed requirements²⁹. Where the Authority so issues a replacement ROC it must:

- 3031 (A) allocate to the replacement ROC the lowest ROC sequence number of any ROC previously issued in respect of the same generating station and same month that has been revoked which has not already been allocated to a replacement ROC (unless that replacement ROC has itself been revoked);
- 3032 (B) issue each replacement ROC to the person to whom the ROC issued in respect of that generating station and that month and bearing the same ROC sequence number was previously issued; and
- 3033 (C) proceed on the basis that one ROC represents one megawatt hour of electricity, with any exact half megawatt hour being rounded upwards³⁰.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'generating station' see PARA 1041 note 6 ante.

3 Ie pursuant to the Renewables Obligation Order 2006, SI 2006/1004, art 16(4) (as amended): see PARA 1228 note 1 ante.

4 For the meaning of 'ROC' see PARA 1223 note 12 ante.

5 For the meaning of 'connected person' see PARA 1224 note 20 ante.

6 Renewables Obligation Order 2006, SI 2006/1004, art 20(1)(a).

7 Ie the matters within the Electricity Act 1989 s 32B(2A) (as amended): see PARA 1221 ante at head (2) in the text.

8 Renewables Obligation Order 2006, SI 2006/1004, art 20(1)(b).

9 Ie the procedure laid down in ibid art 20(3): see the text and notes 21-23 infra.

10 Ibid art 20(1)(c).

11 See note 9 supra.

12 Renewables Obligation Order 2006, SI 2006/1004, art 20(1)(d).

13 Ie subject to ibid art 20(2): see the text and notes 18-20 infra.

14 Ie as those two expressions are defined in ibid art 9(7): see PARA 1225 ante.

15 Ie as provided in ibid art 18(3): see PARA 1228 ante.

16 For the meaning of 'eligible renewable sources' see ibid art 5; and PARA 1224 ante.

17 Ibid art 20(1)(e).

18 Ie in accordance with ibid art 18(6): see PARA 1228 ante.

19 Ie under ibid art 18(2)(a)-(d): see PARA 1228 ante at heads (i)-(iv) in the text.

- 20 Ibid art 20(2).
- 21 For the meaning of 'ROC sequence number' see ibid art 18(1); and PARA 1228 ante.
- 22 As to the register see PARA 1230 ante.
- 23 Renewables Obligation Order 2006, SI 2006/1004, art 20(3).
- 24 For the meaning of 'in writing' see PARA 1229 note 7 ante.
- 25 For the meaning of 'registered holder' see PARA 1230 note 3 ante.
- 26 Ibid art 20(4)(a).
- 27 Ie the procedures laid down in ibid art 20(5); see the text and note 30 infra.
- 28 Ie the relevant criteria in ibid art 16 (as amended); see PARA 1228 note 1 ante.
- 29 Ibid art 20(4)(b). The requirements referred to in the text are those in art 17 (see PARA 1229 ante); see art 20(4)(b). Such a ROC is to be treated as if issued under art 15 (see PARA 1228 ante); art 20(4)(b).
- 30 Ibid art 20(5).

**1223-1238 The renewables obligation; amount of the renewables obligation ...
Preliminary accreditation and accreditation of generating stations**

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(d) Issue and Revocation of Renewables Obligation Certificates ('ROCs')/1232. Small generators.

1232. Small generators.

The following provisions apply to generating stations¹ with a declared net capacity² of 50 kilowatts or less ('sub-50 kilowatt stations')³. The operator of a sub-50 kilowatt station may:

- 3034 (1) not less than one month before the beginning of the first month ('the relevant month') in respect of which the operator requests the issue of ROCs⁴ in respect of electricity generated by the relevant station; or
- 3035 (2) not less than one month before the beginning of any obligation period⁵ ('the relevant obligation period'),

give notice in writing⁶ to the Gas and Electricity Markets Authority ('GEMA')⁷ that its entitlement to ROCs in respect of electricity generated by that station ('the relevant station') is to be determined on a special basis⁸ prescribed for these purposes⁹.

An operator who has given such notice may by notice in writing to the Authority withdraw that notice:

- 3036 (a) if he gave that notice under head (1) above, not less than one month before the beginning of any obligation period following the obligation period during which the relevant month falls; or
- 3037 (b) if he gave that notice under head (2) above, not less than one month before the beginning of any obligation period following the relevant obligation period¹⁰;

and where an operator so gives notice of withdrawal, the Authority must, from the beginning of the obligation period in respect of which the operator gave that notice, determine the operator's entitlement to ROCs in respect of electricity generated by the relevant station on the normal¹¹ basis¹².

1 For the meaning of 'generating station' see PARA 1041 note 6 ante.

2 For the meaning of 'declared net capacity' see PARA 1224 note 4 ante.

3 Renewables Obligation Order 2006, SI 2006/1004, art 21(1).

4 For the meaning of 'ROC' see PARA 1223 note 12 ante.

5 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

6 For the meaning of 'in writing' see PARA 1229 note 7 ante.

7 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

8 Ie the basis set out in the Renewables Obligation Order 2006, SI 2006/1004, art 21(3), (4): see note 9 infra.

9 Ibid art 21(2). Article 21(4) applies (1) where an operator has given notice as specified in art 21(2)(a) (see head (1) in the text), in the case of the relevant station for the remainder of the obligation period during which the relevant month falls and subsequent obligation periods; and (2) where an operator has given notice as specified in art 21(2)(b) (see head (2) in the text), in the case of the relevant station for the relevant obligation period and subsequent obligation periods: art 21(3). Where art 21(4) applies, the reference to 'month' in each place where it occurs in arts 5, 6, 7, 8, 9, 14, 15, 16, 17, 18 and 20 (as amended) and Sch 2 is to be taken to be a reference to 'obligation period', subject to the following exceptions: (a) in art 15(1) the words 'of each month' are to be omitted; (b) in art 18(3)(a) the reference to 'the second month' is to remain unchanged; (c) in Sch 2 para 2(b)(i) the words 'the month and year' must be replaced by 'the obligation period': art 21(4).

10 Ibid art 21(5).

11 le on the basis set out in ibid art 15(1): see PARA 1228 ante.

12 Ibid art 21(6).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(e) Additional Payments/1233. Late payments.

(e) Additional Payments

1233. Late payments.

As soon as reasonably practicable after the specified day¹ in relation to an obligation period² ('the obligation period in question'), the Gas and Electricity Markets Authority ('GEMA')³ must notify any designated electricity supplier⁴ that has not discharged its renewables obligation⁵ in full by the specified day ('defaulting supplier') that it has not fully discharged its renewables obligation, and to what extent⁶. If a defaulting supplier makes a late payment⁷ to the Authority before the end of the late payment period⁸ relating to the obligation period in question it must be treated as having discharged its renewables obligation in full for that obligation period⁹; and if a defaulting supplier pays part of a late payment to the Authority before the end of the late payment period relating to the obligation period in question it must be treated as having discharged the same proportion of the amount of its renewables obligation which was not discharged by the specified day as the proportion which the partial payment bears to the total late payment required in order for the supplier to be treated¹⁰ as having discharged its renewables obligation in full for the obligation period in question¹¹.

The Authority must pay out the late payment fund¹² by 1 January immediately following the late payment period, in accordance with the prescribed system¹³ of allocation¹⁴. It must not, during the late payment period, impose a penalty¹⁵ on any defaulting supplier in respect of that supplier's failure to discharge its renewables obligation in full before the specified day¹⁶.

1 For the meaning of 'specified day' see PARA 1223 note 3 ante.

2 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.

5 As to the renewables obligations see PARA 1223 ante.

6 Renewables Obligation Order 2006, SI 2006/1004, art 23(1).

7 For these purposes, 'late payment' means the total of (1) the amount, or additional amount, that the defaulting supplier would have paid under *ibid* art 11 (see PARA 1226 ante) to discharge its renewables obligation in full immediately before the specified day, taking into account any payments already made by the defaulting supplier under art 11 and any qualifying certificates produced by the supplier to the Authority; and (2) interest on the amount specified in head (1) *supra* charged at the specified rate and calculated on a daily basis, from the specified day to the date on which payment is received by the Authority: art 23(6)(a). 'Specified rate' means 5 percentage points above the base rate of the Bank of England as at the first day of the late payment period in relation to any obligation period: art 23(6)(c). For the meaning of 'qualifying certificate' see PARA 1226 note 19 ante.

8 'Late payment period' in relation to an obligation period, means the period from the specified day in relation to that obligation period to the 31 October immediately following: *ibid* art 2(1).

9 *Ibid* art 23(2).

10 Ie under ibid art 23(2).

11 Ibid art 23(3).

12 For these purposes, 'the late payment fund' means the aggregate of the amounts received by the Authority under ibid art 23(2), (3) in respect of the obligation period in question (together with any interest received thereon by the Authority): art 23(6)(b).

13 Ie the system specified in ibid art 22(3)-(7) (see PARA 1226 ante), but as if (1) the references in art 22(3) and (7) to 'the buy-out fund' were references to that late payment fund; and (2) the references in art 22(3)-(7) to a 'relevant obligation period' were references to the obligation period in question: art 23(4).

14 Ibid art 23(4).

15 Ie under the Electricity Act 1989 s 27A(1) (as added): see PARA 1212 ante.

16 Renewables Obligation Order 2006, SI 2006/1004, art 23(5).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

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1234. Mutualisation.

As soon as reasonably practicable after the end of the late payment period¹ in relation to an obligation period², the Gas and Electricity Markets Authority ('GEMA')³ must determine whether a relevant shortfall⁴ has occurred in relation to the obligation period⁵. Where a relevant shortfall has occurred, the Authority must notify each relevant supplier⁶ of the amount of the shortfall, the amount to be recovered from all relevant suppliers⁷ and the amount of the payment that the relevant supplier is required⁸ to make⁹. Where the Authority so notifies relevant suppliers it must publish a notice stating the amount of the shortfall and the amount to be recovered¹⁰ from all relevant suppliers¹¹.

Where a relevant shortfall has occurred, the specified amount¹² must be recovered from all relevant suppliers as follows¹³. A relevant supplier must make a payment to the Authority which is the same proportion of the sum to be recovered from all relevant suppliers as the proportion which that supplier's renewables obligation for the shortfall period bears to the total of the renewables obligations of all the relevant suppliers for that shortfall period¹⁴. A payment so required must¹⁵ be paid in the following instalments:

- 3038 (1) 25 per cent of the total payment required must be paid to the Authority before 1 September in the mutualisation period¹⁶;
- 3039 (2) 25 per cent of the total payment required must be paid to the Authority before 1 December in the mutualisation period;
- 3040 (3) 25 per cent of the total payment required must be paid to the Authority before 1 March in the mutualisation period; and
- 3041 (4) 25 per cent of the total payment required must be paid to the Authority before 1 June in the obligation period immediately following the mutualisation period¹⁷.

Where a person so required to make a payment fails to make payment in full in accordance with these provisions, and at any time during or after the end of the shortfall period in question, ceases to hold a licence to supply electricity¹⁸, the enforcement provisions of the Electricity Act 1989¹⁹ apply in respect of that person in respect of the obligations imposed by the above provisions, as if that person still held a licence to supply electricity²⁰.

The Authority must pay out the mutualisation fund²¹ in accordance with the prescribed system of allocation²² by the following dates:

- 3042 (a) 1 November in the mutualisation period;
- 3043 (b) 1 February in the mutualisation period;
- 3044 (c) 1 May in the obligation period immediately following the mutualisation period; and
- 3045 (d) 1 August in the obligation period immediately following the mutualisation period²³.

The mutualisation fund relating to a shortfall period must be divided amongst the compliant United Kingdom suppliers²⁴ who meet one or more of the applicable conditions²⁵ so that each

such compliant United Kingdom supplier receives a proportion of the mutualisation fund calculated as follows²⁶. The proportion of the mutualisation fund which each compliant United Kingdom supplier is so entitled to receive is equal to the proportion which the amount of the electricity covered by all of the qualifying certificates it has produced²⁷ bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland Authority for Energy Regulation in respect of the shortfall period, or any period contemporaneous with the shortfall period, in discharge of any renewables obligation imposed in accordance with the relevant statutory provisions²⁸, excluding any qualifying certificates produced by non-compliant United Kingdom suppliers²⁹.

Where a relevant shortfall has occurred, if a designated electricity supplier makes a payment to other United Kingdom suppliers in relation to its failure to discharge its renewables obligation in full in relation to the shortfall period, excluding any payments made by the first supplier in respect of mutualisation payments³⁰ made by the other designated electricity suppliers:

- 3046 (i) the designated electricity supplier who made such payment must notify the Authority, immediately after making the payment, of the United Kingdom suppliers to which the payments were made, how much each supplier received and to which obligation period the payment relates; and
- 3047 (ii) any designated electricity supplier who received such payment must notify the Authority, immediately after receiving the payment, of the amount it received³¹.

Where, before 1 August in the obligation period immediately following the mutualisation period, the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period, the Authority must, as soon as reasonably practicable:

- 3048 (A) recalculate the amount to be recovered³² by reducing the specified amount by the total amount received by the United Kingdom suppliers;
- 3049 (B) issue a revised notification to each relevant supplier detailing the recalculated amount to be recovered³³ from all relevant suppliers and the recalculated amount of the total payment the relevant supplier is required to make³⁴ ('recalculated supplier payment') and a breakdown of any instalment payments required after the date of the notification in respect of the recalculated supplier payment³⁵ ('future instalment payments')³⁶.

Where the instalment payments already made by a relevant supplier are less than the recalculated supplier payment required from a relevant supplier, that supplier must make future instalment payments on the dates mentioned in heads (1) to (4) above which have not yet passed, each instalment payment being equal to the outstanding amount³⁷ divided by the number of future instalment payments³⁸. Where, following such a recalculation, a relevant supplier has paid more than the recalculated supplier payment, the Authority must, where it has received instalment payments under heads (1) to (4) above but has not yet paid out the mutualisation fund, repay to each relevant supplier from the mutualisation fund the difference, together with any interest received thereon by the Authority, between the amount that the supplier has paid and the recalculated supplier payment³⁹; and where the Authority is so required to repay sums to each relevant supplier and the mutualisation fund is insufficient to enable the Authority to repay each relevant supplier in full, the Authority must reduce the sum to be paid to each supplier by a proportion equal to the proportion which that deficit bears to the amount that would have sufficed for that purpose and the supplier is not to be entitled to any further payments from the Authority in this regard⁴⁰. Where, following such a recalculation, a relevant supplier has paid more than the recalculated supplier payment but there is no

mutualisation fund to pay out, the supplier is not to be entitled to any repayment from the Authority⁴¹.

If the Authority receives a notification from a United Kingdom supplier in relation to a payment made by a designated electricity supplier in respect of the designated electricity supplier's failure to discharge its renewables obligation in full for the shortfall period and, due to any recalculations required⁴², it is not reasonably practicable for it to pay out the mutualisation fund by the date required by heads (a) to (d) above, the Authority must pay out the mutualisation fund as soon as reasonably practicable after that date⁴³.

1 For the meaning of 'late payment period' see PARA 1233 note 8 ante.

2 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

4 For these purposes, 'relevant shortfall' means, in relation to any obligation period set out in the Renewables Obligation Order 2006, SI 2006/1004, art 27(1)(i), Sch 4 col 1, a shortfall which is equal to or greater than the corresponding amount set out in Sch 4 col 2; and 'shortfall' means the difference between (1) the payment total; and (2) what the payment total would have been if all the designated electricity suppliers who, at the end of the late payment period in relation to an obligation period had not discharged or were not treated as if they had discharged their renewables obligation in full under art 23(2) (see PARA 1233 ante), had made a payment referred to in art 23(6)(a)(i) (see PARA 1233 note 7 ante at head (1)): art 27(1)(i), (k). 'Payment total' means the total of (a) the buy-out fund in relation to the obligation period in question, immediately before it was paid out in accordance with art 22 (see PARA 1226 ante); and (b) the late payment fund (see PARA 1233 ante) in relation to the obligation period in question (less any sums paid to the Authority as referred to in art 23(6)(a)(ii): see PARA 1233 note 7 head (2) ante) immediately before it is paid out in accordance with art 23: art 27(1)(g). For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante; and as to the renewables obligation see art 3(1); and PARA 1223 ante.

5 Ibid art 24(1)(a).

6 For these purposes, 'relevant supplier' means any designated electricity supplier with a renewables obligation for the shortfall period, which at the end of the late payment period in relation to the shortfall period, had discharged or is treated as if it had discharged the whole or part of its renewables obligation: ibid art 27(1)(j). 'Shortfall period' means an obligation period in respect of which a relevant shortfall occurs: art 27(1)(l).

7 Ie in accordance with ibid art 24(3): see the text and notes 12-13 infra.

8 Ie under ibid art 24(4): see the text and note 14 infra.

9 Ibid art 24(1)(b).

10 See note 7 supra.

11 Renewables Obligation Order 2006, SI 2006/1004, art 24(2).

12 For these purposes, 'specified amount' means, subject to ibid arts 24(5), (6), 26(3) (see note 13 infra and the text and notes 32-36 infra) and art 27(2), the whole of the relevant shortfall, except to the extent that it exceeds £200m: art 27(1)(m). If, in the case of the calendar year 2006 or any subsequent calendar year, the annual retail prices index for that year ('the later year') is higher or lower than that for the previous year, the figure of £200m used in the definition of 'specified amount' must, in relation to the obligation period beginning on 1 April immediately following the later year, be increased (if the index is higher) or decreased (if the index is lower) by the annual percentage inflation rate of the retail prices index for the later year: art 27(2). Where the figure of £200m is so modified, the resulting figure must be rounded to the nearest pound (with any exact amount of 50 pence being rounded upwards: art 27(3). For the meaning of 'retail prices index' see PARA 1226 note 12 ante.

13 Ibid art 24(3). When calculating the amount to be recovered from all relevant suppliers in accordance with art 24(3), the Authority must, where a non-compliant United Kingdom supplier has complied in part with any renewables obligation imposed on that supplier in accordance with the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland legislation by producing qualifying certificates to the Authority or to the Northern Ireland Authority for Energy Regulation (the Northern Ireland authority) in respect of a shortfall period or any period contemporaneous with the shortfall period, reduce the

specified amount in accordance with the Renewables Obligation Order 2006, SI 2006/1004, art 24(6): art 24(5). Where art 24(5) applies, the specified amount must be reduced by a proportion which is equal to the proportion which the amount of the electricity covered by all the qualifying certificates produced by the non-compliant United Kingdom supplier as mentioned in art 24(5) bears to the total amount of the electricity covered by all of the qualifying certificates produced to the Authority or to the Northern Ireland authority in respect of that shortfall period or any period contemporaneous with that shortfall period in discharge of any renewables obligation imposed in accordance with the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland legislation: Renewables Obligation Order 2006, SI 2006/1004, art 24(6). For these purposes, 'non-compliant United Kingdom supplier' means a United Kingdom supplier which, at the end of the late payment period, has not discharged or is not treated as if it had discharged in full every renewables obligation imposed on that supplier in accordance with the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland legislation, in respect of the obligation period to which that late payment period relates, or any period contemporaneous with that obligation period: Renewables Obligation Order 2006, SI 2006/1004, art 27(1)(e). For the meaning of 'United Kingdom supplier' see PARA 1226 note 18 ante; and for the meaning of 'qualifying certificate' see PARA 1226 note 19 ante.

14 Ibid art 24(4).

15 Ie subject to ibid art 26(3), (4): see the text and notes 32-38 infra.

16 For these purposes, 'mutualisation period' means the second obligation period following a shortfall period: ibid art 27(1)(d).

17 Ibid art 24(7).

18 Ie under the Electricity Act 1989 s 6(1) (as substituted and amended): see PARA 1065 ante.

19 Ie ibid ss 25-28 (as amended): see PARA 1207 et seq ante.

20 Renewables Obligation Order 2006, SI 2006/1004, art 24(8).

21 For these purposes, 'mutualisation fund' means the aggregate at any given time of the amounts (excluding any amounts repaid under ibid art 26(5): see the text and note 39 infra) received by the Authority under arts 24, 26 in respect of a shortfall period (together with any interest received thereon by the Authority): art 27(1)(b).

22 Ie the system of allocation specified in ibid art 25(2)-(6): see the text and notes 24-29 infra.

23 Ibid art 25(1).

24 For these purposes, 'compliant United Kingdom supplier' means a United Kingdom supplier which at the end of the late payment period has discharged or is treated as if it had discharged in full every renewables obligation imposed on that supplier in accordance with the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland provision, in respect of the obligation period to which that late payment period relates, or any period contemporaneous with that obligation period: Renewables Obligation Order 2006, SI 2006/1004, art 27(1)(a).

25 Ie the conditions specified in ibid art 25(3), (4) and (5). The applicable condition for a designated electricity supplier is that, in respect of that shortfall period, it has complied (in whole or in part) with its renewables obligation by producing qualifying certificates to the Authority: art 25(3). As to the applicable condition for an electricity supplier supplying electricity in Scotland see art 25(4); and as to the applicable condition for a Northern Ireland supplier see art 25(5). For the meaning of 'qualifying certificate' see PARA 1226 note 19 ante; and for the meaning of 'Northern Ireland supplier' see PARA 1226 note 18 ante.

26 Ibid art 25(2).

27 Ie as mentioned in ibid art 25(3), (4) and (5): see note 25 supra.

28 Ie imposed in accordance with the Electricity Act 1989 s 32(1) (as substituted) (see PARA 1219 ante) or the corresponding Northern Ireland provision.

29 Renewables Obligation Order 2006, SI 2006/1004, art 25(6).

30 For these purposes, 'mutualisation payment' means a payment required under ibid art 24(4): art 27(1)(c).

31 Ibid art 26(1). Where a designated electricity supplier receives a payment from an electricity supplier supplying electricity in Scotland in relation to the electricity supplier's failure to discharge in full any renewables obligation imposed on it in accordance with the Electricity Act 1989 s 32(1) (as substituted and amended), the

designated electricity supplier must notify the Authority, immediately after receiving the payment, of the amount it received: Renewables Obligation Order 2006, SI 2006/1004, art 26(8).

32 Ie under ibid art 24(3).

33 See note 32 *supra*.

34 Ie under the Renewables Obligation Order 2006, SI 2006/1004, art 24(4).

35 Ie in accordance with ibid art 26(4): see the text and notes 37-38 *infra*.

36 Ibid arts 26(3), 27(1)(h).

37 For these purposes, 'outstanding amount' means the recalculated supplier payment less the total of any instalment payments already made by the relevant supplier in accordance with ibid art 24(7) (see heads (1)-(4) in the text): art 27(1)(f).

38 Ibid art 26(4).

39 Ibid art 26(5).

40 Ibid art 26(6).

41 Ibid art 26(7).

42 Ie under ibid art 26(3): see the text and notes 32-36 *supra*.

43 Ibid art 26(2).

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(f) Provision of Information and Functions of the Gas and Electricity Markets Authority/1235. Provision of information to the Gas and Electricity Markets Authority.

(f) Provision of Information and Functions of the Gas and Electricity Markets Authority

1235. Provision of information to the Gas and Electricity Markets Authority.

The Gas and Electricity Markets Authority ('GEMA')¹ may require a designated electricity supplier² to provide it with such information in such form and within such time as it may reasonably require which is, in the Authority's opinion, relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation³ in relation to any obligation period⁴. The Authority may request any person who generates, supplies, distributes or transmits electricity in relation to which a ROC⁵ has been or may be issued, or any person who buys or sells such electricity or ROCs, otherwise than as a consumer, to provide the Authority with such information in such form and within such time as it may reasonably request in order to carry out any of its functions under the Renewables Obligation Order 2006⁶.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.

3 As to the renewables obligation see PARA 1223 ante.

4 Renewables Obligation Order 2006, SI 2006/1004, art 28(1).

5 For the meaning of 'ROC' see PARA 1223 note 12 ante.

6 Renewables Obligation Order 2006, SI 2006/1004, art 28(2). As to the Authority's functions under that Order see PARA 1237 post.

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(f) Provision of Information and Functions of the Gas and Electricity Markets Authority/1236. Exchange of information with the Northern Ireland Authority for Energy Regulation.

1236. Exchange of information with the Northern Ireland Authority for Energy Regulation.

The Gas and Electricity Markets Authority ('GEMA')¹ must, as soon as reasonably practicable after the specified day², notify the Northern Ireland Authority for Energy Regulation ('the Northern Ireland authority') of the NIROC identifier³ of each NIROC produced to it⁴ by a designated electricity supplier⁵ and the name of the designated electricity supplier which produced that NIROC and of the total number of NIROCs produced to GEMA⁶ in respect of the obligation period⁷ to which the specified day relates⁸.

GEMA must, as soon as reasonably practicable after receiving a notification from the Northern Ireland authority as to the ROC identifiers⁹ of ROCs produced to it by the Northern Ireland suppliers¹⁰ under any NIRO order¹¹, inform the Northern Ireland authority of:

- 3050 (1) the ROC identifier of any ROC so notified which it has revoked¹² and whether it has issued a replacement ROC¹³ in respect of any such ROC, unless that replacement ROC has itself been revoked;
- 3051 (2) the ROC identifier of any ROC so notified that has also been produced by a designated electricity supplier¹⁴ and the date on which it was also produced¹⁵.

GEMA must as soon as reasonably practicable after the specified day notify the Northern Ireland authority as to the number of certificates produced to it¹⁶ and the number of certificates certifying the specified matters¹⁷ produced to it by each designated electricity supplier¹⁸ in respect of the obligation period to which the specified day relates¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see generally para 708 note 5 ante. In the text and notes 2-19, however, the abbreviation 'GEMA' has been used, rather than 'the Authority', despite the fact that the relevant regulations are made under the Electricity Act 1989, in order to avoid any possible confusion with the Northern Ireland authority.

2 For the meaning of 'specified day' see PARA 1223 note 3 ante.

3 For the meaning of 'NIROC identifier' see PARA 1227 note 19 ante; and for the meaning of 'NIROC' see PARA 1226 note 10 ante.

4 Ie under the Renewables Obligation Order 2006, SI 2006/1004, art 12: see PARA 1227 ante.

5 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.

6 See note 4 supra.

7 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

8 Renewables Obligation Order 2006, SI 2006/1004, art 29(1).

9 For the meaning of 'ROC identifier' see PARA 1227 note 24 ante; and for the meaning of 'ROC' see PARA 1223 note 12 ante.

- 10 For the meaning of 'Northern Ireland supplier' see PARA 1226 note 18 ante.
- 11 For the meaning of 'NIRO order' see PARA 1226 note 10 ante.
- 12 Ie under the Renewables Obligation Order 2006, SI 2006/1004, art 20: see PARA 1231 ante.
- 13 Ie under ibid 20(4)(b): see PARA 1231 ante.
- 14 Ie under ibid art 3(2): see PARA 1223 ante.
- 15 Ibid art 29(2).
- 16 Ie under ibid art 3: see PARA 1223 ante.
- 17 Ie the matters in the Electricity Act 1989 s 32B(2A) (as added): see PARA 1221 ante at head (2) in the text.
- 18 Ie under ibid art 13 (as substituted): see PARA 1227 ante.
- 19 Ibid art 29(3).

**1223-1238 The renewables obligation; amount of the renewables obligation ...
Preliminary accreditation and accreditation of generating stations**

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(f) Provision of Information and Functions of the Gas and Electricity Markets Authority/1237. Functions of the Gas and Electricity Markets Authority.

1237. Functions of the Gas and Electricity Markets Authority.

In addition to the functions assigned to it elsewhere in the Renewables Obligation Order 2006¹, the Gas and Electricity Markets Authority ('GEMA')² has the following specific functions:

- 3052 (1) keeping, maintaining and making available to the public a list of generating stations³ granted preliminary accreditation and accreditation⁴, together with any applicable conditions attached to the preliminary accreditation or accreditation;
 - 3053 (2) keeping and maintaining a list of ROCs⁵ which have been revoked and making that list available to the public;
 - 3054 (3) calculating and publishing before the start of each obligation period⁶, with the exception of the first obligation period to which the 2006 Order relates, the amount of the payment per megawatt hour of electricity referred to in the provision allowing payments as an alternative way of discharging the renewables obligation⁷ which results from the adjustments made to reflect changes in the retail prices index⁸;
 - 3055 (4) calculating and publishing before the start of each obligation period, with the exception of the first obligation period to which that Order relates, the figure limiting the relevant shortfall⁹ which results from the adjustments made to reflect changes in the retail prices index;
 - 3056 (5) publishing from time to time the total ROC claim¹⁰;
 - 3057 (6) by 1 April each year (with the exception of 1 April 2006 and 1 April 2007) publishing an annual report in relation to the obligation period ending on 31 March in the previous calendar year, such report to include details or, in the case of head (i) below, a summary of:
- 297
- 430. (a) the compliance of each designated electricity supplier¹¹ with its renewables obligation¹², including the extent to which that obligation has been met by the production of ROCs¹³, payments made under the provision described in head (3) above¹⁴ or the production of NIROCs¹⁵, or treated as met by payments made under the provision allowing for late payments¹⁶;
 - 431. (b) the sums received by each United Kingdom supplier¹⁷ under the provisions for payment out of the buy-out fund¹⁸ and the late payments fund¹⁹;
 - 432. (c) the number of ROCs issued by the Authority²⁰, the number of ROCs and other certificates accepted by it as evidence²¹, the number of NIROCs accepted by it²², the number of ROCs and other certificates accepted by it under the specified statutory provision²³, and the number of ROCs issued but not yet deleted in respect of the obligation period;
 - 433. (d) the number of ROCs issued by the Authority²⁴ broken down into different descriptions of generating stations²⁵;
 - 434. (e) any notices of shortfall published by the Authority²⁶;
 - 435. (f) any instalment payments made to the Authority²⁷ during the period to which the annual report relates;
 - 436. (g) the sums received by each compliant United Kingdom supplier²⁸ during the period to which the annual report relates;

437. (h) any recalculations carried out by the Authority²⁹ during the period to which the annual report relates;
438. (i) the outcome of any inquiries or investigations conducted by the Authority pursuant to head (7) below; and
439. (j) any other matters which the Authority considers relevant to the implementation of the 2006 Order;
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- 3058 (7) monitoring implementation of the renewables obligation and compliance with the 2006 Order by designated electricity suppliers and operators of generating stations, including compliance by operators of generating stations with any conditions attached to their accreditation; and such monitoring may include conducting inquiries or investigations into:
- 299
440. (a) the quantities of electricity generated from eligible renewable sources³⁰ by accredited generating stations;
441. (b) the quantities of such electricity supplied to customers in Great Britain;
442. (c) the transfer and holding of ROCs;
443. (d) the effect of such matters on the making and allocation of payments under the specified statutory provisions³¹; and
444. (e) the effect of the renewables obligation on designated electricity suppliers and the operators of generating stations;
- 300
- 3059 (8) publishing at its discretion reports of inquiries or investigations conducted by the Authority pursuant to head (7) above; and
- 3060 (9) the provision of such information to the Northern Ireland Authority for Energy Regulation as the Authority considers may be relevant to the exercise of the Northern Ireland authority's functions under any NIRO order³².

1 le in the Renewables Obligation Order 2006, SI 2006/1004 (as amended): see PARA 1223 et seq ante, PARA 1238 post.

2 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

3 For the meaning of 'generating station' see PARA 1041 note 6 ante.

4 le in accordance with the Renewables Obligation Order 2006, SI 2006/1004, art 31: see PARA 1238 post. For the meaning of 'accreditation' see PARA 1224 note 27 ante.

5 For the meaning of 'ROC' see PARA 1223 note 12 ante.

6 For the meaning of 'obligation period' see PARA 1223 note 6 ante.

7 le the Renewables Obligation Order 2006, SI 2006/1004, art 11: see PARA 1226 ante.

8 For the meaning of 'retail prices index' see PARA 1226 note 12 ante.

9 le the figure referred to in the Renewables Obligation Order 2006, SI 2006/1004, art 27(2): see PARA 1234 note 12 ante.

10 'Total ROC claim' means the total number of ROCs which have been claimed in respect of a particular obligation period, after deducting (1) the number of ROCs which have been issued in respect of that obligation period; and (2) the number of ROCs which the Authority has, in respect of that obligation period, decided not to issue or refused to issue under ibid art 17(2) or 17(3) (see PARA 1228 ante): art 2(1).

11 For the meaning of 'designated electricity supplier' see PARA 1223 note 2 ante.

12 As to the renewables obligation see PARA 1223 ante.

- 13 le pursuant to the Renewables Obligation Order 2006, SI 2006/1004, art 3 (see PARA 1223 ante) or art 13 (as substituted) (see PARA 1227 ante).
- 14 le under ibid art 11: see PARA 1226 ante.
- 15 le pursuant to ibid art 12: see PARA 1227 ante. For the meaning of 'NIROC' see PARA 1226 note 10 ante.
- 16 le ibid art 23: see PARA 1233 ante.
- 17 For the meaning of 'United Kingdom supplier' see PARA 1226 note 18 ante.
- 18 le under the Renewables Obligation Order 2006, SI 2006/1004, art 22: see PARA 1226 ante.
- 19 le under ibid art 23: see PARA 1233 ante.
- 20 le in accordance with ibid arts 15, 20: see PARAS 1228, 1231 ante.
- 21 le under ibid art 3(1): see PARA 1223 ante.
- 22 le under ibid art 12: see PARA 1227 ante.
- 23 le under ibid art 13: see PARA 1227 ante.
- 24 See note 20 supra.
- 25 le as referred to in ibid Sch 2 para 2: see PARA 1230 ante.
- 26 le under ibid art 24(2): see PARA 1234 ante.
- 27 le in accordance with ibid art 24(7): see PARA 1234 ante.
- 28 le under ibid art 25(2): see PARA 1234 ante. For the meaning of 'compliant United Kingdom supplier' see PARA 1234 note 24 ante.
- 29 le in accordance with ibid art 26(3): see PARA 1234 ante.
- 30 For the meaning of 'eligible renewable sources' see ibid art 5; and PARA 1224 ante.
- 31 le under ibid arts 11, 22, 23, 24, 25 and 26: see PARAS 1226, 1233-1234 ante.
- 32 Ibid art 30(a)-(i). For the meaning of 'NIRO order' see PARA 1226 note 10 ante.

1223-1238 The renewables obligation; amount of the renewables obligation ... Preliminary accreditation and accreditation of generating stations

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/C. THE RENEWABLES OBLIGATION/(B) The Renewables Obligation Order 2006/(f) Provision of Information and Functions of the Gas and Electricity Markets Authority/1238. Preliminary accreditation and accreditation of generating stations.

1238. Preliminary accreditation and accreditation of generating stations.

The following provisions apply to the granting and withdrawing of preliminary accreditation and accreditation¹ of generating stations².

Where a generating station in respect of which:

- 3061 (1) the consent of the Secretary of State³ has been obtained; or
- 3062 (2) planning permission⁴ has been granted,

has not been commissioned⁵, the Gas and Electricity Markets Authority ('GEMA')⁶ may, upon the application of the person who proposes to construct or operate the generating station⁷, grant the station preliminary accreditation as being capable of generating electricity from eligible renewable sources⁸.

Where a generating station has been commissioned, the Authority may, upon the application of its operator, grant the station accreditation for the purposes of the specified⁹ relevant criterion¹⁰. Where a station has been granted preliminary accreditation, and such preliminary accreditation has not been withdrawn, and an application for its accreditation is validly made under the above provision, the Authority must not grant that application if:

- 3063 (a) in the Authority's view there has been a material change in circumstances since the preliminary accreditation was granted;
- 3064 (b) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation was based was incorrect in a material particular; or
- 3065 (c) there has been a change in applicable legislation since the preliminary accreditation was granted such that, had the application for preliminary accreditation been made under the amended legislation, it would not in the Authority's view have been granted¹¹.

Otherwise, however, the Authority must grant the application¹².

The Authority may, in granting preliminary accreditation or accreditation, attach such conditions as appear to it to be appropriate¹³.

Where any of the circumstances mentioned in heads (A) to (D) below apply, the Authority may:

- 3066 (i) withdraw the preliminary accreditation or accreditation from any generating station;
- 3067 (ii) amend conditions attached to the preliminary accreditation or accreditation;
- 3068 (iii) attach conditions to the preliminary accreditation or accreditation¹⁴.

Those circumstances are as follows:

- 3069 (A) in the Authority's view there has been a material change in circumstances since the preliminary accreditation or accreditation was granted;
- 3070 (B) any condition subject to which preliminary accreditation or accreditation was granted has not been complied with;
- 3071 (C) the Authority has reason to believe that the information on which the decision to grant the preliminary accreditation or accreditation was based was incorrect in a material particular;
- 3072 (D) there has been a change in applicable legislation since the preliminary accreditation or accreditation was granted such that, had the application for preliminary accreditation or accreditation been made under the amended legislation, it would not in the Authority's view have been granted¹⁵.

The Authority must notify the applicant in writing¹⁶ of its decision on an application for preliminary accreditation or accreditation of a generating station, of any conditions attached to the preliminary accreditation or accreditation and of any withdrawal of preliminary accreditation or accreditation¹⁷. In providing such written notification, the Authority must specify the date on which the grant or withdrawal of preliminary accreditation or accreditation is to take effect and, where applicable, the date on which any conditions attached to the preliminary accreditation or accreditation are to take effect¹⁸.

1 For the meaning of 'accreditation' see PARA 1224 note 27 ante.

2 Renewables Obligation Order 2006, SI 2006/1004, art 31(1). For the meaning of 'generating station' see PARA 1041 note 6 ante.

3 Ie under the Electricity Act 1989 s 36 (as amended): see PARA 1249 post.

4 Ie under the Town and Country Planning Act 1990: see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq.

5 For the meaning of 'commissioned' see PARA 1224 note 19 ante.

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 The reference in the text to the person who proposes to construct the generating station includes a person who arranges for the construction of the generating station: Renewables Obligation Order 2006, SI 2006/1004, art 31(10).

8 Ibid art 31(2).

9 Ie for the purposes of ibid art 16(2): see PARA 1228 note 1 head (1) ante.

10 Ibid art 31(3).

11 Ibid art 31(4)(a)-(c).

12 Ibid art 31(4).

13 Ibid art 31(5).

14 Ibid art 31(6).

15 Ibid art 31(7).

16 For the meaning of 'in writing' see PARA 1229 note 7 ante.

17 Renewables Obligation Order 2006, SI 2006/1004, art 31(8).

18 Ibid art 31(9).

**1223-1238 The renewables obligation; amount of the renewables obligation ...
Preliminary accreditation and accreditation of generating stations**

SI 2006/1004 (as amended) replaced: Renewables Obligation Order 2009, SI 2009/785.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/D. ELECTRICITY FROM NON-FOSSIL FUEL SOURCES AND FOSSIL FUEL LEVY; TRANSITIONAL ARRANGEMENTS AND SAVINGS/1239. Secretary of State's power to make relevant orders.

D. ELECTRICITY FROM NON-FOSSIL FUEL SOURCES AND FOSSIL FUEL LEVY; TRANSITIONAL ARRANGEMENTS AND SAVINGS

1239. Secretary of State's power to make relevant orders.

The Secretary of State¹ may by order made by statutory instrument² make such provision as he considers necessary or expedient for the purpose of:

- 3073 (1) saving orders made before 1 October 2001³ under the provision of the Electricity Act 1989⁴ which, before its substitution by the Utilities Act 2000⁵, made provision with regard to electricity from non-fossil fuel sources⁶;
- 3074 (2) preserving, modifying, replacing or otherwise dealing with arrangements (as mentioned in that provision) made pursuant to such an order, including making provision for substituting different parties to the arrangements or for replacement arrangements to be between parties different from those party to the replaced arrangements⁷;
- 3075 (3) requiring the continued payment of any fossil fuel levy payable by virtue of the provision of the Electricity Act 1989 imposing that levy⁸ and providing for payments out of that levy despite the repeal of that provision⁹.

Such an order may, in particular:

- 3076 (a) provide for the specified provisions of the Electricity Act 1989¹⁰ to continue to have effect with modifications specified in the order¹¹;
- 3077 (b) provide for what is to happen in relation to the fossil fuel levy and payments out of it in certain specified circumstances¹²;
- 3078 (c) provide in such a case as is referred to in head (b) above payments of amounts determined in accordance with the order¹³ to be made by, instead of to, the person to whom payments out of the fossil fuel levy would otherwise have been made¹⁴.

Such an order may provide:

- 3079 (i) that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part I of the Electricity Act 1989¹⁵; and
- 3080 (ii) for one of those requirements to be that a person referred to in head (A) or head (B) below is not to act or omit to act as set out there¹⁶.

The persons, acts and omissions referred to in head (ii) above are:

- 3081 (A) an act or omission by a person subject to requirements contained in the order which prevents any arrangements made pursuant to the order from securing such results as are specified in the order; and

3082 (B) an act or omission by a party to arrangements made pursuant to an order under the specified provision of the Electricity Act 1989¹⁷ made before 1 October 2001, or such arrangements as modified or replaced by virtue of an order under the above provisions, which prevents the arrangements from securing the specified¹⁸ result¹⁹.

An order under the above provisions may make different provision for different areas²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 A statutory instrument containing an order under the Utilities Act 2000 is subject to annulment in pursuance of a resolution of either House of Parliament: s 67(8).

3 Ie before the coming into force of *ibid* s 62: see the Utilities Act 2000 (Commencement No 6 and Transitional Provisions) Order 2001, SI 2001/3266, art 2, Schedule.

4 Ie the Electricity Act 1989 s 32 (as originally enacted and as amended by the Environment Act 1995 s 120(1), Sch 22 para 39(1)-(3)).

5 Ie by the Utilities Act 2000 s 62: see PARA 1219 ante.

6 *Ibid* s 67(1)(b).

7 *Ibid* s 67(1)(c). The power in s 67(1)(c) might be exercised before, and may be exercised after, 1 October 2001: s 67(2).

8 Ie the Electricity Act 1989 s 33 (as amended) (now repealed with savings by the Utilities Act 2000 ss 66, 108, Sch 8).

9 Utilities Act 2000 s 67(1)(d). The Secretary of State also had power to make provision by order made by statutory instrument providing for the Electricity Act 1989 s 32 (as originally enacted and as amended by the Environment Act 1995 s 120(1), Sch 22 para 39(1)-(3)) to have effect, before its substitution by the Utilities Act 2000 s 62, with modifications specified in the order (but if this power was exercised the modifications were to include the omission of the Electricity Act 1989 s 32(3) and (4)): see the Utilities Act 2000 s 67(1)(a).

10 Ie the Electricity Act 1989 s 32 (apart from s 32(3) and (4)) as it had effect immediately before 1 October 2001 or s 33 as it had effect immediately before 21 November 2000 (ie the date of the coming into force of the Utilities Act 2000 s 66: see the Utilities Act 2000 (Commencement No 1 and Saving) Order 2000, SI 2000/2412, art 3(1)).

11 Utilities Act 2000 s 67(3).

12 *Ibid* s 67(4)(a). The specified circumstances are if in any month (1) the cost referred to in the Electricity Act 1989 s 33(5)(b) (repealed with savings) is greater than the cost referred to in s 33(5)(a) (repealed with savings); or (2) the same is true in relation to any other corresponding measures referred to in s 33 (repealed with savings) as modified under the Utilities Act 2000 s 67(3): see s 67(4)(a)(i), (ii).

13 Ie but not exceeding the difference between the sums referred to in *ibid* s 67(4)(a): see note 12 *supra*.

14 *Ibid* s 67(4)(b).

15 Ie for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq* ante, PARA 1240 *et seq* post. For the meaning of 'relevant requirement' see PARA 1207 note 5 ante.

16 Utilities Act 2000 s 67(5). While, however, the Electricity Act 1989 s 32(3), (4) (as originally enacted) remained in force, such an order might not provide for anything which would have been an offence under s 32(3) (as originally enacted) to be treated as a relevant requirement: Utilities Act 2000 s 67(5).

17 Ie under the Electricity Act 1989 s 32 (as originally enacted and as amended by the Environment Act 1995 s 120(1), Sch 22 para 39(1)-(3)).

18 Ie the result mentioned in the Electricity Act 1989 s 67(2) (as originally enacted) or that subsection as modified by virtue of an order under the Utilities Act 2000 s 67, or such corresponding result as is specified in the order: see s 67(6)(b).

19 Ibid s 67(6)(a), (b).

20 Ibid s 67(7).

UPDATE

1239-1240 Secretary of State's power to make relevant orders, Arrangements for securing the availability of generating capacity from non- fossil fuel sources

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1239 Secretary of State's power to make relevant orders

TEXT AND NOTE 7--Utilities Act 2000 s 67(1)(c) amended: Energy Act 2008 s 39.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/D. ELECTRICITY FROM NON-FOSSIL FUEL SOURCES AND FOSSIL FUEL LEVY; TRANSITIONAL ARRANGEMENTS AND SAVINGS/1240. Arrangements for securing the availability of generating capacity from non-fossil fuel sources.

1240. Arrangements for securing the availability of generating capacity from non-fossil fuel sources.

As originally enacted, the Electricity Act 1989 contained powers for the Secretary of State¹ to make orders requiring each public electricity supplier² in England and Wales, before a day specified in the order, to make (in so far as it had not already done so), and produce evidence showing that it had made, (1) such arrangements; or (2) where a previous order had effect in relation to that supplier, such additional arrangements, as would secure the required result³. That result was that for a period specified in the order there would be available to the public electricity supplier from non-fossil fuel generating stations⁴ or, if the order so provided, from non-fossil fuel generating stations of any particular description⁵, an aggregate amount of generating capacity which was not less than that specified in relation to that supplier in the order⁶. Such an order might make different provision for different suppliers⁷. The relevant statutory provisions were amended by the Environment Act 1995 so as to provide that combined heat and power stations⁸, whether generally or of any particular description, were to be taken as being particular descriptions of non-fossil fuel generating stations⁹.

Despite the substitution by the Utilities Act 2000 for the provisions described above of new provisions conferring power on the Secretary of State to impose, by order, the renewables obligation on designated electricity suppliers, as already discussed¹⁰, the earlier provisions, and certain orders made under them¹¹, continue to have effect with prescribed modifications¹² for the purposes¹³ set out below¹⁴.

Each supply successor company¹⁵ was to ensure that before the thirtieth day following the commencement of the order period¹⁶ it had produced evidence to the Gas and Electricity Markets Authority ('GEMA')¹⁷ that it had made arrangements (or amendments to previously existing arrangements) jointly with all other supply successor companies to secure that the nominated person¹⁸ had made arrangements to secure (or which continued to secure) that the statutory requirements¹⁹ ('the requirements') were complied with²⁰. At all times during the order period each supply successor company is under a duty to secure that the requirements are complied with²¹ and it must not by any act or omission prevent any new arrangements²² from securing that there is available to the nominated person from the specified non-fossil fuel generating stations the required aggregate amount of generating capacity²³.

Each supply successor company must supply the Authority with such information, or with information of a particular kind, requested by the Authority and which in that company's opinion is relevant to the question whether the supply successor company, either acting individually or jointly with other supply successor companies, is discharging, or has discharged, its statutory²⁴ obligations²⁵. Information so requested by the Authority must be given to it in whatever form it requires²⁶; but no person is to be required by virtue of these provisions to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court²⁷.

If, by 27 March 2001, any generator had not entered into the new arrangements with the nominated person, the generator was to be deemed:

- 3083 (a) to have entered into an agreement with the nominated person on and with effect from 27 March 2001 on those terms last offered to him in writing by the nominated person prior to 27 March 2001, to the extent that those terms comply with all prescribed requirements²⁸ in relation to new arrangements²⁹; and
- 3084 (b) to have terminated the original arrangements to which he was a party, without prejudice to any rights or liabilities existing prior to such termination, with termination having effect immediately before he was deemed to have entered into the agreement referred to in head (a) above³⁰.

A supply successor company ('the company') must notify the Secretary of State in writing immediately upon the occurrence of any of the following events and such notification must include the identity of any relevant third parties (as referred to in heads (vi) and (viii) below):

- 3085 (i) the company passes a resolution that it would be wound up;
- 3086 (ii) a court makes a winding-up order in relation to the company or the company enters administration;
- 3087 (iii) the company makes a composition or arrangement with its creditors;
- 3088 (iv) an administrative receiver, receiver or manager is appointed to the company by a creditor or by a court;
- 3089 (v) the company ceases to carry on business as an electricity supplier;
- 3090 (vi) the company makes arrangements to transfer its supply licence to a third party;
- 3091 (vii) the company has, or makes arrangements to have, its supply licence revoked or modified; or
- 3092 (viii) the company makes arrangements to transfer all or part of its electricity supply business to a third party³¹.

Where it appears to either the Secretary of State or to the Authority that in relation to the company any of the events listed in heads (i) to (viii) above has taken or will take place, all or part of the obligations of the company under the above provisions³² may be transferred by the Secretary of State to any third party, including any other existing supply successor company, who appears to the Secretary of State to have already or to be about to take over, continue or to have transferred to it all or part of the electricity supply business or the supply licence of the company³³. In those circumstances the Secretary of State must notify the relevant third party and the company in writing of the transfer of obligations³⁴ and that third party becomes a supply successor company with effect from a date specified by the Secretary of State and is to take over all or part of the obligations of the company under the above provisions³⁵ as specified by the Secretary of State³⁶. On making that written notification the Secretary of State must release the company from all or the appropriate part of its obligations under the above provisions³⁷ and must notify the company accordingly and specify the date on which such release is to take effect³⁸.

For enforcement purposes, the obligations of each supply successor company set out above are to be treated as relevant requirements³⁹ for the purposes of Part I⁴⁰ of the Electricity Act 1989⁴¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Public electricity suppliers have now been replaced by electricity suppliers and electricity distributors: see the Utilities Act 2000 s 31(1), cited in PARA 1065 note 9 ante.

3 Electricity Act 1989 s 32(1) (as originally enacted). In exercise of the power so conferred, the Secretary of State made the following orders: (1) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1990, SI 1990/263 (amended by SI 1990/494); (2) the Electricity (Non-Fossil Fuel Sources) (England and Wales) (No 2) Order 1990, SI 1990/1859; (3) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1991, SI

1991/2490; (4) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994, SI 1994/3259 (amended by SI 1995/68); (5) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248; and (6) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998, SI 1998/2353 (made after the amendments to the Electricity Act 1989 s 32 discussed in the text and notes 8-9 *infra*). For transitional provisions with regard to arrangements made before the day specified in the order referred to in head (1) *supra* (ie 1 April 1990) see the Electricity Act 1989 s 32(7) (as originally enacted). Contracts for the 1990 and 1991 Orders have now terminated.

4 Electricity Act 1989 s 32(2)(a) (as originally enacted). For these purposes, a 'non-fossil fuel generating station' meant a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel; and 'fossil fuel' meant coal, coal products, lignite, natural gas, crude liquid petroleum or petroleum products: s 32(8) (as originally enacted). 'Coal products' meant any substances produced directly or indirectly from coal; and 'natural gas' and 'petroleum products' had the same meanings as in the Energy Act 1976 (see PARA 603 notes 3-4 *ante*): Electricity Act 1989 s 32(8) (as originally enacted). For the meaning of 'generating station' see PARA 1041 note 12 *ante*.

5 *Ibid* s 32(2)(b) (as originally enacted). See eg the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1991, SI 1991/2490, art 2, Sch 1, Tables A-F.

6 Electricity Act 1989 s 32(2) (as originally enacted). See further note 3 heads (1)-(6) *supra*.

Subject to s 32(6) (as originally enacted), if throughout any period a public electricity supplier (1) was entitled under a contract to purchase, at any wattage specified in the contract, electricity generated by a particular non-fossil fuel generating station; or (2) himself operated a non-fossil fuel generating station and, of the station's capacity, any wattage did not fall to be regarded, by virtue of head (1) *supra*, as available to any other person, a generating capacity of that wattage was to be regarded for the purposes of s 32 (as originally enacted) as available to that supplier from that station for that period: s 32(5) (as originally enacted). The amount of a non-fossil fuel generating station's capacity which might be regarded as available for these purposes was not to exceed that station's declared net capacity; and where different parts of such a station's capacity fell to be regarded as available to different persons, any excess over that station's declared net capacity was to be apportioned between those persons: see s 32(6) (as originally enacted). 'Declared net capacity', in relation to a non-fossil fuel generating station, meant the highest generation of electricity (at the main alternator terminals) which could be maintained indefinitely without causing damage to the plant less (a) so much of that capacity as was consumed by the plant; and (b) in the case of a station which was capable of being fuelled by a fossil fuel, so much of that capacity as the former Director General of Electricity Supply (now replaced by the Gas and Electricity Markets Authority ('GEMA')) might determine: see s 32(8) (as originally enacted).

The Secretary of State might by regulations provide (i) that s 32(5)-(8) (as originally enacted) was to have effect in relation to any non-fossil fuel generating station which was driven by water, wind or solar power with such modifications as might be prescribed; and (ii) that electricity generated outside the United Kingdom was to be treated for the purposes of s 32(5)(a) (as originally enacted) (see head (2) *supra*) as generated by a non-fossil fuel generating station in such circumstances and to such extent as might be prescribed: see s 32(9) (as originally enacted). As to the exercise of the power under head (i) *supra* see the Electricity Act 1989 (Modifications of Section 32(5) to (8)) Regulations 1990, SI 1990/264; and as to the exercise of the power under head (ii) *supra* see the Electricity (Imported Capacity) Regulations 1990, SI 1990/265.

7 Electricity Act 1989 s 32(2) (as originally enacted). See eg the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1990, SI 1990/263, art 3, Sch 1.

8 For these purposes, 'combined heat and power station' meant a non-fossil fuel generating station which was, or might be, operated for purposes including the supply to any premises of: (1) heat produced in association with electricity; or (2) steam produced from, or air and water heated by, such heat: see the Electricity Act 1989 s 32(8) (as originally enacted; definition added by the Environment Act 1995 s 120(1), Sch 22 para 39(1), (3)).

9 See the Electricity Act 1989 s 32(2A)-(2C) (added by the Environment Act 1995 s 120(1), Sch 22 para 39(1), (2)).

10 See PARA 1219 *ante*.

11 *Ie* the orders cited in note 3 heads (4)-(6) *supra*. Those orders are referred to as 'NFFO Orders 3, 4 and 5': see the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 2(1). Contracts under the 1997 and 1998 Orders (ie NFFO Orders 4 and 5) have been amended by the Electricity from Non-Fossil Fuel Sources Arrangements (England and Wales) Order 2006, SI 2006/2388.

12 For the prescribed modifications see the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 8, which repeals the Electricity Act 1989 s 32(3), (4) (as originally enacted) (enforcement provisions).

13 le for the purposes of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended): see the text and notes 15-41 *infra*.

14 Ibid arts 2(1), 8A (art 8A added by SI 2001/3268).

15 'Supply successor company' means a person who became the holder of a supply licence under the Electricity Act 1989 s 6(1)(d) (as substituted) (see PARA 1065 *ante*) on 1 October 2001 by virtue of a licensing scheme made in relation to a public electricity supplier under the Utilities Act 2000 Sch 7 Pt II (paras 13-22) (see PARA 1034 note 23 *ante*) or such other person who has become a supply successor company by virtue of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 7(3) (see the text and notes 34-36 *infra*); and 'public electricity supplier' means a person who, prior to 1 October 2001, was authorised by a licence to supply electricity under the Electricity Act 1989 s 6(1)(c) as that provision had effect immediately before the coming into force of the Utilities Act 2000 s 30, as to which see PARA 1065 *ante*) and whose 'authorised area' (as defined in the Electricity Act 1989 s 6(9) as that provision had effect immediately before the coming into force of the Utilities Act 2000 s 30) was situated wholly or mainly in England and Wales: Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 2(1) (definitions respectively added and substituted by SI 2001/3268).

16 'Order period' means the period starting on 1 October 2001 and ending on 30 November 2018: Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 2(1) (definition substituted by SI 2001/3268).

17 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.

18 'Nominated person' means the person who was nominated by the public electricity suppliers in compliance with the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3 and approved by the Secretary of State under art 5 (as those provisions had effect immediately before the coming into force of the amendments to the 2000 Order by the Electricity from Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268) unless approval of that person has been withdrawn by the Secretary of State in which case it means the person approved by the Secretary of State under the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 5 (as amended): art 2(1) (definition added by SI 2001/3268). The nominated person is the Non-Fossil Purchasing Agency Ltd.

A person may only become or continue to be a nominated person if that person is registered under the Companies Act 1985 or the Companies Act 2006 as a company limited by shares and is approved by the Secretary of State: Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 5(1); Companies Act 2006 s 1297(5). Without prejudice to the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 10 (as substituted) (enforcement: see the text and notes 39-41 *infra*), if any of the requirements set out in note 19 *infra* are not being met at any time, the Secretary of State may withdraw his approval of the nominated person at any time on such notice as is reasonable in the circumstances. Where the Secretary of State withdraws his approval he may either himself nominate one or more persons to be the nominated person or he may request that the supply successor companies nominate a replacement: art 5(2) (art 5(2), (3) amended, art 5(4), (5) substituted, and art 5(6), (7) added, by SI 2001/3268). Where the Secretary of State has withdrawn his approval of the nominated person in accordance with the above provision, the supply successor companies must jointly bear the administrative costs incurred as a result of this change in proportions to be determined by the Secretary of State: Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 5(3) (as so amended). If the supply successor companies wish to change the person who is to be the nominated person for the purposes of the 2000 Order they must jointly nominate the person they wish to become the nominated person and request in writing that the Secretary of State both approve the person so nominated and withdraw approval of the then existing nominated person: art 5(4) (as so substituted). Where there is a change in the person who is nominated to be the nominated person (either at the instigation of the supply successor companies or the Secretary of State) the Secretary of State's approval of the person so nominated may be conditional on new arrangements having been entered into by the new nominated person by a date specified by the Secretary of State: art 5(5) (as so substituted). In the circumstances described in art 5(5) (as so substituted), the dates referred to in arts 3, 4 and 6 (as amended) may be replaced with dates specified by the Secretary of State and the reference in art 6(1)(b) to the 'original arrangements' is to be read as a reference to arrangements which replace those original arrangements to which the generator (or his successor) was party immediately prior to the date specified by the Secretary of State to be inserted into art 6(1)(a): art 5(6) (as so added). Where requested in writing to approve a person nominated for the purposes of the 2000 Order, the Secretary of State must decide whether to so approve or not and must notify the supply successor companies in writing of that decision within 30 days of receipt of such request: art 5(7) (as so added).

19 le the requirements listed in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 4(1). The requirements are as follows (art 4(1) (amended by SI 2001/3268; and by virtue of the Utilities Act 2000 s 3(2)), ie:

- 77 (1) the nominated person must by the commencement of the order period have made arrangements ('the new arrangements') which replace (in so far as it is necessary to comply with the 2000 Order) the original arrangements but with the nominated person replacing the relevant public electricity supplier as contracting party to those arrangements in each case;
- 78 (2) subject to the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 4(2), the new arrangements must secure that there is available to the nominated person from the non-fossil fuel generating stations described in the orders cited in note 3 heads (3)-(6) supra the aggregate amount of generating capacity which, immediately before 1 October 2001, would have been required by those orders to have been available to public electricity suppliers from that date until the end of the order period, had the 2000 Order not been made;
- 79 (3) having entered into the new arrangements, the nominated person must not by any act or omission of his prevent those arrangements made by him from securing the result mentioned in head (2) supra;
- 80 (4) the new arrangements must be on terms such that generators who are party to them are in substantially the same economic position as regards matters relating to contract price, indexation and term under those new arrangements as they had been in as party to the original arrangements;
- 81 (5) all electricity made available to the nominated person under the new arrangements must be offered for sale to persons who must include all licensed electricity suppliers;
- 82 (6) the nominated person must use his reasonable endeavours to receive the best price reasonably attainable for such electricity;
- 83 (7) the nominated person must conduct himself at all times in relation to his operations in general and in particular in relation to the selling of such electricity in a manner so as to ensure and satisfy the Authority that he does not show any undue preference or exercise any undue discrimination in relation to any licensed electricity supplier or class of licensed electricity supplier; and
- 84 (8) any owner must not gain any advantage from his ownership (save that expressly permitted under either the 2000 Order or regulations made under the Electricity Act 1989 s 33 (repealed with savings: see PARA 1241 post)) in relation to the purchase or sale by the nominated person of electricity which has been made available to him under the new arrangements and arrangements must be in place so as to ensure at all times that any owner does not gain such advantage.

The amount of generating capacity required by head (2) supra to be available to the nominated person must be reduced in the same manner that the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248, art 4 reduced the amount of generating capacity required to be made available to public electricity suppliers by that Order, but the reduction in generating capacity so provided for must be calculated by reference to any adapted conditions instead of by reference to the conditions precedent and termination events set out in the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248, Schs 2, 3; and for these purposes an 'adapted condition' means a condition set out in the new arrangements which has broadly equivalent effect to a provision contained in Sch 2 or Sch 3 taking into account the existence of any new electricity trading arrangements and the fact that it is the nominated person, not a public electricity supplier, who enters into the new arrangements: Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 4(2), (3). Any case of dispute as to whether a condition in the new arrangements is an 'adapted condition' may be referred to and determined by the Secretary of State on application by either the nominated person or a generator who is party to those new arrangements: art 4(4).

'Licensed electricity supplier' means any person falling within the definition of 'electricity supplier' in the Electricity Act 1989 s 6(9) (as substituted) (see PARA 1065 note 7 ante); 'new arrangements' means arrangements made by the nominated person which comply with all the requirements of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 4(1)(a), (b) and (e) (as amended) (see heads (1)-(4) supra); 'generator' means any operator of a non-fossil fuel generating station described in any of the orders cited in note 3 heads (4)-(6) supra who immediately before 27 March 2001 was party to any original arrangements; 'original arrangements' means the additional arrangements referred to in the Electricity Act 1989 s 32 prior to its substitution by the Utilities Act 2000 s 62 which were entered into by public electricity suppliers in compliance with their obligations under the orders cited in note 3 heads (4)-(6) supra; and 'owner' means any person who either directly or indirectly owns or has any interest in the nominated person (and the term 'ownership' is to be construed accordingly): Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 2(1) (definitions of 'generator', 'licensed electricity supplier' and 'original arrangements' substituted by SI 2001/3268).

20 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3(1) (substituted by SI 2001/3268). Within 45 days after the commencement of the order period (or at such later or additional dates as the Secretary of State might consider necessary) the Authority was to report to the Secretary of State the extent to which it was satisfied that the supply successor companies had complied with their obligation in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3(1) (now as substituted): see art 3(6) (added by SI 2001/3268).

21 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3(2) (arts 3(2), (3) amended by SI 2001/3268).

22 See note 19 *supra*.

23 It must not prevent any new arrangements from securing the result mentioned in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 4(1)(b) (as substituted) (see note 19 head (2) *supra*): art 3(2) (as amended: see note 21 *supra*).

24 Its obligations in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended).

25 *Ibid* art 3(3) (as amended (see note 21 *supra*); also amended by virtue of the Utilities Act 2000 s 3(2)).

26 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3(4) (amended by virtue of the Utilities Act 2000 s 3(2)).

27 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 3(5).

28 It all the requirements of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended).

29 Any dispute as to whether the terms of the agreement referred to in head (1) in the text comply with the requirements of the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended) in relation to the new arrangements might be referred to and determined by the Secretary of State where application to the Secretary of State had been made in writing before 1 December 2001. In making his determination under this provision the Secretary of State might give such directions to the nominated person or the generator as appeared to him to be appropriate for varying the terms of the agreement so that they comply with the requirements of the 2000 Order in relation to the new arrangements: art 6(3) (art 6(1)-(3) amended by SI 2001/3268).

30 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 6(1) (as amended: see note 29 *supra*). Where art 6(1) (as amended) applies, the nominated person was to notify the generator in writing within 14 days after 27 March 2001 of the terms of the agreement which are deemed to apply to him: art 6(2) (as so amended).

31 *Ibid* art 7(1) (amended by SI 2001/3268; SI 2003/2096).

32 It under the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended).

33 *Ibid* art 7(2).

34 Its obligations under the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended).

35 See note 32 *supra*.

36 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 7(3).

37 See note 32 *supra*.

38 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 7(4).

39 For the meaning of 'relevant requirement' see PARA 1207 note 5 *ante*.

40 It for the purposes of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq ante*, PARA 1241 *et seq post*.

41 Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 10 (substituted by SI 2001/3268).

UPDATE

**1239-1240 Secretary of State's power to make relevant orders,
Arrangements for securing the availability of generating capacity from non-fossil fuel sources**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1240 Arrangements for securing the availability of generating capacity from non-fossil fuel sources

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/D. ELECTRICITY FROM NON-FOSSIL FUEL SOURCES AND FOSSIL FUEL LEVY; TRANSITIONAL ARRANGEMENTS AND SAVINGS/1241. Power to impose fossil fuel levy.

1241. Power to impose fossil fuel levy.

For the period beginning on 1 October 2001 and ending on 30 November 2018¹, the following provisions continue to have effect².

The Secretary of State³ may by regulations provide⁴:

- 3093 (1) for the imposition on electricity suppliers⁵ of a levy in respect of each qualifying month⁶;
- 3094 (2) for the collection of payments in respect of that levy by a prescribed⁷ person⁸; and
- 3095 (3) for the making of payments by that person to the nominated person⁹ out of the payments so collected¹⁰.

The amount of any payment required to be made to the nominated person by regulations under these provisions must be the difference between:

- 3096 (a) the total cost incurred by the nominated person in purchasing electricity which was generated in pursuance of qualifying arrangements¹¹; and
- 3097 (b) the total amount received by the nominated person in relation to the sale of such electricity or rights relating thereto,

calculated, in each case, by such method and with reference to such periods of time as may be specified by such regulations, and the total cost referred to in head (a) above is to include such costs as are reasonably incurred by the nominated person in relation to the sale and purchase of such electricity and any advance or deferred payments¹². Where the amount referred to in head (b) above is greater than the cost referred to in head (a) above the difference must be paid by the nominated person to the prescribed person referred to in head (2) above, such difference being calculated by such method as may be specified by regulations under these provisions¹³.

Regulations under these provisions may:

- 3098 (i) impose requirements, whether as to the furnishing of records or other information¹⁴ or the affording of facilities for the examination and testing of meters or otherwise, on the nominated person and on persons authorised by a licence to supply, transmit, distribute or generate electricity¹⁵;
- 3099 (ii) make provision as to the times at which payments falling to be made in pursuance of the regulations, whether payments by way of levy or payments to or by the nominated person, are to be so made¹⁶;
- 3100 (iii) require the amount of any overpayment or underpayment which is made by or to any person, whether it arises because an estimate turns out to be wrong or otherwise, to be set off against or added to any subsequent liability or entitlement of that person¹⁷;

- 3101 (iv) make provision for a debt recovery procedure to be followed by the nominated person, including provision for the consequences for the nominated person of that procedure not being followed¹⁸; and
- 3102 (v) include certain transitional measures¹⁹.

The Secretary of State must exercise the powers so conferred on him in the manner which he considers is best calculated to secure that the sums realised by the levy are sufficient, after payment of the administrative expenses of the prescribed person, to pay to the nominated person each qualifying month the payment required to be made to him by the regulations²⁰.

1 le the 'order period': see the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 2(1) (as amended); and PARA 1240 note 16 ante.

2 See *ibid* art 11(1), which provides that the Electricity Act 1989 s 32 (as originally enacted) is to have effect from 21 November 2000, notwithstanding its repeal by the Utilities Act 2000 s 66; and the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 11(2), which modifies the Electricity Act 1989 s 33 with effect from the beginning of the order period.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 Electricity Act 1989 s 33(1) (amended by the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 11(2)(a)). As to the making of regulations generally see the Electricity Act 1989 ss 60, 106 (as amended); and PARA 1306 post.

5 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

6 Electricity Act 1989 s 33(1)(a) (s 33(1)(a), (c) substituted by the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (2)). 'Qualifying month' in relation to an electricity supplier or a public electricity supplier, means a month beginning on or after the day appointed by the first order under the Electricity Act 1989 s 32 (as originally enacted) (see PARA 1240 note 3 ante) which has effect in relation to that supplier and in relation to the nominated person the meaning is to be specified in regulations made under s 33 (as amended and repealed with savings): s 33(8) (substituted by the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (5)). 'Public electricity supplier' means a person who, prior to 1 October 2001, was authorised by a licence to supply electricity under the Electricity Act 1989 s 6(1)(c) (as that provision had effect immediately before the coming into force of the Utilities Act 2000 s 30 (as to which see PARA 1065 ante)) and whose 'authorised area' (as defined in the Electricity Act 1989 s 6(9) as that provision had effect immediately before the coming into force of the Utilities Act 2000 s 30) was situated wholly or mainly in England and Wales: Electricity Act 1989 s 33(8) (as so substituted). For the meaning of 'nominated person' see note 9 *infra*.

The amount of any payment which is required by regulations under s 33 (as amended; repealed with savings by the Utilities Act 2000 s 66) to be made by any person in respect of the levy must be calculated, by such method as may be specified by the regulations, by reference to the aggregate amount charged by that person for leviable electricity supplied by him during the qualifying month: Electricity Act 1989 s 33(2). 'Leviable electricity' means electricity which (1) is generated by a fossil fuel generating station; (2) is generated by a generating station fuelled by nuclear fuel; or (3) is generated in pursuance of qualifying arrangements by a generating station fuelled or driven otherwise than by a fossil fuel or nuclear fuel; and 'fossil fuel generating station' means a generating station fuelled by a fossil fuel: s 33(8) (as so substituted). For the meaning of 'qualifying arrangements' see note 11 *infra*. For the meanings of 'generating station' and 'generate' see PARA 1041 notes 6-7 ante. The Secretary of State may by regulations amend s 33 (as amended) (repealed with savings) so as to (a) omit the word 'leviable' in s 33(2); and (b) omit the definition of 'leviable electricity' in s 33(8) (as substituted): s 33(9) (added by the Fossil Fuel Levy Act 1998 s 1(1), (3)).

7 For the meaning of 'prescribed' see PARA 1096 note 11 ante.

8 Electricity Act 1989 s 33(1)(b). The prescribed person to collect payments and to make payments to the nominated person (see head (3) in the text) is the Gas and Electricity Markets Authority ('GEMA'): Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 4 (substituted by SI 2001/1200).

9 'Nominated person' has the meaning given in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended) (see PARA 1240 note 18 ante): Electricity Act 1989 s 33(8) (as substituted: see note 6 *supra*).

10 Electricity Act 1989 s 33(1)(c) (as substituted: see note 6 *supra*).

11 For these purposes, references to qualifying arrangements in relation to the nominated person are to any arrangements which: (1) are new arrangements, as defined in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended) (see PARA 1240 note 19 ante); or (2) would be new arrangements but for the fact that the parties to them have modified the arrangements by changing the location of the generating station which is the subject of the arrangements ('modified new arrangements'), and satisfy the requirements specified in the Electricity Act 1989 s 33(7B) (as added), and which satisfy such other requirements as may be specified in regulations made under the Electricity Act 1989 s 33 (as amended): s 33(7A) (added by the Deregulation (Non-Fossil Fuel) Order 1997, SI 1997/1185 art 11(1), (2)(j)); substituted by the Electricity from Non-Fossil Fuel Sources (Locational Flexibility) Order 2001, SI 2001/3914, art 2(1), (2)). The requirements mentioned in head (2) supra are that: (a) the new location of the generating station is anywhere within Great Britain, including (unless the relevant NFFO order requires the generating station to be 'on-shore') any part of the territorial sea of the United Kingdom which is adjacent to Great Britain; (b) planning permission and all necessary consents (including any necessary wayleave consents), easements, servitudes and rights to enable the generating station to be constructed and operated at the new location in accordance with and as contemplated by the terms of the modified new arrangements have been obtained; (c) no generating station has been built pursuant to the arrangements prior to the change of location; (d) the modified new arrangements do not relate to a generating station built at the new location prior to the change of location; and (e) evidence of the modified new arrangements has been produced to the Authority: Electricity Act 1989 s 33(7B) (ss 33(7B)-(7D) added by the Electricity from Non-Fossil Fuel Sources (Locational Flexibility) Order 2001, SI 2001/3914, art 2(1), (2)). The relevant NFFO order referred to in head (a) supra is the order mentioned in heads (i)-(iii) infra pursuant to which the arrangements were first produced to the former Director General of Electricity Supply (prior to the abolition of that office by the Utilities Act 2000 s 1(3)), in compliance with the Electricity Act 1989 s 32 as originally enacted: s 33(7C) (as so added). The Orders are (i) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1994, SI 1994/3259 (amended by SI 1995/68); (ii) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1997, SI 1997/248; and (iii) the Electricity (Non-Fossil Fuel Sources) (England and Wales) Order 1998, SI 1998/2353: Electricity Act 1989 s 33(7D) (as so added).

12 Ibid s 33(5) (substituted by the Electricity from Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (3)). 'Advance payment' means any payment made or expense incurred in relation to a particular generating station before electricity is first generated by that station; and 'deferred payment' means any payment made or expense incurred in relation to a particular generating station after electricity ceases to be generated by that station: Electricity Act 1989 s 33(8) (as substituted: see note 6 supra).

13 Ibid s 33(5A) (added by the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 11(1), (2)(f); substituted by the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (3)). The Authority must collect payments from the nominated person pursuant to the Electricity Act 1989 s 33(5A) (as substituted): Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 4 (as substituted: see note 8 supra).

14 For the meaning of 'information' see PARA 1044 note 10 ante.

15 Electricity Act 1989 s 33(6)(a) (s 33(6) substituted by the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (3)). As to licences to supply, transmit, distribute or generate electricity see PARA 1065 ante at heads (1)-(4) in the text.

16 Electricity Act 1989 s 33(6)(b) (as substituted: see note 15 supra).

17 Ibid s 33(6)(c) (as substituted: see note 15 supra).

18 Ibid s 33(6)(d) (as substituted: see note 15 supra). As to the prescribed debt recovery procedure see the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5A (added by SI 2001/1200).

19 See the Electricity Act 1989 s 33(10) (added by the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 11(1), (2)(n); substituted by the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (6)).

20 Electricity Act 1989 s 33(7) (amended by the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727, art 11(1), (2)(i); the Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001, SI 2001/3268, art 3(1), (4)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(i) Fuel Sources and Fuel Stocks/D. ELECTRICITY FROM NON-FOSSIL FUEL SOURCES AND FOSSIL FUEL LEVY; TRANSITIONAL ARRANGEMENTS AND SAVINGS/1242. Calculation and payments of fossil fuel levy.

1242. Calculation and payments of fossil fuel levy.

Each licensed supplier¹ must pay a levy² in respect of each qualifying month³ in accordance with the following provisions⁴. In relation to a levy payment date⁵ the method of calculating the amount of the payment required to be made⁶ ('the amount') is as described in the relevant⁷ regulation⁸.

From time to time the Gas and Electricity Markets Authority ('GEMA')⁹ must calculate the rate of the levy in accordance with the prescribed method¹⁰; and the rate of the levy must be reviewed by the Authority according to that method at least once in any period of 12 months¹¹. At least 14 days before any notification of that rate is issued¹², the Authority must consult the Secretary of State¹³ on the calculation or review of the levy rate and must provide him with all assumptions, information and data upon which the calculation or review is based. The Secretary of State may make representations to the Authority in relation to the intended rate of the levy and the Authority must take account of any such representations before issuing the notification¹⁴. Having calculated or reviewed the rate of the levy the Authority must notify the rate of the levy to the Secretary of State, the nominated person and each licensed supplier; and any change in the rate of the levy must be notified to the above persons at least three months before the commencement of the qualifying month, or the first of the qualifying months, to which it applies¹⁵. The Authority must also notify the rate of the levy to the applicant for a licence to supply electricity to premises¹⁶ at the time the licence is granted¹⁷. The Authority must arrange for the publication of the rate of levy calculated by it in accordance with these provisions in such form and such manner as the Authority considers appropriate for bringing it to the attention of consumers of electricity supplied by licensed suppliers¹⁸.

In relation to supplies of electricity other than leviable electricity, where a licensed supplier is exclusively entitled under any agreement with the operator of a generating station¹⁹ specified, or of a description specified, in the agreement or with any person who is entitled to procure the delivery of electricity generated by any such station to direct the delivery to him or to a licensed distributor²⁰ or to a licensed transmitter²¹ of all or part of the electricity generated by such station and:

3103 (1) a direction is given by or on behalf of the supplier in or pursuant to that agreement requiring the delivery during a qualifying month of a quantity, specified in or calculated in accordance with the direction and being either the whole or a part less than the whole, of the electricity generated by that station;

3104 (2) the specified quantity of electricity is so generated and is delivered in accordance with such direction;

3105 (3) at the time of delivery it is not physically impossible for an amount of electricity equal to the specified quantity of electricity to have been conveyed from the station to the point of delivery or, as the case may be, in the aggregate to the points of supply; and

3106 (4) the supplier supplies in the same qualifying month a quantity of electricity at least equal to the quantity specified in or calculated in accordance with his direction,

then, and subject to evidence of the above-mentioned matters being provided to the reasonable satisfaction of the Authority, the licensed supplier is to be regarded²² as having supplied during that qualifying month a quantity of electricity other than leviabale electricity generated by the generating station mentioned in head (1) above equal to whichever is the lesser of the quantity mentioned in that head and the quantity of electricity generated and delivered as mentioned in head (2) above²³. In relation to supplies of leviabale electricity, this provision applies as if it referred to leviabale electricity instead of to electricity other than leviabale electricity with the exception that evidence of the matters mentioned heads (1) to (4) above only need be provided to the Authority if it so requests²⁴. When calculating any quantity of electricity purchased or supplied by or otherwise attributed to licensed suppliers, due allowance must be made for any quantities of such electricity which are lost or consumed during its transmission and distribution²⁵; and when calculating any quantity of electricity purchased by a licensed supplier from an embedded generator²⁶, due allowance must be made for the fact that in such circumstances the loss or consumption of electricity during its distribution may not be the same as it is for electricity generated by generators who are not embedded generators²⁷.

Each licensed supplier must make payments in respect of the levy in accordance with the following provisions²⁸. In respect of each qualifying month, the licensed supplier must calculate²⁹ the amount of the payment due from him by applying the rate of levy notified to him by the Authority³⁰ to the aggregate amount (exclusive of the levy, value added tax and climate change levy) charged, whether or not a bill or invoice has been delivered to a customer, by him for leviabale electricity supplied by him³¹. Not more than one month after the end of each qualifying month the licensed supplier must make the payment which he has calculated to be due from him in respect of that month to the Authority³². If the licensed supplier makes that payment later than one month after the end of the qualifying month in question but before any default notice has been served on him³³ he must also pay³⁴ an amount in respect of interest³⁵. At the same time as he makes a payment in accordance with the above provision, and without prejudice to any other provision of the relevant regulations³⁶ which requires the licensed supplier to furnish the Authority with any description of statement, information or other material, the licensed supplier must furnish to the Authority a statement in accordance with the following provisions³⁷. Such a statement must:

- 3107 (a) set out the manner in which the licensed supplier has calculated the amount of the payment; and
- 3108 (b) without prejudice to the generality of head (a) above, include the best estimate the supplier can make³⁸ of the quantities (expressed in kilowatt hours) of leviabale electricity, and electricity other than leviabale electricity, supplied by him during the qualifying month in question; and
- 3109 (c) set out the price per kilowatt hour at which the supplier purchased the supplies of leviabale electricity supplied by him during the qualifying month in question³⁹.

With each such statement the licensed supplier must also furnish to the Authority such evidence as may be available to him to justify the estimate mentioned in head (b) above⁴⁰. Where any quantity of electricity mentioned in a statement so furnished to the Authority is generated by a fossil fuel⁴¹ generating station which is capable of being fuelled or driven otherwise than by a fossil fuel, the licensed supplier furnishing that statement must also furnish to the Authority an additional statement describing the fuels used in that generating station during the qualifying month⁴².

If at any time the Authority considers⁴³ that any one or more of the licensed suppliers is or are purporting to have supplied during any qualifying month quantities of electricity generated by a relevant station or stations⁴⁴:

- 3110 (i) which are greater than the quantities which the Authority has reason to believe were generated by such station or stations⁴⁵ during that qualifying month;
or
3111 (ii) which the Authority is not satisfied⁴⁶ were attributable to electricity generated by such station or stations⁴⁷ during that qualifying month,

the Authority may⁴⁸ reduce the quantities which the relevant supplier is purporting to have supplied in the appropriate manner⁴⁹. As soon as the Authority has reduced quantities in accordance with the above provisions, it must serve on each licensed supplier concerned a notice setting out any quantities so reduced and the quantities from which they have been reduced which are relevant to that supplier⁵⁰. As soon as he receives a notice so served, the licensed supplier must forthwith recalculate the amount of the payment in respect of the levy due from him in respect of the qualifying month in question on the basis of the reduced quantities set out in that notice, and as the circumstances may require:

- 3112 (A) the supplier must forthwith thereafter pay to the Authority the difference between the amount already due from him in respect of that month and the amount shown to be due by the recalculation in accordance with this provision; or
3113 (B) the supplier may deduct from the next payment due from him an amount equal to the difference between the amounts mentioned in head (A) above,

together, in each case, with an amount in respect of interest⁵¹. At the same time as he makes a payment in accordance with head (A) or head (B) above, the licensed supplier must furnish the Authority with a copy of the recalculation so made⁵².

1 'Licensed supplier' means an electricity supplier as defined in the Electricity Act 1989 s 6(9) (added by the Utilities Act 2000 s 30) (see PARA 1065 note 7 ante) who supplies customers in England and Wales: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (definition substituted by SI 2001/3286).

2 'Levy' means the levy imposed by the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): reg 2(1) (regs 2-5, 6-8, 11, 12, 20, 21 substituted by SI 2001/1200).

3 'Qualifying month' in relation to the nominated person means the period from 27 March 2001 to 30 April 2001 and thereafter it means a month beginning on or after 1 May 2001: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as substituted: see note 2 supra). 'Nominated person' has the same meaning for these purposes as is given to it in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000, SI 2000/2727 (as amended) (see PARA 1240 note 18 ante): Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as so substituted).

4 Ibid reg 3 (as substituted: see note 2 supra).

5 'Levy payment date' in relation to any month after May 2001, means the fifth banking day of each qualifying month and the first levy payment date was 8 May 2001: ibid reg 2(1) (definition substituted by SI 2001/3286). 'Banking day' means a day on which banks are generally open in the City of London excluding Saturdays or Sundays: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as substituted: see note 2 supra).

6 Ie by either the Electricity Act 1989 s 33(5) (as substituted; repealed with savings) or s 33(5A) (as added and substituted; repealed with savings): see PARA 1241 ante.

7 Ie as described in the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5 (as substituted: see note 2 supra).

8 See ibid reg 5(1) (as substituted: see note 2 supra). Where the amount is a positive number that number represents the amount which is required to be paid to the nominated person by the Electricity Act 1989 s 33(5) (as substituted; repealed with savings) (see PARA 1241 ante) in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 28 (as substituted) (see PARA 1245 post): reg 5(8) (as so substituted). Where the amount is a negative number that number represents the amount which is required to be paid by the nominated person to the prescribed person (ie by the Gas and Electricity Markets Authority) by the Electricity Act 1989 s 33(5A)

(as added; repealed with savings) (see PARA 1241 ante) in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 41 (as substituted) (see PARA 1245 post): reg 5(9) (as so substituted).

9 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

10 In calculating or reviewing the rate of the levy the Authority must take the following matters into account in relation to a period of time defined by it (which must not exceed 12 months): (1) the likely amount required by the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5 (as substituted) to be paid by or to the nominated person; (2) the likely aggregate amount of all interest payments to be paid pursuant to reg 29(1) (as amended) less the likely aggregate amount of all interest payments to be paid pursuant to reg 29(2) (as amended); (3) the amount of the administrative expenses of the Authority likely to be deducted and retained by it in accordance with reg 28(2) (as substituted and amended: see PARA 1245 post); (4) the aggregate amount of all interest payments likely to be received pursuant to reg 30 (as amended) (see PARA 1245 post); (5) the aggregate amount of any money likely to be held or invested by the Authority having been received pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended); and (6) the aggregate amount (exclusive of the levy, value added tax and climate change levy) likely to be charged (whether or not a bill or invoice has been delivered to a customer) by licensed suppliers for leviabie electricity supplied by them: reg 6(2) (as substituted: see note 2 supra). As to climate change levy see PARA 661 et seq ante. For these purposes, any reference to leviabie electricity is to leviabie electricity supplied to customers in England and Wales: reg 2(2)(e) (as so substituted). For the meaning of 'leviabie electricity' see PARA 1241 note 6 ante.

11 Ibid reg 6(1) (as substituted: see note 2 supra).

12 Ie under ibid reg 6(4) (as substituted): see the text and note 15 infra.

13 As to the Secretary of State see PARA 601 note 1 ante.

14 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 6(3) (as substituted: see note 2 supra).

15 Ibid reg 6(4) (as substituted: see note 2 supra). Any document required or authorised by the 1990 Regulations to be served (whether the expression 'serve' or the expression 'send' or 'give' or any other expression is used) on any person is, if sent by first class post, to be deemed to have been delivered 48 hours from the time of posting: reg 38(1). This applies only for the purpose of determining when, for the purposes of those regulations, a document sent by post is deemed to be delivered, and does not affect any obligation of any person to furnish any information set out in the document: reg 38(2).

16 Ie the applicant for a licence under the Electricity Act 1989 s 6(1)(d) (as substituted and amended): see PARA 1065 ante.

17 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 6(5) (substituted by SI 2001/3286).

18 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 7 (as substituted: see note 2 supra).

19 For the meaning of 'generating station' see PARA 1041 note 6 ante.

20 'Licensed distributor' means an electricity distributor as defined in the Electricity Act 1989 s 6(9) (added by the Utilities Act 2000) (see PARA 1065 note 9 ante): Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as substituted: see note 2 supra).

21 'Licensed transmitter' means a person authorised by a licence to transmit electricity (see PARA 1065 ante): ibid reg 2(1) (as substituted: see note 2 supra).

22 Ie for the purposes of the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended) and subject to regs 9, 10 (see the text and notes 25-27 infra).

23 Ibid reg 8(1) (as substituted: see note 2 supra).

24 Ibid reg 8(2) (as substituted: see note 2 supra).

25 Ibid reg 9.

26 For these purposes, 'embedded generator' means the operator of a generating station which is connected directly to a system of electric lines and electrical plant operated by a licensed supplier or a licensed distributor: ibid reg 10(2) (amended by SI 2001/3286). For the meanings of 'electric line' and 'electrical plant' see PARA 1041 note 5 ante.

27 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 10(1).

28 Ibid reg 11(1) (as substituted: see note 2 supra). Any person who ceases to be a licensed supplier must, as regards any qualifying month or part of a qualifying month during which he was a licensed supplier, continue to be treated as if he were a licensed supplier for so long as there is in relation to him (1) any liability arising under the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended), and not fully discharged; or (2) any right so arising and not fully satisfied: reg 40(1). Where any person who ceases to be a licensed supplier is not liable, by reason of such cessation, to make any further payments under reg 11 (as substituted), any requirement in the 1990 Regulations to make a payment with any further payment under reg 11 (as substituted) (however such further payment may be described) is to be construed as a requirement to make the payment forthwith, and reg 29 (as amended) (interest) applies as appropriate: reg 40(2).

29 Ie and, in doing so, must take into account any deductions which he may make in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): reg 11(2) (as substituted: see note 2 supra).

30 Ie in accordance with ibid reg 6 (as substituted): see the text and notes 1-17 supra.

31 Ibid reg 11(2) (as substituted: see note 2 supra).

32 Ibid reg 11(3) (as substituted: see note 2 supra).

33 Ie under ibid reg 16(1) or reg 17(1): see PARA 1243 post.

34 Ie in accordance with ibid reg 29(1) (as amended). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 11(4) (as substituted): reg 29(1)(a). 'Prescribed interest rate' means a rate which is 4% per annum above the base rate of Barclays Bank plc current from time to time: reg 2(1) (as substituted: see note 2 supra). 'Prescribed period' means the period beginning on the day which is one month after the expiry of the qualifying month to which the payment mentioned in reg 29(1) or, as the case may be, the deduction mentioned in reg 29(2) relates and ending on the day on which the payment or deduction is actually made or, in the case of a payment, would have been made but for a deduction in accordance with the 1990 Regulations: reg 29(3).

35 Ibid reg 11(4) (as substituted: see note 2 supra).

36 Ie any other provision of the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended).

37 Ibid reg 12(1) (as substituted: see note 2 supra).

38 Ie after taking into account the effect in relation to him of regs 8-10 (as amended) during the qualifying month in question.

39 Ibid reg 12(2) (as substituted: see note 2 supra). If, in the statement mentioned in reg 12 (as substituted), the price at which the licensed supplier purchased leviable electricity exceeds the price at which such electricity was sold by him, the licensed supplier must furnish the Authority with a statement setting out (1) any price below the purchase price which he is charging for leviable electricity; (2) the manner in which that price has been calculated; and (3) any reasons which the supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that lower price: reg 20(1) (as substituted: see note 2 supra). That statement must be furnished to the Authority at the same time as the licensed supplier furnishes the Authority with the statement in accordance with reg 12 (as substituted and amended): reg 20(2) (as so substituted). The licensed supplier must furnish the Authority with a further statement on each occasion when there is a change in any matter set out in the statement mentioned in reg 20(1) (as substituted); and such a further statement must set out the change which has taken place, and the reasons for that change: reg 20(3), (4) (as so substituted).

The Authority must consider the matters set out in any statement furnished under reg 20 (as substituted) and may require the licensed supplier to provide an auditor's certificate as to whether any price is set out in such statement, and the manner in which that price has been calculated, have been fairly stated and properly compiled: reg 21(1) (as so substituted). The Authority may also serve notice on the licensed supplier requiring him to provide further reasons justifying any price below the purchase price for electricity which the licensed supplier has set out in a statement under reg 20 (as substituted and amended): reg 21(2) (as so substituted). If the Authority does not accept that it is appropriate in all the circumstances for amounts payable by the licensed supplier in respect of the levy to be calculated by reference to any price being charged for electricity the Authority must, within 28 days of the date upon which it received the statement or (if requested) the auditor's certificate or further reasons, serve on the licensed supplier a notice under reg 22 (as amended): reg 21(3) (as so substituted). The Authority may also by notice served on the licensed supplier require the supplier to furnish the Authority with a statement setting out (a) any price which the licensed supplier is charging for any electricity; (b) the manner in which that price has been calculated; and (c) any reasons which the supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that price; and the Authority may also in like manner require the licensed supplier to provide an auditor's certificate that any calculation so furnished is fairly stated

and properly compiled: reg 21(4) (as so substituted). If, after having regard to any statement so furnished, and to any auditor's certificate so provided, the Authority considers that any price charged by the licensed supplier is less than the price which the Authority thinks it would be appropriate to charge for electricity, it must serve on the licensed supplier a notice under reg 22 (as amended): reg 21(5) (as so substituted). Any auditor's certificate required to be provided under reg 21 (as substituted) must be provided as quickly as is reasonably practicable and in any event not more than 60 days after the date of the Authority's request: reg 21(6) (as so substituted). 'Auditor's certificate' means a statement given, in relation to a company within the meaning of the Companies Act 1985 or the Companies Act 2006, by the auditor or auditors (as holding office for the time being in accordance with that Act) of the person furnishing the information; and in relation to any other description of person, a person who is a member of one or more of the following bodies, ie the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Chartered Association of Certified Accountants and the Institute of Chartered Accountants in Ireland: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as substituted: see note 2 supra); Companies Act 2006 s 1297(5).

Subject to the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 22(2)-(4) (as amended), a notice served by the Authority on a licensed supplier under reg 22 (as amended) must set out: (i) the Authority's reasons for not accepting that it is appropriate in all the circumstances for amounts payable by the supplier in respect of the levy to be calculated by reference to any price charged during the qualifying month or months in question for electricity; and (ii) the price which the Authority thinks it would be appropriate to charge for that purpose: reg 22(1) (reg 22 amended by virtue of the Utilities Act 2000 s 3(2); the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 22(1) also amended by SI 1998/1828). When deciding what price to set out pursuant to head (ii) supra in such a notice the Authority must in particular have regard to: (A) the quantities of electricity being supplied by the licensed supplier; (B) load factors; (C) the voltage at which any supply is given; (D) the time of year and the time of the day at which any supply is given; (E) any conditions according to which a supply may be interrupted; (F) the location of customers receiving a supply from the supplier; (G) the date and duration of any agreement under which any customer is receiving a supply from the supplier: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 22(2) (as so amended). Any price set out pursuant to head (ii) supra in such a notice served on a licensed supplier must not be so high as to cause the average charge per unit treated as charged by that supplier to exceed the maximum average charge per unit which he could make under the terms of his licence: reg 22(3) (amended by SI 2001/3286). No notice under the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 22 (as amended) in respect of a particular qualifying month may be served after the expiry of a period of three years commencing on the last day of the month in question: reg 22(4). Upon receipt of a notice under reg 22 (as amended), the licensed supplier must as quickly as practicable calculate the amount which would have been payable in respect of the relevant qualifying month, or each of the relevant qualifying months, if that amount had been calculated by reference to the price set out in that notice: reg 23(1). As soon as he has completed that calculation, the licensed supplier must pay to the Authority an amount equal to the difference between the amount produced by that calculation and the amount already due in respect of the levy in respect of the relevant qualifying month, or each of the relevant qualifying months, together with an amount in respect of interest in accordance with reg 29(1): reg 23(2) (reg 23 amended by virtue of the Utilities Act 2000 s 3(2)). At the same time as he makes a payment in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 23(2) (as amended) the licensed supplier must furnish to the Authority a statement of the manner in which he has calculated that payment: reg 23(3) (as so amended). For these purposes, 'relevant qualifying month' means a qualifying month in respect of which the licensed supplier was due to make a payment pursuant to reg 11 (as substituted) and in relation to which the Authority has served a notice under reg 22 (as amended): reg 23(4) (as so amended). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 23(2) (as amended): reg 29(1)(f). As to the prescribed interest rate and the prescribed period see note 34 supra.

40 Ibid reg 12(3) (as substituted: see note 2 supra). That evidence must include evidence of the effect in relation to him of regs 8-10 (as amended) during the qualifying month: reg 12(3) (as so substituted).

41 For the meaning of 'fossil fuel' see PARA 1240 note 13 ante (definition applied by ibid reg 13(3)).

42 Ibid reg 13(1) (amended by virtue of the Utilities Act 2000 s 3(2)). Any additional statement furnished in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 13(1) (as so amended) must include: (1) a description of each type of fuel used in the station during the month; (2) an estimate of the quantity of each type of fuel so used; and (3) an estimate of the net calorific value of each such type of fuel: reg 13(2).

43 Ie after taking into account the effect of regs 8-10 (as amended).

44 Any reference in ibid reg 14 (as amended) to a relevant station or stations is a reference to a particular generating station or generating stations of a particular description: reg 14(7).

45 Ie as adjusted pursuant to ibid regs 9, 10 (as amended).

46 Ie whether by reason of evidence produced to the Authority pursuant to reg 8 (as substituted and amended) or otherwise.

47 See note 45 supra.

48 le after taking into account any relevant evidence produced for the purposes of the Fossil Fuel Levy Regulations 1990, SI 1990/266, regs 8-10 (as amended).

49 Ibid reg 14(1), (2) (amended by virtue of the Utilities Act 2000 s 3(2)). For these purposes, the appropriate manner is a manner which takes into account evidence produced for the purposes of the Fossil Fuel Levy Regulations 1990, SI 1990/266, regs 8-10 (as amended) and, subject thereto, which causes each quantity purported to have been supplied by a supplier mentioned in reg 14(1) (as amended) as reduced by the Authority to bear the same proportion to the aggregate of the quantities as so reduced as each quantity purported to have been so supplied bears to the aggregate of such quantities: reg 14(3) (as so amended).

50 Ibid reg 14(4) (as amended: see note 49 supra).

51 Ibid reg 14(5) (as amended: see note 49 supra). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 14(5)(a) (see head (A) in the text): reg 29(1)(b). As to the prescribed interest rate and the prescribed period see note 34 supra. An amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with reg 14(5)(b) (see head (b) in the text): reg 29(2)(a).

If any amount which a licensed supplier is entitled to deduct pursuant to reg 14(5)(b) is greater than the amount of the next payment due from him under reg 11(3) (as substituted), the supplier need not make that next payment and he may deduct the balance of the amount which he is entitled to deduct (together with an amount in respect of interest in accordance with reg 29(2) (as amended)) from the next succeeding payment due from him under reg 11(3) (as substituted): reg 27(1) (amended by SI 2001/1200). This applies in relation to successive payments due under the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 11(3) (as substituted) until either the licensed supplier has deducted the whole of the amount first mentioned in reg 27(1) (as amended) or the supplier has served notice on the Authority that he does not intend to make any further deductions in respect of that amount: reg 27(2) (reg 27 amended by virtue of the Utilities Act 2000 s 3(2)). A licensed supplier who in pursuance of these provisions does not make a payment in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 11 (as substituted) in respect of a qualifying month must nevertheless furnish to the Authority a statement in relation to that month in accordance with reg 12 (as substituted), save that such statement must set out the manner in which the supplier has calculated the amount of the payment which he would have paid but for this provision: reg 27(3) (as so amended). An amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with reg 27 (as amended): reg 29(2)(f).

Where any person who ceases to be a licensed supplier is unable, by reason of such cessation, to exercise any right of deduction from payments due under reg 11 (as substituted) in pursuance of reg 14(5)(b), as read with reg 29 (as amended), the Authority must make to that person a payment of an amount equal to the amount which could not be so deducted: reg 40(3) (amended by virtue of the Utilities Act 2000 s 3(2)).

52 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 14(6) (as amended: see note 10 supra).

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1243. Defaults etc in making payments in respect of levy.

If any licensed supplier¹ fails to make a payment in respect of the levy², the Gas and Electricity Markets Authority ('GEMA')³ must as soon as practicable serve notice on the supplier:

- 3114 (1) stating that the supplier has failed to make the payment; and
- 3115 (2) after having regard to the information relating to the supplier available to the Authority at the time, setting out the amount which the Authority believes that the supplier should have paid and the manner in which the amount has been calculated⁴.

Forthwith upon receipt of a notice so served on him the licensed supplier must pay to the Authority the amount set out in the notice, together with an amount in respect of interest⁵.

If at any time the Authority has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy by a licensed supplier in respect of a qualifying month⁶ pursuant to the relevant regulations⁷ is less than it should have been, the Authority must serve notice on the supplier setting out:

- 3116 (a) the Authority's reason or reasons for the belief; and
- 3117 (b) after having regard to the information relating to the supplier available to the Authority at the time, the amount which the Authority believes that the supplier should have paid and the manner in which that amount has been calculated⁸.

Forthwith upon receipt of a notice so served on him the licensed supplier must pay to the Authority the difference between the amount set out in that notice and the amount which he has paid, together with an amount in respect of interest⁹.

If at any time any licensed supplier has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy by him in respect of a qualifying month pursuant to the relevant regulations is less than it should have been, he must serve notice on the Authority setting out:

- 3118 (i) his reason or reasons for the belief;
- 3119 (ii) the amount which he believes he should have paid and the manner in which that amount has been calculated,

and with his notice the licensed supplier must pay to the Authority the difference between the amount which he has paid and the amount set out in that notice, together with an amount in respect of interest¹⁰.

No notice under any of the above provisions may, however, be served after the expiry of a period of three years commencing on the last day of the qualifying month in question¹¹.

- 1 For the meaning of 'licensed supplier' see PARA 1242 note 1 ante.
- 2 le pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 11 (as substituted): see PARA 1242 ante. For the meaning of 'levy' see PARA 1242 note 2 ante.
- 3 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 4 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 16(1) (regs 16-18 amended by virtue of the Utilities Act 2000 s 3(2)). As to service of notices and documents see PARA 1242 note 10 ante.
- 5 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 16(2) (as amended: see note 4 supra). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 16(2) (as amended): reg 29(1)(c). As to the prescribed interest rate and the prescribed period see PARA 1242 note 34 ante.
- 6 For the meaning of 'qualifying month' see PARA 1242 note 3 ante.
- 7 le pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): see PARA 1242 ante, PARA 1244 et seq post.
- 8 Ibid reg 17(1) (as amended: see note 4 supra).
- 9 Ibid reg 17(2) (as amended: see note 4 supra). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 17(2) (as amended): reg 29(1)(d); and see note 5 supra.
- 10 Ibid reg 18(1) (as amended: see note 4 supra). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 18(1) (as amended): reg 29(1)(e); and see note 5 supra.
- 11 Ibid regs 16(3), 17(3), 18(2).

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1244. Over-payments in respect of levy.

If at any time any licensed supplier¹ has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy² by him in respect of a qualifying month³ pursuant to the relevant regulations⁴ is greater than it should have been, he may serve notice on the Gas and Electricity Markets Authority ('GEMA')⁵ setting out his reason or reasons for the belief and the amount which he believes he should have paid and the manner in which that amount has been calculated⁶. If the Authority wishes to question any matter set out in a notice so served on it, it must do so by notice served on the licensed supplier within 28 days of receiving the notice served as previously mentioned⁷. Any notice so served by the Authority must set out in full its reasons for wishing to question any matter in the notice previously served⁸. If the Authority fails to serve such a notice within the prescribed period, it is deemed to have accepted the notice served on it as previously mentioned without question as to the amount, but without prejudice to the ability of the Authority subsequently to serve notice of under-payment⁹ on the licensed supplier in respect of the qualifying month in question, and the licensed supplier may then deduct the difference between the amount which he has paid and the amount set out in that notice, together with an amount in respect of interest¹⁰, from the next payment due¹¹ from him¹².

If at any time the Authority has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy by a licensed supplier in respect of a qualifying month pursuant to the relevant regulations is greater than it should have been, the Authority must serve notice on the supplier setting out the Authority's reason or reasons for the belief and, after having regard to the information relating to the supplier available to the Authority at the time, the amount which it believes that the supplier should have paid and the manner in which that amount has been calculated¹³. If the licensed supplier wishes to question any matter set out in a notice so served on him, he must do so by notice served on the Authority within 28 days of receiving the notice served as mentioned above¹⁴. Any notice so served must set out in full the licensed supplier's reasons for wishing to question any matter in the notice served on him by the Authority¹⁵. If the licensed supplier fails to serve such a notice within the prescribed period, he is deemed to have accepted the notice served on him by the Authority without question as to the amount, but without prejudice to the Authority's ability subsequently to serve notice of under-payment on the licensed supplier¹⁶ in respect of the qualifying month in question, and he may then deduct the difference between the amount set out in that notice and the amount which he has paid, together with an amount in respect of interest¹⁷, from the next payment due¹⁸ from him¹⁹.

When any question arising from a notice questioning any matter served under the above provisions²⁰ has been resolved, whether by agreement between the Authority and the licensed supplier or otherwise:

- 3120 (1) any payment found to be due from the supplier in respect of the levy must be made by him at the same time as he makes the next payment due from him²¹; and

3121 (2) any amount found to be in excess of the proper amount of a payment made by the supplier in respect of the levy may be deducted by him from the next payment due from him,

together, in each case, with an amount in respect of interest²².

If any amount which a licensed supplier is entitled to deduct pursuant to the above provisions²³ is greater than the amount of the next payment due from him²⁴, the supplier need not make that next payment and he may deduct the balance of the amount which he is entitled to deduct, together with an amount in respect of interest²⁵, from the next succeeding payment due from him²⁶. This applies in relation to successive payments due until either the licensed supplier has deducted the whole of the amount first mentioned above or the supplier has served notice on the Authority that he does not intend to make any further deductions in respect of that amount²⁷. A licensed supplier who, in pursuance of this provision, does not make a payment²⁸ in respect of a qualifying month must nevertheless furnish to the Authority a statement in relation to that month²⁹, save that that statement must set out the manner in which the supplier has calculated the amount of the payment which he would otherwise have paid³⁰.

Where any person who ceases to be a licensed supplier is unable, by reason of such cessation, to exercise any right of deduction from payments due³¹ in pursuance of the above provisions³², the Authority must make to that person a payment of an amount equal to the amount which could not be so deducted³³.

1 For the meaning of 'licensed supplier' see PARA 1242 note 1 ante.

2 For the meaning of 'levy' see PARA 1242 note 2 ante.

3 For the meaning of 'qualifying month' see PARA 1242 note 3 ante.

4 I.e. pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): see PARAS 1242-1243 ante, PARA 1245 et seq post.

5 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

6 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 24(1) (regs 24-27, 40(3) amended by virtue of the Utilities Act 2000 s 3(2)). No such notice may be served after the expiry of a period of three years commencing on the last day of the qualifying month in question: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 24(5). As to the service of notices see PARA 1242 note 15 ante.

7 Ibid reg 24(2) (as amended: see note 6 supra).

8 Ibid reg 24(3) (as amended: see note 6 supra).

9 I.e. in accordance with ibid reg 17 (as amended): see PARA 1243 ante.

10 I.e. in accordance with ibid reg 29(2) (as amended). An amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with reg 24(4) (as amended): reg 29(2)(c). As to the prescribed period see PARA 1242 note 34 ante.

11 I.e. under ibid reg 11(3) (as substituted and amended): see PARA 1242 ante.

12 Ibid reg 24(4) (as amended: see note 6 supra).

13 Ibid reg 25(1) (as amended: see note 6 supra). No such notice may be served after the expiry of a period of three years commencing on the last day of the qualifying month in question: reg 25(5).

14 Ibid reg 25(2) (as amended: see note 6 supra).

15 Ibid reg 25(3) (as amended: see note 6 supra).

16 See note 9 *supra*.

17 An amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 25(4) (as amended): reg 29(2)(d). See also note 10 *supra*.

18 See note 11 *supra*.

19 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 25(4) (as amended: see note 6 *supra*).

20 I.e. a notice served under *ibid* reg 24(2) (as amended) or reg 25(2) (as amended): see the text and notes 7, 14 *supra*.

21 See note 11 *supra*.

22 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 26 (as amended: see note 6 *supra*). Interest at the prescribed interest rate and for the prescribed period must be paid by any licensed supplier on the amount of any payment made in accordance with reg 26(a) (see head (1) in the text); and an amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with reg 26(b) (see head (2) in the text): reg 29(1)(g), (2)(e). As to the prescribed period see *PARA 1242* note 34 *ante*.

23 I.e. pursuant to *ibid* reg 24(4) (as amended), reg 25(4) (as amended) or reg 26(b): see the text and notes 9-12, 16-22 *supra*.

24 See note 11 *supra*.

25 An amount equal to interest at the base rate of Barclays Bank plc current from time to time during the prescribed period must be added to the amount of any deduction made in accordance with reg 27 (as amended): reg 29(2)(f).

26 *Ibid* reg 27(1) (amended by SI 2001/1200).

27 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 27(2) (as amended: see note 6 *supra*).

28 I.e. in accordance with *ibid* reg 11 (as substituted): see *PARA 1242 ante*.

29 I.e. in accordance with *ibid* reg 12 (as substituted): see *PARA 1242 ante*.

30 *Ibid* reg 27(3) (as amended: see note 6 *supra*).

31 I.e. under *ibid* reg 11 (as substituted): see *PARA 1242 ante*.

32 I.e. in pursuance of *ibid* reg 24(4) (as amended), reg 25(4) (as amended) or reg 26(b), as read, in each case, with reg 29 (as amended): see the text and notes 10-12, 16-22 *supra*.

33 *Ibid* reg 40(3) (as amended (see note 6 *supra*); also amended by SI 2001/1200).

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1245. Calculations and payments to be made by the nominated person.

In advance of each levy payment date¹ the nominated person² must calculate the amount of any payment due to or from him³ and must provide the Gas and Electricity Markets Authority ('GEMA')⁴ with a statement setting out how the amount of the payment required to be made⁵ has been calculated and including the figures used in calculating that amount⁶. The nominated person must provide the Authority with that statement on the banking day⁷ prior to the relevant levy payment date⁸.

Where in relation to any levy payment date the amount is a negative number, the nominated person must pay that sum to the Authority on the fifth banking day after the levy payment date immediately following the date on which the statement has been provided⁹. If the nominated person makes that payment later than the next levy payment date, at the discretion of the Authority, it may also be required to pay interest on that sum at a rate not exceeding the prescribed rate¹⁰ from the levy payment date on which such payment should have been made until such payment is actually made¹¹.

If the Secretary of State¹² so directs, the Authority¹³ must pay an amount into the Consolidated Fund out of money that has been paid¹⁴ by the nominated person¹⁵; but the total of the amounts directed to be paid must not exceed £60 million¹⁶. At any time which falls after the giving of such a direction, the Secretary of State is under a duty to spend the required amount¹⁷ for the purpose of promoting the use of energy from renewable sources¹⁸. This duty of the Secretary of State is without prejudice to any other power or duty of his to spend money for that purpose¹⁹.

1 For the meaning of 'levy payment date' see PARA 1242 note 5 ante.

2 For the meaning of 'the nominated person' see PARA 1242 note 3 ante.

3 In accordance with the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5 (as substituted): see PARA 1242 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 In the amount referred to in the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5 (as substituted): see PARA 1242 ante. That amount is the amount required to be paid by either the Electricity Act 1989 s 33(5) (as substituted) (repealed with savings) or s 33(5A) (as added) (repealed with savings) (see PARA 1241 ante): see the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 5(1) (substituted by SI 2001/3286).

6 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 41(1) (regs 41, 42 substituted by SI 2001/1200).

7 For the meaning of 'banking day' see PARA 1242 note 5 ante.

8 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 41(2) (as substituted: see note 6 supra).

9 Ibid reg 41(3) (as substituted: see note 6 supra).

10 For the meaning of 'prescribed rate' see PARA 1242 note 34 ante.

11 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 41(4) (as substituted: see note 6 supra). In any case where the Authority determines that interest is so payable under reg 41(4) (as substituted), the amount of such

interest may not be included under any item listed in reg 5 (as substituted) for the purposes of calculating the amount referred in reg 5 (as substituted) on any levy payment date: reg 41(5) (as so substituted).

In relation to any payments required to be made by the nominated person in accordance with reg 41 (as substituted), regs 16, 17 and 18 (as amended) (defaults etc in making payments: see PARA 1243 ante) apply as if they referred to (1) payments under reg 41 (as substituted) (instead of reg 11 (as substituted and amended)); (2) payments by the nominated person (instead of by licensed suppliers); and (3) interest payments under reg 41(4) (as substituted) (instead of under reg 29(1) (as amended)): reg 42(1) (as substituted: see note 6 supra).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 Ie as the person prescribed under the Electricity Act 1989 s 33(1)(b) (as substituted; repealed with savings) (collection of fossil fuel levy): see PARA 1241 ante.

14 Ie under ibid s 33(5A) (as added) (repealed with savings): see PARA 1241 ante.

15 See the Sustainable Energy Act 2003 s 7(1), (8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

16 Ibid s 7(2).

17 For these purposes, 'the required amount' is an amount of money equal to the total of the amounts that at the time in question have been paid into the Consolidated Fund under ibid s 7(1), less the total of any amounts that the Secretary of State has already spent under s 7(3): s 7(4).

18 Ibid s 7(3). For these purposes, 'renewable sources' means sources of energy other than fossil fuel or nuclear fuel; and 'fossil fuel' means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and 'natural gas' and 'petroleum products' have the same meanings as in the Energy Act 1976: see PARA 603 notes 3-4 ante): Sustainable Energy Act 2003 s 7(5), (6).

19 Ibid s 7(7). As to the promotion of sustainable energy see further PARA 614 et seq ante.

UPDATE

1245 Calculations and payments to be made by the nominated person

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1246. Application and distribution etc of sums collected.

Payments received by the Gas and Electricity Markets Authority ('GEMA')¹ in a qualifying month² pursuant to the relevant regulations³ must be applied and distributed by it in accordance with the following provisions⁴. The Authority must deduct and retain from those payments the amount of the administrative expenses incurred by it in respect of the qualifying month⁵ and in respect of its collection of payments⁶ from the nominated person⁷. Where in relation to the levy payment date⁸ immediately after the end of the qualifying month mentioned above, the Authority has received a statement from the nominated person⁹ which states that payment is due to be made to the nominated person¹⁰, the payments mentioned above less the amounts so deducted are to be applied¹¹ to the making of such payment on the levy payment date in relation to which such statement has been prepared¹². If, however, any of the payments mentioned above are not received by the Authority in time to be applied and distributed in accordance with the preceding provisions, such payments must, as soon as practicable after the payment to the nominated person¹³ has been made, be added in the appropriate amounts¹⁴ to the next payment due to be made under these provisions to the nominated person¹⁵.

Any money received by the Authority¹⁶ must, until such time as it is required for the making of payments pursuant to the above provisions, be invested in the approved manner¹⁷ and all relevant interest payments¹⁸ must be invested in the approved manner¹⁹.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 For the meaning of 'qualifying month' see PARA 1242 note 3 ante.

3 Ie pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): see PARA 1242 et seq ante, PARA 1247 post.

4 Ibid reg 28(1) (reg 28 substituted by SI 2001/3286).

5 Ie as the person prescribed by the 1990 Regulations for the purposes of the Electricity Act 1989 s 33(1)(b), (c) (as amended; repealed with savings): see PARA 1241 ante.

6 Ie pursuant to ibid s 33(5A) (as added: repealed with savings): see PARA 1241 ante.

7 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 28(2) (as substituted: see note 4 supra). For the meaning of 'the nominated person' see PARA 1242 note 3 ante.

8 For the meaning of 'levy payment date' see PARA 1242 note 5 ante.

9 Ie in accordance with ibid reg 41(1) and (2) (as substituted): see PARA 1245 ante.

10 Ie pursuant to ibid reg 5(8) (as substituted): see PARA 1242 note 8 ante.

11 Ie subject to ibid reg 28(4), (5) (as substituted): see the text and notes 13-15 infra.

12 Ibid reg 28(3) (as substituted: see note 4 supra).

13 Ie the payment mentioned in ibid reg 28(3) (as substituted).

14 For these purposes, the appropriate amount as regards the payment mentioned in *ibid* reg 28(4) (as substituted) in relation to the nominated person is an amount equal to the difference between the amount due to be paid to the nominated person under reg 5(8) (as substituted) and the payment actually made to the nominated person under reg 28(3) (as substituted): reg 28(5) (as substituted: see note 4 *supra*).

15 *Ibid* reg 28(4) (as substituted: see note 4 *supra*). In relation to any payments required to be made to the nominated person in accordance with reg 28 (as substituted), regs 24, 25 and 26 (as amended) (over-payments: see PARA 1244 *ante*) apply as if (1) they referred to payments under reg 28 (as substituted) (instead of reg 11) (as substituted); (2) they referred to payments to the nominated person (instead of to licensed suppliers); and (3) there were no reference to interest under reg 29(2) (as amended): reg 42(2) (substituted by SI 2000/1200).

16 *Ie* pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266, regs 2-29 (as amended), other than reg 29(1) (as amended).

17 *Ibid* reg 30(1) (amended by virtue of the Utilities Act 2000 s 3(2)). For these purposes, any money or relevant interest payment is invested in the approved manner if, utilising one or more of the Bank of England or an authorised deposit taker, it is (1) invested on the sterling United Kingdom inter-bank money market; or (2) placed on deposit in sterling in an interest bearing account or accounts: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 30(3) (amended by SI 2001/3649). 'Authorised deposit taker' means (a) a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) to accept deposits; or (b) an EEA firm of the kind mentioned in Sch 3 para 5(b) (as substituted) which has permission under Sch 3 para 15 (as amended), as a result of qualifying for authorisation under Sch 3 para 12(1), to accept deposits; and this definition must be read with s 22, any relevant order under s 22, and Sch 2 (as amended): Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 30(4), (5) (added by SI 2001/3649).

18 'Relevant interest payments' means (1) interest payments made pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 29(1) (as amended); and (2) interest payments in respect of money invested pursuant to reg 30 (as amended): reg 2(1) (substituted by SI 2001/1200).

19 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 30(2) (amended by SI 2001/1200).

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1247. Records and information; inspection of meters.

The Gas and Electricity Markets Authority ('GEMA')¹ must keep separate records of:

- 3122 (1) all payments received by it pursuant to any of the specified provisions²;
- 3123 (2) all relevant interest payments³ received by it; and
- 3124 (3) all administrative expenses incurred by it in connection with the levy⁴.

The Authority must maintain one or more bank accounts for all payments received by it pursuant to the relevant regulations⁵, and must keep such account or accounts separate from all other bank accounts maintained by it⁶. The Authority must send a statement of the amount standing for the time being to the credit of any such account to the Secretary of State⁷ and the nominated person⁸ at monthly intervals⁹. It must also send a statement of the administrative expenses incurred by it in connection with the levy and of the costs of the nominated person to the licensed suppliers¹⁰ and the nominated person at intervals of not more than six months¹¹. Within ten banking days¹² of the end of each month the Authority must also send to the Secretary of State a statement of aggregate levy receipts, relevant interest payments, the Authority's administrative expenses and payments made to or received from the nominated person during that month¹³.

The Authority may¹⁴ by notice served¹⁵ on any person who is:

- 3125 (a) a licensed supplier;
- 3126 (b) a licensed transmitter¹⁶;
- 3127 (c) a licensed generator¹⁷;
- 3128 (d) the nominated person; or
- 3129 (e) a licensed distributor¹⁸,

require that person to furnish, at such reasonable time and place as may be, and in the form and manner, specified in the notice, to the Authority such information of a prescribed description¹⁹ as may be specified in the notice²⁰; but no person is to be required, when complying with such a notice, to give any information which he could not be compelled to give in evidence in civil proceedings in the High Court²¹. Any person furnishing information to the Authority in accordance with such a notice must, if the notice so requires, provide an auditor's certificate²² that such information, or any such part of that information as may be specified in the notice, is fairly stated and properly compiled²³. Where any person is required by such a notice to furnish information in the form of estimates, he must use all reasonable care, having regard to all the relevant circumstances, to ensure that the information so furnished is complete, accurate and reliable²⁴. Where information of a prescribed description²⁵ has been furnished to the Authority by any person in accordance with such a notice, and that information is, or appears to the Authority to be, inconsistent with other information in the possession of the Authority pursuant to the relevant regulations, that conflict must be resolved in the prescribed manner²⁶.

All information furnished to the Authority pursuant to the relevant regulations must be kept separate from other information held by the Authority²⁷ and may be used by it, or by any staff or other person employed or engaged by it, only for purposes connected with the levy²⁸.

The nominated person, each licensed supplier, each licensed transmitter, each licensed distributor and each licensed generator must retain for the prescribed period²⁹ any relevant records³⁰. During the prescribed period the nominated person, each licensed supplier, each licensed transmitter, each licensed distributor and each licensed generator must permit any person who is authorised in writing by the Authority for the purpose, on production of his Authority, to inspect and to take copies of or extracts from any relevant records being retained pursuant to this provision³¹.

Each licensed supplier, each licensed transmitter, each licensed distributor and each licensed generator must permit any competent person who is authorised by the Authority for the purpose, on the production of his Authority, to examine and test any relevant meter³² for all or any of the following purposes:

- 3130 (i) determining the pattern or construction of the meter;
- 3131 (ii) determining the manner of its installation;
- 3132 (iii) determining whether the meter is in proper order for ascertaining the quantities of electricity passing through it; and
- 3133 (iv) establishing the margins for error within which it is operating³³.

1 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

2 le pursuant to any of the Fossil Fuel Levy Regulations 1990, SI 1990/266, regs 1-28 (as amended): see PARAS 1242-1246 ante.

3 For the meaning of 'relevant interest payments' see PARA 1246 note 18 ante.

4 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 31(1) (regs 2, 31, 33 substituted by SI 2001/1200). For the meaning of 'levy' see PARA 1242 note 2 ante.

5 le pursuant to the Fossil Fuel Levy Regulations 1990, SI 1990/266 (as amended): see PARAS 1242-1246 ante.

6 Ibid reg 31(2) (as substituted: see note 4 supra).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 For the meaning of 'the nominated person' see PARA 1242 note 3 ante.

9 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 31(3) (as substituted: see note 4 supra).

10 For the meaning of 'licensed supplier' see PARA 1242 note 1 ante.

11 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 31(4) (as substituted: see note 4 supra).

12 For the meaning of 'banking day' see PARA 1242 note 5 ante.

13 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 31(5) (as substituted: see note 4 supra).

14 le subject to ibid reg 33(2) (as substituted) (see the text and note 21 infra), and without prejudice to reg 34 (see the text and note 24 infra).

15 As to service of notices see PARA 1242 note 15 ante.

16 For the meaning of 'licensed transmitter' see PARA 1242 note 21 ante.

17 'Licensed generator' means a person authorised by a licence to generate electricity: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 2(1) (as substituted: see note 4 supra).

18 For the meaning of 'licensed distributor' see PARA 1242 note 20 ante.

19 le of a description contained in the Fossil Fuel Levy Regulations 1990, SI 1990/266, Schedule Pts 1-IV (paras 1-18) (retitled and amended by SI 2001/1200; also amended by SI 1998/1828; SI 2001/3286).

20 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 33(1) (as substituted: see note 4 supra).

21 Ibid reg 33(2) (as substituted: see note 4 supra).

22 For the meaning of 'auditor's certificate' see PARA 1242 note 39 ante.

23 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 33(3) (as substituted: see note 4 supra).

24 Ibid reg 34.

25 See note 19 supra.

26 See the Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 35(1) (amended by SI 2001/1200; and by virtue of the Utilities Act 2000 s 3(2)). Where the information is of a description contained in the Fossil Fuel Levy Regulations 1990, SI 1990/266, Schedule Pt I (paras 1-8) (as amended), the Authority may place greater reliance on information furnished by a licensed supplier; where the information is of a description contained in Schedule Pt II (paras 9-10) (as amended), the Authority may place greater reliance on information furnished by a licensed transmitter; and where the information is of a description contained in Schedule Pt III (paras 11-15), the Authority may place greater reliance on information furnished by a licensed generator: reg 35(2) (as so amended). Subject to that, in any case the Authority may place greater reliance on information which is accompanied by an auditor's certificate that it is fairly stated and properly compiled: reg 35(3) (amended by virtue of the Utilities Act 2000 s 3(2)).

27 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 36(1) (regs 36, 37, 39 amended by virtue of the Utilities Act 2000 s 3(2)). The information must be kept in containers or other media which cannot be opened or otherwise interfered with and to which access cannot be had, except in case of emergency, by any person not entitled to use or have access to such information: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 36(2).

28 Ibid reg 36(3) (as amended: see note 27 supra).

29 For these purposes, 'prescribed period', in relation to any relevant records, means the period of five years commencing on the date on which information derived from those records is either (1) in the case of a licensed supplier, first used by the supplier for the purpose of calculating or recalculating the amount of any payment due from him in respect of the levy; or (2) in the case of the nominated person, a licensed supplier, a licensed transmitter, a licensed distributor or a licensed generator, first furnished to the Authority pursuant to a notice under ibid reg 33 (as substituted); 'records' includes any document, book, computer program, printout, tape, core, film, disk or other tangible data whatsoever and, in relation to any single item of information, means any one of them; and 'relevant records' means any records from which have been derived (a) any information used by a licensed supplier for the purpose of calculating the amount of any payment due from him in respect of the levy; and (b) any information furnished to the Authority by the nominated person, a licensed supplier, a licensed transmitter, a licensed distributor or a licensed generator pursuant to a notice under reg 33 (as substituted): reg 37(3) (as amended (see note 27 supra); also amended by SI 2001/1200; SI 2001/3286).

30 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 37(1) (substituted by SI 2001/1200; amended by SI 2001/3286).

31 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 37(2) (as amended (see note 27 supra); also amended by SI 2001/1200; SI 2001/3286).

32 For these purposes, 'relevant meter' means a meter which (1) is under the control of the licensed supplier, licensed transmitter, licensed distributor or licensed generator or to which a licensed supplier (or a person authorised by a supplier) has access; and (2) is used for ascertaining any quantities of electricity provided to or supplied by a licensed supplier: Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 39(2) (amended by SI 2001/3286).

33 Fossil Fuel Levy Regulations 1990, SI 1990/266, reg 39(1) (as amended (see note 27 supra); also amended by SI 2001/3286).

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E. FUEL STOCKS AT GENERATING STATIONS

1248. Fuel stocks etc at generating stations.

In respect of any generating station¹ which is of a capacity not less than 10 megawatts² (or such other specified capacity not exceeding 100 megawatts as may be substituted by an order³ of the Secretary of State⁴) and is fuelled otherwise than by waste⁵ or manufactured gases⁶, the Secretary of State may give a direction⁷ requiring the person who operates it:

- 3134 (1) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will enable those stocks to be brought within a specified⁸ time to, and thereafter maintained at, a specified level⁹, and ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by any other direction¹⁰ of the Secretary of State¹¹; and
- 3135 (2) to create such stocks and make such arrangements with respect to them¹².

The amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation¹³.

In respect of any generating station to which these provisions apply, the Secretary of State may give a direction authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station¹⁴ and requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels¹⁵.

A direction under the above provisions may:

- 3136 (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station¹⁶;
- 3137 (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers¹⁷;
- 3138 (c) specify the manner in which any period¹⁸ is to be determined¹⁹; and
- 3139 (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified²⁰.

Such a direction which confers on any person the function of specifying anything²¹ may require that person to exercise that function in such manner as may be specified by the direction²².

The Secretary of State may also give a direction:

- 3140 (i) requiring the holder of a transmission licence²³ to give to the Secretary of State, after consultation with specified persons²⁴, any information²⁵ or advice which the Secretary of State may reasonably require for purposes connected with the exercise of these functions²⁶;

- 3141 (ii) requiring any person who is authorised by a licence to participate in the transmission of electricity²⁷ to carry on the activities which the licence authorises, or any of them, at any time when a direction authorising or requiring the person who operates a generating station to make such use as may be specified of any stocks held at or near that generating station and requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels²⁸ is in force, either in a specified manner or with a view to achieving specified objectives²⁹.

The Secretary of State must lay before each House of Parliament a copy of every direction given by him under the above provisions unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person³⁰.

A person who, without reasonable excuse, contravenes³¹ or fails to comply with any such direction of the Secretary of State is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine³². No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or on behalf of the Secretary of State³³.

1 For the meaning of 'generating station' see PARA 1041 note 6 ante.

2 The Electricity Act 1989 s 34(1)(a) as enacted refers to '50 megawatts' but has effect as if for that capacity there were substituted the capacity of '10 megawatts': see the Electricity Act 1989 (Variation of Section 34(1)(a)) Order 1990, SI 1990/1066, art 2.

3 As to the making of orders generally see the Electricity Act 1989 s 106 (as amended); and PARA 1306 post.

4 See *ibid* s 34(2); and note 2 *supra*. As to the Secretary of State see PARA 601 note 1 ante.

5 For these purposes, 'waste' has the same meaning as in the Control of Pollution Act 1974 s 30(1) (prospectively repealed) (ie the same meaning as in the Environmental Protection Act 1990 s 75(2) (as substituted): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 623); Electricity Act 1989 s 34(1).

6 Electricity Act 1989 s 34(1) (as varied: see note 2 *supra*).

7 As to directions generally see *ibid* s 107; and PARA 1306 post.

8 For these purposes, 'specified' means specified by or under the Secretary of State's direction: Electricity Act 1989 s 34(5).

9 *Ibid* s 34(3)(a)(i).

10 Ie a direction under *ibid* s 34(4): see the text and notes 14-15 *infra*.

11 *Ibid* s 34(3)(a)(ii).

12 *Ibid* s 34(3)(b).

13 *Ibid* s 34(3).

14 *Ibid* s 34(4)(a).

15 *Ibid* s 34(4)(b).

16 *Ibid* s 34(5)(a).

17 *Ibid* s 34(5)(b).

18 Ie any period mentioned in *ibid* s 34(3) or (4): s 34(5)(c).

19 *Ibid* s 34(5)(c).

- 20 Ibid s 34(5)(d).
- 21 Ie anything falling to be specified under the direction: *ibid* s 34(6).
- 22 Ibid s 34(6).
- 23 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.
- 24 For these purposes, 'specified' means specified by or under the Secretary of State's direction: Electricity Act 1989 s 35(3).
- 25 For the meaning of 'information' see PARA 1044 note 10 ante.
- 26 Electricity Act 1989 s 35(1) (amended by the Energy Act 2004 s 143(1), Sch 19 paras 3, 12(1), (2)). The functions referred to are those under the Electricity Act 1989 s 34 (as modified): see the text and notes 1-23 *supra*.
- 27 For the meaning of 'licence' see PARA 1041 note 12 ante; and for the meaning of references to participating in the transmission of electricity see PARA 1050 note 5 ante.
- 28 Ie a direction under *ibid* s 34(4): see the text and notes 14-15 *supra*.
- 29 Ibid s 35(2) (substituted by the Energy Act 2004 s 143(1), Sch 19 paras 3, 12(1), (3)). A person subject to a direction under head (ii) in the text must give effect to it notwithstanding any other duty imposed on him by or under the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1249 et seq post): s 35(3) (amended for these purposes by the Energy Act 2004 s 143(1), Sch 19 paras 3, 12(1), (4)).
- 30 Electricity Act 1989 s 35(4).
- 31 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.
- 32 Electricity Act 1989 s 35(5). As to the statutory maximum see PARA 689 note 2 ante.
- 33 Ibid s 35(6). The Energy Act 1976 s 18(1), Sch 2 paras 1-4, 7-8 (administration and other matters: see PARA 609 et seq ante) have effect as if: (1) the Electricity Act 1989 s 34 (as modified) were contained in that Act; (2) the powers of the Energy Act 1976 Sch 2 para 1 were exercisable for any purpose connected with securing compliance with a direction under the Electricity Act 1989 s 34; (3) information obtained by virtue of the Energy Act 1976 Sch 2 para 1 could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and (4) the powers conferred by Sch 2 para 1(1)(c) included power to direct that information and forecasts be furnished to any such person: Electricity Act 1989 s 35(7).

UPDATE

1248 Fuel stocks etc at generating stations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/A. GENERATING STATIONS AND OVERHEAD LINES REQUIRING CONSENT FOR CONSTRUCTION, INSTALLATION ETC/1249. Consent required for construction etc of generating stations; in general.

(ii) Works requiring Consent of the Secretary of State

A. GENERATING STATIONS AND OVERHEAD LINES REQUIRING CONSENT FOR CONSTRUCTION, INSTALLATION ETC

1249. Consent required for construction etc of generating stations; in general.

A generating station¹ may not be constructed at a relevant place² and a generating station at such a place must not be extended³ or operated except in accordance with a consent granted by the Secretary of State⁴. This restriction does not, however, apply to a generating station whose capacity:

- 3142 (1) does not exceed the permitted capacity, that is to say:
- 301
- 445. (a) 50 megawatts (or such other capacity as may be substituted by an order⁵ of the Secretary of State)⁶; or
- 446. (b) in the case of generating stations which are wholly or mainly driven by wind or water and are situated in waters within or adjacent to England and Wales up to the seaward limits of the territorial sea⁷, one megawatt, provided that the waters are not within an area in which development⁸ requires planning permission⁹ under the Town and Country Planning Act 1990¹⁰; and
- 302
- 3143 (2) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended¹¹.

Different provision may be made in such an order¹² for generating stations of different classes or descriptions¹³. The Secretary of State may also by order direct that this requirement of consent is not to apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order¹⁴.

A consent granted by the Secretary of State may include such conditions (including conditions as to the ownership or operation of the generating station) as appear to the Secretary of State to be appropriate¹⁵. Such a consent continues in force for such period as may be specified in or determined by or under the consent¹⁶.

Any person who, without reasonable excuse, contravenes¹⁷ these provisions as to the requirement of consent is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁸. No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or on behalf of the Secretary of State¹⁹.

1 For the meaning of 'generating station' see PARA 1041 note 6 ante.

2 ie a relevant place within the meaning of the Electricity Act 1989 s 4 (as amended): see PARA 1050 ante. 'Construct' and 'construction', in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in the Energy Act 2004 Pt 2 Ch 2 (ss 84-104); and

'renewable energy installation' has the same meaning as in Pt 2 Ch 2 (see PARA 1310 et seq post): Electricity Act 1989 s 64(1) (definitions added by the Energy Act 2004 s 102(1), (4)). For the meanings of 'construct' and 'construction' for those purposes see PARA 1312 note 4 post; and for the meaning of 'renewable energy installation' see PARA 1311 note 2 post.

3 For these purposes, 'extension', in relation to a generating station, includes the use by the person operating the station of any land or area of waters, wherever situated, for a purpose directly related to the generation of electricity by that station and 'extend' is to be construed accordingly: Electricity Act 1989 s 36(9) (amended by the Energy Act 2004 s 93(3)). It is submitted that 'extended' was intended to fall within this meaning.

4 Electricity Act 1989 s 36(1) (amended by the Energy Act 2004 s 93(1)). The Electricity Act 1989 s 36(1) (as amended) is subject to s 36(2), (4) (see the text and notes 6- 14 infra). As to the Secretary of State see PARA 601 note 1 ante.

5 See *ibid* s 36(3). As to the making of orders generally see s 106 (as amended); and PARA 1306 post; and as to the exercise of this power see head (1)(b) in the text.

6 *Ibid* s 36(2)(a) (as originally enacted).

7 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

8 For this purpose, 'development' bears the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq): Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001, SI 2001/3642, art 2(2).

9 For this purpose, 'planning permission' bears the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 43 note 6): Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001, SI 2001/3642, art 2(2).

10 See *ibid* art 2(1), modifying the Electricity Act 1989 s 36(2)(a).

11 Electricity Act 1989 s 36(2)(b).

12 *Ie* an order under *ibid* s 36(2).

13 *Ibid* s 36(2). As to the framing of classes or descriptions see PARAS 1051 note 4, 1068 note 17 ante.

14 *Ibid* s 36(4). In exercise of the power so conferred, the Secretary of State has made the Offshore Generating Stations (Exemption) Order 1990, SI 1990/443, which came into force on 31 March 1990: art 1. The requirement of consent under the Electricity Act 1989 s 36(1) (as amended) does not apply to a generating station which is situated on an offshore installation (within the meaning of the Mineral Workings (Offshore Installations) Act 1971 (repealed: see now the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, regs 2(1), 3(1) (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733) and is used solely for the purpose of the supply of electricity to that offshore installation, or to that and any other offshore installation: Offshore Generating Stations (Exemption) Order 1990, SI 1990/443, arts 2, 3.

15 Electricity Act 1989 s 36(5)(a).

16 *Ibid* s 36(5)(b).

17 For the meaning of 'contravention' and cognate expressions see PARA 1070 note 20 ante.

18 Electricity Act 1989 s 36(6). As to the standard scale see PARA 613 note 11 ante.

19 *Ibid* s 36(7). As to the preliminary accreditation and accreditation of generating stations under the Renewables Obligation Order 2006, SI 2006/1004, art 31 see PARA 1238 ante. See also the Energy Act 1976 s 14 (as amended); and PARAS 1216-1217 ante; the Electricity Act 1989 s 61 (as amended) (concurrent proceedings in relation to applications for consent under s 36 (as modified: see note 10 supra) and compulsory purchase orders, etc); and PARA 1298 post; s 10(1), Sch 3 para 2 (as amended) (limitation on compulsory acquisition of land to which application for consent will relate); and PARAS 1283-1284 post; and s 38, Sch 9 para 1 (preservation of amenity in relation to proposals for consent under s 36 (as modified)); and PARA 1253 post. The Town and Country Planning Act 1990 allows the Secretary of State to direct that planning permission is to be deemed to be granted under the Electricity Act 1989 s 36 (as modified): see the Town and Country Planning Act 1990 s 90(2); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238. On granting consent, the Secretary

of State may direct that hazardous substances consent is to be deemed to be granted: see the Planning (Hazardous Substances) Act 1990 s 12(2), (3), (5); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1254. See also the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927; and PARA 1254 et seq post; the Electricity Generating Stations (Fuel Control) Order 1987, SI 1987/2175; and PARA 1216 ante; the Nuclear Installations Act 1965 s 3 (as amended); and PARAS 1490-1491 post; the Submarine Pipelines (Electricity Generating Stations) Regulations 1981, SI 1981/750, reg 2; and PARA 1300 post; and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729 et seq.

As to the powers under the Electricity Act 1989 to enter on land for purposes of exploration see s 10(1) (as amended), Sch 4 para 10; and PARA 1296 post. As to EC legislation as it applies to, inter alia, construction, etc of generating stations see PARA 631 et seq ante.

UPDATE

1249 Consent required for construction etc of generating stations; in general

TEXT AND NOTES--Certain of the functions of the Secretary of State in issuing consents under the Electricity Act 1989 s 36 are transferred to the Marine Management Organisation and s 36 is accordingly further amended: see Marine and Coastal Access Act 2009 s 12. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/A. GENERATING STATIONS AND OVERHEAD LINES REQUIRING CONSENT FOR CONSTRUCTION, INSTALLATION ETC/1250. Declarations extinguishing etc public rights of navigation.

1250. Declarations extinguishing etc public rights of navigation.

Where a consent¹ is granted by the Secretary of State² in relation to:

- 3144 (1) the construction³ or operation of a generating station⁴ that comprises or is to comprise, in whole or in part, renewable energy installations⁵ situated at places in relevant waters⁶; or
- 3145 (2) an extension⁷ of a generating station that is to comprise, in whole or in part, renewable energy installations situated at places in relevant waters or an extension of such an installation,

he may, at the same time, make a declaration under these provisions as respects rights of navigation so far as they pass through some or all of those places⁸. He may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent⁹.

Such a declaration is one declaring that the rights of navigation specified or described in it:

- 3146 (a) are extinguished;
- 3147 (b) are suspended for the period that is specified in the declaration;
- 3148 (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
- 3149 (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration¹⁰.

Such a declaration has effect, in relation to the rights specified or described in it, from the time at which it comes into force¹¹ and continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it¹².

A declaration under these provisions:

- 3150 (i) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
- 3151 (ii) must specify the date on which it is to come into force, or the means by which that date is to be determined;
- 3152 (iii) may modify or revoke a previous such declaration, or a declaration under the specified provision of the Energy Act 2004¹³; and
- 3153 (iv) may make different provision in relation to different means of exercising a right of navigation¹⁴.

Where such a declaration is made by the Secretary of State, or a determination is made by him for the purposes of a provision contained in such a declaration, he must either:

- 3154 (A) publish the declaration or determination in such manner as appears to him to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
- 3155 (B) secure that it is published in that manner by the applicant for the declaration¹⁵.

Where a consent relating to the matters that are described in heads (1) and (2) above has been granted by the Secretary of State¹⁶ before the above provisions came into force¹⁷, then on an application made by the generator¹⁸, the Secretary of State may make a declaration under the following provisions as respects rights of navigation so far as they pass through the places where the renewable energy installations are situated or are to be situated or so far as they pass through some of those places¹⁹. Such a declaration is in the terms set out in heads (a) to (d) above²⁰. Except that it may not modify or revoke a previous declaration²¹, the provisions set out above as to the effect of the declaration, the matters set out in heads (i) to (iv) above and the requirements as to publication set out in heads (A) and (B) above²² apply as they apply to declarations made under the above provisions²³. Before making such a declaration, the Secretary of State must, however, publish details of the generator's application in such manner as he considers appropriate²⁴. The Secretary of State must give notice of that application to such persons as he considers appropriate, must consult the persons to whom notice has been given and must make such arrangements as he considers appropriate for a copy of the application to be made available for inspection by members of the public²⁵. He must also give such opportunities to such persons as he considers appropriate to make representations to the Authority about the application²⁶.

1 For these purposes, 'consent' means a consent under the Electricity Act 1989 s 36 (as amended) (see PARA 1249 ante): s 36A(7) (s 36A added by the Energy Act 2004 s 99(1)).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'construction' for these purposes see PARA 1312 note 4 post; and as to the application of this definition see PARA 1249 note 2 ante.

4 For the meaning of 'generating station' see PARA 1041 note 6 ante.

5 For the meaning of 'renewable energy installation' see PARA 1311 note 2 post; and as to the application of this definition see PARA 1249 note 2 ante.

6 For these purposes, 'relevant waters' means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea: Electricity Act 1989 s 36A(7) (as added: see note 1 supra). For the meaning of 'Great Britain' see PARA 602 note 7 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

7 'Extension', in relation to a renewable energy installation, has the same meaning as in the Energy Act 2004 Pt 2 Ch 2 (ss 84-104) (see PARA 1310 et seq post): Electricity Act 1989 s 38A(7) (as added: see note 1 supra). That definition (in the Energy Act 2004 s 104(1)) (see PARA 1314 note 6 post) applies the definition in the Electricity Act 1989 s 36(9) (see PARA 1249 note 3 ante).

8 Ibid s 36A(1) (as added: see note 1 supra).

9 Ibid s 36A(2) (as added: see note 1 supra).

10 Ibid s 36A(3) (as added: see note 1 supra).

11 Ibid s 36A(4)(a) (as added: see note 1 supra).

12 Ibid s 36A(4)(b) (as added: see note 1 supra).

13 Ie a declaration under the Energy Act 2004 s 100: see the text and notes 16-26 infra.

14 Electricity Act 1989 s 36A(5) (as added: see note 1 supra).

15 Ibid s 36A(6) (as added: see note 1 supra).

16 Ie under the Electricity Act 1989 s 36 (as amended): see PARA 1249 ante.

17 Ie before 1 October 2005 (the commencement of the Energy Act 2004 s 99): see the Energy Act 2004 (Commencement No 5) Order 2005, SI 2005/877, art 2(2), Sch 2.

18 For these purposes, 'generator', in relation to a consent under the Electricity Act 1989 s 36 (as amended), means the person who is constructing or operating the station in question, or making the extension in question, or who is proposing to do so: Energy Act 2004 s 100(8).

19 See ibid s 100(1)-(3).

20 See ibid s 100(4).

21 Ie the Electricity Act 1989 s 36A(5)(c) (as added) (see head (iii) in the text) is omitted: Energy Act 2004 s 100(5).

22 Ie the Electricity Act 1989 s 36A(4)-(6) (as added) applies in relation to such declarations.

23 See the Energy Act 2004 s 100(5).

24 Ibid s 100(6)(a). The Secretary of State may satisfy the requirements of s 100(6)(a)-(d) by securing that the things that he is required to do under that provision are done on his behalf by the generator: see s 100(7).

25 Ibid s 100(6)(b)-(d); and see note 24 supra.

26 Ibid s 100(6)(e).

UPDATE

1250 Declarations extinguishing etc public rights of navigation

TEXT AND NOTES 1-15--Certain of the functions of the Secretary of State in issuing consents under the Electricity Act 1989 s 36A are transferred to the Marine Management Organisation and s 36A is accordingly amended: see Marine and Coastal Access Act 2009 s 12. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/A. GENERATING STATIONS AND OVERHEAD LINES REQUIRING CONSENT FOR CONSTRUCTION, INSTALLATION ETC/1251. Duties in relation to navigation.

1251. Duties in relation to navigation.

The Secretary of State¹ may not grant a consent² in relation to any particular offshore generating activities³ if he considers that interference with the use of recognised sea lanes essential to international navigation⁴ is likely to be caused by the carrying on of those activities or is likely to result from their having been carried on⁵. It is the duty of the Secretary of State, in determining whether to give a consent for any particular offshore generating activities, and what conditions to include in such a consent, to have regard to the extent and nature of any obstruction of or danger to navigation which, without amounting to interference with the use of such sea lanes, is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on⁶. In determining for these purposes what interference, obstruction or danger is likely and its extent and nature, the Secretary of State must have regard to the likely overall effect⁷, both while being carried on and subsequently, of the activities in question and of such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted⁸.

If the Secretary of State, having granted a consent in relation to any offshore generating activities, thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify⁹ in relation to any of the following matters the obligations imposed by those conditions:

- 3156 (1) the provision of aids to navigation (including, in particular, lights and signals);
- 3157 (2) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
- 3158 (3) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity¹⁰.

A modification in exercise of that power must be set out in a notice¹¹ given by the Secretary of State¹² to the person whose obligations are modified¹³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'consent' means a consent under the Electricity Act 1989 s 36 (as amended) (see PARA 1249 ante): s 36B(7) (s 36B added by the Energy Act 2004 s 66(1)).

3 For these purposes, 'offshore generating activities' means (1) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or (2) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation: Electricity Act 1989 s 36B(7) (as added: see note 2 supra). For the meaning of 'construction' see PARA 1312 note 4 post; for the meaning of 'renewable energy installation' see PARA 1311 note 2 post; and as to the application of these definitions see PARA 1249 note 2 ante. For the meaning of 'generating station' see PARA 1041 note 6 ante. For the meaning of 'extension', in relation to a renewable energy installation, see PARA 1249 note 3 ante (definition applied by the Energy Act 2004 s 104(1) and the Electricity Act 1989 s 36B(8) (as added: see note 2 supra)).

4 For these purposes, 'the use of recognised sea lanes essential to international navigation' means (1) anything that constitutes the use of such a sea lane for the purposes of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) art 60(7); or (2) any use of waters in the territorial sea adjacent to Great Britain that would fall within head (1) supra if the waters were in a renewable energy zone: Electricity Act 1989 s 36B(7) (as added: see note 2 supra). For the meaning of 'renewable energy zone' see PARA 1310 post (definition applied by the Electricity Act 1989 s 64(1) (amended for this purpose by the Energy Act 2004 s 102(1), (4)(b)); for the meaning of 'Great Britain' see PARA 602 note 7 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

5 Electricity Act 1989 s 36B(1) (as added: see note 2 supra).

6 Ibid s 36B(2) (as added: see note 2 supra).

7 For these purposes, the effects of offshore generating activities include (1) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under ibid s 36A (as added) and the Energy Act 2004 s 100 (extinguishment of public rights of navigation: see PARA 1250 ante); and (2) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under the Energy Act 2004 ss 95, 96, Pt 2 Ch 3 (ss 105-114) (safety zones and decommissioning: see PARAS 1314-1316, 1320 et seq post): Electricity Act 1989 s 36B(4) (as added: see note 2 supra).

8 Ibid s 36B(3) (as added: see note 2 supra).

9 For the meaning of 'modify' see PARA 1035 note 3 ante.

10 Electricity Act 1989 s 36B(5) (as added: see note 2 supra).

11 For the meaning of 'notice' see PARA 1047 note 11 ante.

12 Ie as the person who granted the consent.

13 See the Electricity Act 1989 s 36B(6) (as added: see note 2 supra).

UPDATE

1251 Duties in relation to navigation

TEXT AND NOTES--Certain of the functions of the Secretary of State in issuing consents under the Electricity Act 1989 s 36B are transferred to the Marine Management Organisation and s 36B is accordingly amended: see Marine and Coastal Access Act 2009 s 12. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/A. GENERATING STATIONS AND OVERHEAD LINES REQUIRING CONSENT FOR CONSTRUCTION, INSTALLATION ETC/1252. Consent required for overhead lines; in general.

1252. Consent required for overhead lines; in general.

An electric line¹ may not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State². This restriction does not, however, apply:

- 3159 (1) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying³ a single consumer⁴;
- 3160 (2) in relation to so much of an electric line as is or will be within premises⁵ in the occupation or control of the person responsible for its installation⁶; or
- 3161 (3) in such other cases as may be prescribed⁷.

The prescribed exemptions are:

- 3162 (a) the installation or keeping installed of an electric line which connects an electric line installed below ground with apparatus mounted on a pole or structure and is attached to the pole or structure throughout its length except where it passes through a fuse or apparatus⁸;
- 3163 (b) the installation or keeping installed of a wire or cable, including its casing or coating, which forms part of electronic communications apparatus⁹ and which is supported, or carried by, or suspended from the supports for an existing line¹⁰;
- 3164 (c) the installation or keeping installed for a period not exceeding six months of an electric line no part of which is within a National Park¹¹, a National Scenic Area in Scotland¹², an area of outstanding natural beauty¹³, a regional park¹⁴ or a site of special scientific interest (an 'SSSI')¹⁵ and which connects two points on an existing line which are not further apart than the maximum distance¹⁶ so as to provide a diversion for the existing line¹⁷;
- 3165 (d) the installation or keeping installed of an electric line attached to a building, other than a scheduled monument¹⁸, listed building¹⁹ or building in a conservation area²⁰, where the building in question crosses a road, railway or watercourse and its principal purpose is not the support of the electric line²¹;
- 3166 (e) the installation or keeping installed, subject to the prescribed limitations and restrictions²², of an electric line no part of which is within a National Park, National Scenic Area, area of outstanding natural beauty, regional park or SSSI and which replaces an existing line whether or not it is installed in the same positions as the existing line in question²³;
- 3167 (f) an electric line forming part of the Midland Metro light rail transit system²⁴;
- 3168 (g) an electric line which has been, or is to be, installed or kept installed in accordance with a power conferred by, or by an order made under, an Act of Parliament²⁵ and has been, or is to be, installed or kept installed for the purposes of a tramway or trolley vehicle system or system using a mode of guided transport²⁶ prescribed by order made under the Transport and Works Act 1992²⁷.

A consent granted under these provisions may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Secretary of State to be

appropriate²⁸. Such a consent may be varied or revoked by the Secretary of State at any time after the end of such period as may be specified in the consent²⁹ and otherwise continues in force for such period as may be specified in or determined by or under the consent³⁰.

Any person who without reasonable excuse contravenes³¹ these provisions relating to the requirement of consent is liable on summary conviction to a fine not exceeding level 3 on the standard scale³². No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or on behalf of the Secretary of State³³.

1 For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 Electricity Act 1989 s 37(1). Section 37(1) is subject to s 37(2): s 37(1). As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'supply' see PARA 1041 note 10 ante.

4 Electricity Act 1989 s 37(2)(a).

5 For the meaning of 'premises' see PARA 1041 note 5 ante.

6 Electricity Act 1989 s 37(2)(b).

7 Ibid s 37(2)(c). For the meaning of 'prescribed' see PARA 1096 note 11 ante. In exercise of the power so conferred, the Secretary of State has made the Overhead Lines (Exemption) Regulations 1990, SI 1990/2035; and the Overhead Lines (Exemption) Regulations 1992, SI 1992/3074: see heads (a)-(e), (g) in the text.

8 Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(1)(a).

9 Ie within the meaning given in the Telecommunications Act 1984 Sch 2 para 1 (as amended) (see TELECOMMUNICATIONS vol 97 (2010) PARA 163): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(1)(b).

10 Ibid reg 3(1)(b). 'An existing line' means an electric line which has been installed or is kept installed above ground in accordance with a consent granted under the Electricity Act 1989 s 37(1); or has been installed above ground and is an electric line to which s 37(1) does not apply either by virtue of s 112(3), Sch 17 para 5(4) or (5) (transitional provisions) or by virtue of any provision of the Overhead Lines (Exemption) Regulations 1990, SI 1990/2035: reg 2.

11 As to the National Parks see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq.

12 Ie an area designated as a National Scenic Area by a direction under the Town and Country Planning (Scotland) Act 1972 s 262C (as added): see the Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

13 'Area of outstanding natural beauty' means an area designated as such by an order under the National Parks and Access to the Countryside Act 1949 s 87 (repealed) (see now the Countryside and Rights of Way Act 2000 s 82 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 658 et seq): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

14 Ie lands designated as a regional park by an order under the Countryside (Scotland) Act 1967 s 48A (as added): see the Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

15 'SSSI' means a site of special scientific interest designated under the Wildlife and Countryside Act 1981 s 29 (repealed) (see now s 28 (as amended) (notification of SSSIs); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674 et seq): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

16 'The maximum distance' means (1) in relation to an electric line which has a nominal voltage less than 66 kilovolts, 500 metres; and (2) in relation to any other electric line, 850 metres: ibid reg 3(2).

17 Ibid reg 3(1)(c).

18 'Scheduled monument' has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

19 'Listed building' has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 91 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1091): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

20 'Conservation area' has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 91 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1169): Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 3(2).

21 Ibid reg 3(1)(d).

22 Ie subject to the limitations in ibid reg 4 and the provisions of reg 5 (see note 23 infra): reg 3(1)(e). The prescribed limitations are that: (1) the electric line does not have a nominal voltage greater than the nominal voltage of the existing line; (2) any conditions contained in a consent granted under the Electricity Act 1989 s 37(1) or under the previous legislation (ie the Electric Lighting (Clauses) Act 1899 Schedule s 10(b) (repealed)) applicable to the existing line are complied with; (3) the height above the surface of the ground of any support for the electric line does not exceed the height of the highest support which is being replaced by more than 10%; (4) where the electric line is installed in a different position from the existing line, the distance between any small support and the existing line does not exceed 30 metres and the distance between any other support and the existing line does not exceed 60 metres; and (5) where the electric line is installed in a different position from the existing line, the existing line is removed within 12 months from the date on which the installation of the electric line which replaces it is completed: Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 4(1). For these purposes, any reference to the distance between a support and an existing line is a reference to the shortest distance between the centre of the base of that support and an imaginary line through the centre of the base of each support of the existing line (reg 4(2)(a)); and a 'small support' means a support for an electric line which does not exceed 10 metres in height (reg 4(2)(b)).

23 Ibid reg 3(1)(e). In a case where either (1) the electric line is to be installed in a different position from the existing line; or (2) the height above the surface of the ground of any support for the electric line will exceed the height of the highest support which is to be replaced, reg 3(1)(e) applies only if it is determined for these purposes that there is not likely to be a significant adverse effect on the environment: reg 5(1). For these purposes, it must be determined that there is not likely to be such an adverse effect if (a) notice is given by the person proposing to install the electric line to the relevant planning authority (within the meaning of the Electricity Act 1989 s 36(8), Sch 8 (as amended): see PARA 1260 note 9 post) of the proposal to install that electric line; and (b) that planning authority does not, within six weeks of receiving that notice, (i) determine that if the electric line were installed in accordance with the proposal it would in the opinion of that authority be likely to have a significant adverse effect on the environment; and (ii) notify the person by whom the notice was given and the Secretary of State of that determination: Overhead Lines (Exemption) Regulations 1990, SI 1990/2035, reg 5(2), (3).

24 See the Midland Metro Act 1992 s 10(3); the Midland Metro (No 2) Act 1992 s 10(3).

25 Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 3(a). The Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, came into force on 1 January 1993 (see reg 1) and thus did not apply to the exemption set out at head (f) in the text.

26 For these purposes, 'guided transport', 'tramway', 'trolley vehicle system' and 'vehicle' have the same meanings as in the Transport and Works Act 1992 (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES): Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 2.

27 Ibid reg 3(b). The order referred to is an order made under the Transport and Works Act 1992 s 2: Overhead Lines (Exemption) Regulations 1992, SI 1992/3074, reg 3(b).

28 Electricity Act 1989 s 37(3)(a).

29 Ibid s 37(3)(b).

30 Ibid s 37(3)(c).

31 For the meaning of 'contravention' and cognate expression see PARA 1070 note 20 ante.

32 Electricity Act 1989 s 37(4). As to the standard scale see PARA 613 note 11 ante.

33 Ibid s 37(5). As to applications for consent see s 36(8), Sch 8 (as amended); and PARA 1260 et seq post. See also the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927; and PARA 1254 et seq post.

See further the Electricity Act 1989 s 61 (as amended) (concurrent proceedings in relation to applications for consent under s 37 and compulsory purchase orders, applications for necessary wayleaves and felling and lopping of trees, etc); and PARA 1298 post; s 10(1), Sch 3 para 2 (as amended) (limitation on compulsory

acquisition of land to which application for consent will relate); and PARA 1283 post; and s 38, Sch 9 para 1 (preservation of amenity in relation to proposals for consent under s 37); and PARA 1253 post. The Town and Country Planning Act 1990 allows the Secretary of State to direct that planning permission is to be deemed to be granted under the Electricity Act 1989 s 37: see the Town and Country Planning Act 1990 s 90(2); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 238. As to the powers under the Electricity Act 1989 to enter on land for purposes of exploration see s 10(1), Sch 4 para 10; and PARA 1296 post. As to EC environmental legislation as it applies to, inter alia, overhead lines see PARA 637 ante. See also the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729 et seq.

UPDATE

1252 Consent required for overhead lines; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 8-23--SI 1990/2035 replaced: Overhead Lines (Exemption) (England and Wales) Regulations 2009, SI 2009/640 (amended by SI 2010/29).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1253. Preservation of amenity.

B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT

1253. Preservation of amenity.

In formulating any proposals ('relevant proposals'):

- 3169 (1) for the construction¹ or extension² of a generating station³ of a capacity not less than 10 megawatts, or such other capacity as may be specified by order made by the Secretary of State⁴, or for the operation of such a station in a different manner;
- 3170 (2) for the installation, whether above or below ground, of an electric line⁵; or
- 3171 (3) for the execution of any other works for or in connection with the transmission⁶ or supply⁷ of electricity⁸,

a licence holder⁹ or a person authorised by exemption¹⁰ to generate¹¹, distribute¹², supply or participate in the transmission of electricity¹³ must:

- 3172 (a) have regard the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings¹⁴ and objects of architectural, historic or archaeological interest¹⁵;
- 3173 (b) do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects¹⁶.

In considering any relevant proposals for which his consent is required¹⁷, the Secretary of State must have regard to the desirability of the matters mentioned in head (a) above and the extent to which the person by whom the proposals were formulated has complied with his duty under head (b) above¹⁸.

A licence holder must within 12 months from the grant of his licence prepare, and from time to time modify¹⁹, a statement setting out the manner in which he proposes to perform his duty under heads (a) and (b) above, including in particular the consultation procedures he intends to follow²⁰. Before so preparing or modifying a statement, he must consult:

- 3174 (i) where the activities which he is authorised by his licence to carry out include activities in England, Natural England²¹ and the Historic Buildings and Monuments Commission for England ('English Heritage')²²; and
- 3175 (ii) where those activities include activities in Wales, the Countryside Council for Wales²³ and the Welsh Ministers²⁴.

As soon as practicable after preparing or modifying such a statement, the licence holder must publish it as so prepared or modified in such manner as he considers appropriate²⁵.

- 1 For the meaning of 'construction' see PARA 1312 note 4 post; and as to the application of this definition see PARA 1249 note 2 ante.
- 2 For the meaning of 'extension' see PARA 1249 note 3 ante.
- 3 For the meaning of 'generating station' see PARA 1041 note 6 ante.
- 4 See the Electricity Act 1989 s 38, Sch 9 para 1(4). As to the Secretary of State see PARA 601 note 1 ante; and as to the making of orders generally see s 106 (as amended); and PARA 1306 post. At the date at which this title states the law, no such order had been made for these purposes. Cf, however, the Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001, SI 2001/3642, made under and for the purposes of the Electricity Act 1989 s 36 (as amended); and PARA 1249 ante.
- 5 For the meaning of 'electric line' see PARA 1041 note 5 ante.
- 6 For the meaning of 'transmission' see PARA 1041 note 6 ante.
- 7 For the meaning of 'supply' see PARA 1041 note 10 ante.
- 8 See the Electricity Act 1989 Sch 9 para 1(3).
- 9 For the meaning of 'licence holder' see PARA 1041 note 12 ante.
- 10 For the meaning of 'exemption' see PARA 1046 note 7 ante.
- 11 For the meaning of 'generate' see PARA 1041 note 7 ante.
- 12 For the meaning of 'distribute' see PARA 1041 note 5 ante.
- 13 For the meaning of references to participating in the transmission of electricity see PARA 1050 note 5 ante.
- 14 For these purposes, 'building' includes structure: Electricity Act 1989 Sch 9 para 1(3).
- 15 Ibid Sch 9 para 1(1)(a) (Sch 9 para 1(1) amended by the Energy Act 2004 s 143(1), Sch 19 paras 3, 16; and by the Utilities Act 2000 (Transitional Provisions) (No 2) Regulations 2001, SI 2001/3264, reg 6).
- 16 Electricity Act 1989 Sch 9 para 1(1)(b) (as amended: see note 15 supra). See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 729 et seq. As to the assessment of environmental impact see PARA 1254 et seq post.
- 17 Ie under the Electricity Act 1989 s 36 (as amended) (consent in relation to generating stations: see PARA 1249 ante) or s 37 (consent in relation to electric lines: see PARA 1252 ante).
- 18 Ibid Sch 9 para 1(2).
- 19 For the meaning of 'modify' see PARA 1035 note 3 ante.
- 20 Electricity Act 1989 Sch 9 para 2(1).
- 21 As to Natural England see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523.
- 22 Electricity Act 1989 Sch 9 para 2(2)(a) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 16; the Natural Environment and Rural Communities Act 2006 s 105, Sch 11 Pt 1 para 115, Sch 12). As to English Heritage see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 803 et seq; TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1058.
- 23 As to the Countryside Council for Wales see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 524.
- 24 See the Electricity Act 1989 Sch 9 para 2(2)(b) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 16; the Historic Buildings Council for Wales (Abolition) Order 2006, SI 2006/63, art 3(4)). The statutory wording is 'the National Assembly for Wales' rather than the Welsh Ministers; but see PARA 601 note 1 ante.
- 25 Electricity Act 1989 Sch 9 para 2(3). Schedule 9 paras 1, 2 (as amended) extend to England and Wales only: Sch 9 para 1(5).

UPDATE

1253 Preservation of amenity

TEXT AND NOTE 18--See Marine and Coastal Access Act 2009 s 12(5)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1254. Prohibition of grant of consent without consideration of environmental information.

1254. Prohibition of grant of consent without consideration of environmental information.

The Secretary of State¹ must not grant a section 36 consent² or a section 37 consent³ which relates to EIA development unless the prescribed requirements⁴ have been satisfied⁵. For these purposes, 'EIA development' means development⁶ which is:

- 3176 (1) Schedule 1 development, namely the carrying out of development to provide any of the following:
- 303
447. (a) a generating station⁷ the construction⁸ of which or the operation of which will require a section 36 consent and which is either a nuclear generating station or a non-nuclear generating station with a heat output of 300 megawatts or more;
448. (b) an electric line⁹ installed above ground with a voltage of 220 kilovolts or more and a length of more than 15 kilometres, the installation of which or the keeping installed of which will require a section 37 consent; or
449. (c) any change to or extension¹⁰ of such development where such a change or extension in itself meets the thresholds, if any, or the descriptions of development specified for these purposes¹¹;
- 304
- 3177 (2) Schedule 2 development, namely the carrying out of development to provide any of the following:
- 305
450. (a) a generating station the construction of which or the operation of which will require a section 36 consent but which is not Schedule 1 development;
451. (b) an electric line installed above ground with a voltage of 132 kilovolts or more the installation of which or the keeping installed of which will require a section 37 consent but which is not Schedule 1 development;
452. (c) an electric line installed above ground in a sensitive area¹² the installation of which or the keeping installed of which will require a section 37 consent but which is not Schedule 1 development and does not fall within head (b) above; or
453. (d) any change to or extension of development of a description falling within the description of Schedule 1 development (other than a change or extension falling with head (1)(c) above) or Schedule 2 development where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment¹³,
- 306
- 3178 if one of the specified events¹⁴ has occurred¹⁵;
- 3179 (3) any other development which the Secretary of State determines¹⁶ is EIA development¹⁷;

and in spite of the fact that any development is not Schedule 1 development or Schedule 2 development, the Secretary of State may, having taken into account such of the prescribed criteria¹⁸ as are relevant to the development, make a determination¹⁹ that an application for a

section 36 consent or a section 37 consent is for EIA development as the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location²⁰.

An applicant must submit in relation to any application for a section 36 consent or a section 37 consent which relates to EIA development an environmental statement²¹ which includes the prescribed information²². In relation to any application for a section 36 consent or a section 37 consent which relates to EIA development, the Secretary of State must not grant the required consent unless:

- 3180 (i) he is satisfied that the applicant has complied with his obligations under the above provision;
- 3181 (ii) he has taken into consideration the environmental information²³ and states in his decision in relation to that consent that he has done so; and
- 3182 (iii) the prescribed procedures²⁴ have been followed in so far as they are applicable²⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 'Section 36 consent' means a consent under the Electricity Act 1989 s 36 (as amended) to construct, extend or operate a generating station (see PARA 1249 ante): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1).

3 'Section 37 consent' means a consent under the Electricity Act 1989 s 37 to install or keep installed an electric line above ground (see PARA 1252 ante): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1).

4 le the requirements of *ibid* reg 4 (as amended): see the text and notes 22-25 *infra*.

5 *Ibid* reg 3(1).

6 For these purposes, 'development' means the carrying out of building, engineering or other operations in, on, over or under land or sea in pursuance of any application to which the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927 (as amended), apply: reg 2(1). Those regulations apply in the case of any application under the Electricity Act 1989 s 36 (as amended) for consent to construct, extend or operate a generating station, or any application under s 37 for consent to install or keep installed an electric line above ground, which is received by the Secretary of State on or after 1 September 2000 (Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 1(1), (2)); and extend throughout England and Wales (reg 1(3)).

7 For the meaning of 'generating station' see PARA 1041 note 6 ante (definition applied by *ibid* reg 2(1)).

8 'Construction' is not defined for these purposes; but cf para 1249 note 2 ante.

9 For the meaning of 'electric line' see PARA 1041 note 5 ante (definition applied by the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1)).

10 'Extension' is not defined for these purposes; but cf para 1249 note 3 ante.

11 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1), Sch 1 (amended by SI 2007/1977).

12 For these purposes, 'sensitive area' means any of the following: (1) land notified under the Wildlife and Countryside Act 1981 s 28(1) (as substituted) (areas of special scientific interest); (2) land to which the Wildlife and Countryside Act 1981 s 29(3) (repealed) (nature conservation orders) applied; (3) an area to which the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 (as amended), Table para (u)(ii) applies (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 475 ante at head (21)(b) in the text); (4) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949; (5) the Broads; (6) a property appearing on the World Heritage List kept under the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage art 11(2); (7) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979; (8) an area of outstanding natural beauty designated as such by an order made by Natural England as respects England or the Countryside Council for Wales, as respects Wales, under the Countryside and Rights of Way Act 2000 s 82 (as amended) as confirmed by the Secretary of State or by the National Assembly for Wales or the Welsh Ministers; (9) a

European site within the meaning of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 10 (as amended); Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 2 paras (a)-(i) (amended by virtue of the Countryside and Rights of Way Act 2000 ss 73, 76, 93, Sch 10, Sch 15 Pt II and the Natural Environment and Rural Communities Act 2006 s 1(4)).

13 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 2 paras (1), (3)-(5) (amended by SI 2007/1977).

14 The events referred to are: (1) the submission by the applicant in relation to the proposed development of a document referred to by the applicant as an environmental statement for the purposes of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927 (as amended); or (2) a determination by the Secretary of State (whether pursuant to a request for a screening opinion or reg 6 (as amended): see PARA 1255 post), having taken into account such of the criteria set out in Sch 3 (see note 18 infra) as are relevant to the development, that the application relates to EIA development as the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location: reg 3(3). 'Screening opinion' means a written statement of opinion of the Secretary of State as to whether the development in question is EIA development: reg 2(1).

15 See *ibid* reg 3(2).

16 *Ie* in accordance with *ibid* reg 3(4): see the text and notes 18-20 *infra*.

17 *Ibid* reg 2(1).

18 *Ie* the criteria set out in *ibid* Sch 3. Those criteria are as follows (Sch 3):

85 (1) characteristics of development: the characteristics of development must be considered, having regard, in particular, to:

55. (a) the size of the development;
55

56. (b) the cumulation with other developments;
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57. (c) the use of natural resources;
57

58. (d) the production of waste;
58

59. (e) pollution and nuisances; and
59

60. (f) the risk of accidents, having regard in particular to substances or technologies used;
60

86 (2) location of development: the environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to the existing land use, the relative abundance, quality and regenerative capacity of natural resources in the area and the absorption capacity of the natural environment, paying particular attention to the following areas:

61. (a) wetlands;
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62. (b) coastal zones;
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63. (c) mountain and forest areas;
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64. (d) nature reserves and parks;
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65. (e) areas classified or protected under EEA states' legislation;
65

66. (f) special protection areas designated by EEA states pursuant to EC Council Directive 79/409 (OJ L103, 25.04.79, p 1) (as amended) on the conservation of wild birds and EC Council Directive 92/43 (OJ L206, 22.07.92, p 7) (as amended) on the conservation of natural habitats and of wild fauna and flora: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728; WATER AND WATERWAYS vol 101 (2009) PARAS 674, 679);

66

67. (g) areas in which the environmental quality standards laid down in legislation of the Communities have already been exceeded;

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68. (h) densely populated areas; and

68

69. (i) landscapes of historical, cultural and archaeological significance;

69

- 87 (3) characteristics of the potential impact; the potential significant effects of development must be considered in relation to criteria set out under heads (1), (2) supra, and having regard, in particular, to:

70. (a) the extent of the impact (geographical area and size of the affected population);

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71. (b) the transfrontier nature of the impact;

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72. (c) the magnitude and complexity of the impact;

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73. (d) the probability of the impact; and

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74. (e) the duration, frequency and reversibility of the impact.

74

'EEA state' has the meaning given by the Interpretation Act 1978 Sch 1 (as amended) (ie in relation to any time, a state which at that time is a member state, or any other state which at that time is a party to the EEA Agreement; and the 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993, as modified or supplemented from time to time): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1) (definition substituted by SI 2007/1977).

19 Ie whether pursuant to a request for a screening opinion or to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 6 (as amended).

20 Ibid reg 3(4).

21 'Environmental statement' means (1) a statement prepared in respect of development pursuant to ibid reg 4(1) (see the text to this note and note 22 infra); (2) any information (a) provided to the Secretary of State by the applicant in order to supplement the statement referred to in head (1) supra and (b) made available to the Secretary of State no later than 14 days after the date of receipt by the Secretary of State of that statement; and (3) any further information submitted by the applicant pursuant to a requirement under reg 13(1) (see PARA 1257 post): reg 2(1) (definition substituted by SI 2007/1977).

22 The statement must include at least the information referred to in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 4 Pt II, and such of the information referred to in Sch 4 Pt I as is reasonably required to assess the environmental effects of the development and which, having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile, taking into account the terms of any scoping opinion given: reg 4(1). 'Scoping opinion' means a written statement of opinion of the Secretary of State as to the information to be provided in an environmental statement: reg 2(1) (definition amended by SI 2007/1977).

The information which the statement must contain is as follows (Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 4 Pt II), ie:

- 88 (1) a description of the development comprising information on the site, design and size of the development;

- 89 (2) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

- 90 (3) the data required to identify and assess the main effects which the development is likely to have on the environment;

- 91 (4) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects; and

92 (5) a non-technical summary of the information provided under heads (1)-(4) supra.

The additional information which may be reasonably required is as follows (Sch 4 Pt I), ie:

93 (a) a description of the development, including in particular:

75. (i) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
75

76. (ii) a description of the main characteristics of the production processes, for instance, nature and quality of the materials used; and
76

77. (iii) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development;
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94 (b) a description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors;

95 (c) a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

78. (i) the existence of the development;
78

79. (ii) the use of natural resources; and
79

80. (iii) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant of the forecasting methods used to assess the effects on the environment;
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96 (d) a description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment;

97 (e) a non-technical summary of the information provided under heads (a)-(d) supra;

98 (f) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

23 Ie including without limitation any views expressed by other EEA states under *ibid* reg 12 (as amended) (see *PARA 1258 post*): reg 4(2)(b). 'Environmental information' means the environmental statement prepared by the applicant, additional information, and any representations duly made by any consultative body or any other person about the likely environmental effects of the proposed development: reg 2(1) (definition substituted by SI 2007/1977). 'Additional information' means information which (1) is made available to the Secretary of State after the date of receipt by the Secretary of State of a document referred to by the applicant as an environmental statement and before determination by the Secretary of State of the application for a section 36 consent or a section 37 consent in respect of the development; (2) is of material relevance to the matters referred to in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, Sch 4; and (3) is not information falling within *PARAS* (b) or (c) of the definition of 'environmental statement' (see note 21 heads (2)-(3) *supra*): reg 2(1) (definition added by SI 2007/1977). 'The consultative bodies' means (a) (other than in relation to development which is or is to be situated in the English area) the local planning authority and any principal council for the area where the land is situated, if not the local planning authority; (b) where the application or proposed application relates to a site in England, Natural England; (c) where the application or proposed application relates to a site in Wales, the Countryside Council for Wales; (d) where the application or proposed application relates to a section 36 consent, the Environment Agency; and (e) other bodies designated by statutory provision as having specific environmental responsibilities whom the Secretary of State considers are likely to have an interest in the application or proposed application: Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1) (definition amended by SI 2007/977; and by virtue of the Natural Environment and Rural Communities Act 2006 s 1(4)). 'The English area' means the area so defined in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 1(2) (see *PARA 1656 note 6 post*); 'local planning authority' has the same meaning as is

assigned to 'relevant planning authority' by the Electricity Act 1989 Sch 8 para 2(6)(a), (aa) or (ab) (as amended) (as the case may be) (see PARA 1260 note 9 post); and 'principal council' has the same meaning as in the Local Government Act 1972 s 270(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 24): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1).

24 le the procedures laid down in ibid reg 9 (as amended), reg 10(2A) (as added), regs 11-14 (as amended), reg 14A (as added): see PARAS 1257-1259 post.

25 Ibid reg 4(2) (amended by SI 2007/1977).

UPDATE

1254 Prohibition of grant of consent without consideration of environmental information

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1255. Screening.

1255. Screening.

A person who is minded to apply for a section 36 consent¹ or a section 37 consent² for development³ which he considers may be EIA development⁴ may make a written request to the Secretary of State⁵ for a screening opinion⁶. A request for a screening opinion must be accompanied by:

- 3183 (1) a plan sufficient to identify the site which is the subject of the proposed development;
- 3184 (2) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment; and
- 3185 (3) such further information or representations as the person making the request may wish to provide or make⁷.

The Secretary of State, on receiving a request for a screening opinion must, if he considers that he has not been provided with sufficient information to give an opinion, within three weeks of the receipt of the request by him give notice⁸ to the person making the request of the particular points on which he requires further information⁹.

Where the Secretary of State considers that he has sufficient information he must consult the local planning authority¹⁰ within whose area the land which is the subject of the proposed application is situated (or, in relation to a proposed development in, on, over or under the sea, such local planning authority or local planning authorities as he considers appropriate) as to its views on whether the proposed development is EIA development, unless the person requesting a screening opinion has already conveyed that authority's views to the Secretary of State¹¹. A local planning authority must give its views to the Secretary of State within three weeks of the date on which it was so consulted, or such longer period as the Secretary of State may determine¹².

When the Secretary of State considers that he has sufficient information he must give a screening opinion within three weeks of whichever is the latest of:

- 3186 (a) the date of receipt of the request by the Secretary of State;
- 3187 (b) the date by which he has received all the further information required by him in a notice given under the above provisions; and
- 3188 (c) the date by which the local planning authority is so required to give its views or, if earlier, the date by which the Secretary of State has received the views of the local planning authority,

or within such longer period as may be agreed in writing with the person making the request¹³. Where the Secretary of State determines that the application for consent is for EIA development, he must provide with the screening opinion a written statement giving full reasons for his determination¹⁴.

Where an application is made to the Secretary of State for a section 36 consent or a section 37 consent but the application is not accompanied by a document referred to by the applicant as

an environmental statement¹⁵ and the proposed development has not previously been the subject of a screening opinion, the Secretary of State must make a determination as to whether or not the application for consent is for EIA development within three weeks of whichever is the latest of:

- 3189 (i) the date of receipt of the application by the Secretary of State;
- 3190 (ii) the date by which he has received all the further information required by him¹⁶; and
- 3191 (iii) the date by which the local planning authority is required to give its views¹⁷ or, if earlier, the date by which the Secretary of State has received the views of the local planning authority,

or within such longer period as may be agreed in writing with the applicant, and give notice to the applicant in writing accordingly, giving full reasons for his determination¹⁸. The applicant may, within three weeks beginning with the date a notice is so given that the proposed development is EIA development, write to the Secretary of State to inform him that he proposes to provide an environmental statement¹⁹. If the Secretary of State so determines that the proposed development is EIA development and the applicant takes no such action, the consent applied for is to be deemed to be refused at the end of the three week period referred to above²⁰.

1 For the meaning of 'section 36 consent' see PARA 1254 note 1 ante.

2 For the meaning of 'section 37 consent' see PARA 1254 note 2 ante.

3 For the meaning of 'development' see PARA 1254 note 6 ante.

4 For the meaning of 'EIA development' see PARA 1254 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 5(1). For the meaning of 'screening opinion' see PARA 1254 note 14 ante.

7 Ibid reg 5(2).

8 Any notice or other document to be sent, served or given under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927 (as amended) (see PARA 1254 ante; the text and notes 1-7 supra, 9-20 infra; and PARA 1256 et seq post) may be sent, served or given either (1) by delivering it to the person on whom it is to be served or to whom it is to be given; (2) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address; (3) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address; or (4) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office: reg 16.

9 Ibid reg 5(3). Nothing in the relevant regulations, however, requires the disclosure of any information which is subject to an obligation of confidentiality under the law of England and Wales (including any information which is capable of being treated as confidential or must be so treated under the Environmental Information Regulations 2004, SI 2004/3391): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 15(2); Interpretation Act 1978 s 17(2).

10 For the meaning of 'local planning authority' see PARA 1254 note 23 ante.

11 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 5(4).

12 Ibid reg 5(5).

13 Ibid reg 5(6).

14 Ibid reg 5(7).

15 For the meaning of 'environmental statement' see PARA 1254 note 21 ante.

16 In a notice given under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 5(3) as applied by reg 6(2). When making any determination under reg 6(1) (as amended) the Secretary of State may have recourse to procedures laid down in reg 5 as if the applicant had made a request for a screening opinion and in particular may require the applicant to provide the information set out in reg 5(2), may require further information in accordance with reg 5(3) and may consult the relevant local planning authority in accordance with reg 5(4), (5): reg 6(2).

17 In under ibid reg 5(5) as applied by reg 6(2): see note 16 supra.

18 Ibid reg 6(1) (amended by SI 2007/1977).

19 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 6(3).

20 Ibid reg 6(4).

UPDATE

1255 Screening

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1256. Preparation of an environmental statement.

1256. Preparation of an environmental statement.

A person who is minded to apply for a section 36 consent¹ or a section 37 consent² for development³ which is or may be EIA development⁴ may make a written request for a scoping opinion⁵. A request for a scoping opinion must be accompanied by:

- 3192 (1) a plan sufficient to identify the site which is the subject of the proposed development;
- 3193 (2) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment; and
- 3194 (3) such further information or representations as the person making the request may wish to provide or make⁶.

The Secretary of State⁷, on receiving a request for a scoping opinion, must, if he considers that he has not been provided with sufficient information to give an opinion, within three weeks of the receipt of the request by him give notice to the person making the request of the particular points on which he requires further information⁸.

When the Secretary of State considers that he has sufficient information he must consult:

- 3195 (a) the person making the request for a scoping opinion; and
- 3196 (b) the consultative bodies⁹,

and give them three weeks, or such longer period as that person and the Secretary of State may agree, to make representations regarding the content of the scoping opinion¹⁰. The Secretary of State must not give a scoping opinion until he is satisfied that the requirements for consultation so provided for have been met and he has considered any representations received by him pursuant to such consultation regarding the scoping opinion which he proposes to give¹¹.

The Secretary of State must give a scoping opinion within three weeks of whichever is the latest of:

- 3197 (i) the date of receipt of the request by the Secretary of State;
- 3198 (ii) the date by which he has received all the further information required by him in a notice given under the above provisions; and
- 3199 (iii) the last date by which any person consulted under heads (a) and (b) above is required to make representations, or if earlier, the date by which the Secretary of State has received the last of the representations of such persons,

or within such longer period as may be agreed in writing with the person making the request for a scoping opinion¹². Before giving a scoping opinion the Secretary of State must, having regard to current knowledge and methods of assessment, take into account the specific

characteristics of the proposed development, the specific characteristics of that type of development and the environmental features likely to be affected¹³.

Where a person has, at the same time as making a request for a screening opinion¹⁴, asked the Secretary of State for a scoping opinion under the above provisions, and the Secretary of State has given a screening opinion to the effect that the development is EIA development, the Secretary of State must begin the procedures relating to scoping on the date on which he gives the screening opinion¹⁵.

A prospective applicant may give the Secretary of State notice in writing that he intends to make an application for a section 36 consent or a section 37 consent in relation to any development and to submit an environmental statement with his application¹⁶. Such a notice must include the information necessary to identify, or be accompanied by documents identifying, the location and the nature and purpose of the proposed development, and must indicate the main environmental consequences to which the prospective applicant proposes to refer in his environmental statement¹⁷. Where the Secretary of State receives such a notice he must:

- 3200 (A) give notice to the consultative bodies in writing of the name and address of the prospective applicant and of the duty imposed upon them¹⁸ to make information available to the prospective applicant; and
- 3201 (B) give notice to the prospective applicant in writing of the names and addresses of the consultative bodies so notified¹⁹.

Where an application for a section 36 consent or a section 37 consent in relation to development has been made without an environmental statement, and either the Secretary of State has given notice to the applicant²⁰ that the development constitutes EIA development, or the applicant has informed the Secretary of State that he proposes to submit an environmental statement, the Secretary of State must take the action specified in heads (A) and (B) above which are to be read as if references to the prospective applicant were references to the applicant²¹.

1 For the meaning of 'section 36 consent' see PARA 1254 note 1 ante.

2 For the meaning of 'section 37 consent' see PARA 1254 note 2 ante.

3 For the meaning of 'development' see PARA 1254 note 6 ante.

4 For the meaning of 'EIA development' see PARA 1254 ante.

5 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 7(1) (amended by SI 2007/1977).

6 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 7(2).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 7(3). As to the service of notices see PARA 1255 note 8 ante; and as to the exclusion of confidential information see PARA 1255 note 9 ante.

9 For the meaning of 'the consultative bodies' see PARA 1254 note 23 ante.

10 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 7(4) (amended by SI 2007/1977).

11 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 7(5).

12 Ibid reg 7(6).

13 Ibid reg 7(7).

14 Ie under ibid reg 5(1): see PARA 1255 ante.

15 Ibid reg 7(8).

16 Ibid reg 8(1).

17 Ibid reg 8(2).

18 Ie by ibid reg 15 (as amended). Subject to reg 15(2) (exclusion of confidential information: see PARA 1255 note 9 ante), the consultative bodies must, if requested by the applicant (or prospective applicant), or may without such a request, enter into consultation with the applicant to determine whether they have in their possession any information which they consider or the applicant considers relevant to the preparation of an environmental statement and, if they have any such information, they must make it available to the applicant: reg 15(1) (amended by SI 2007/1977).

19 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 8(3) (amended by SI 2007/1977).

20 Ie pursuant to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 6 (as amended): see PARA 1255 ante.

21 Ibid reg 8(4).

UPDATE

1256 Preparation of an environmental statement

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1257. Publicity and procedures in connection with environmental impact assessment; in general.

1257. Publicity and procedures in connection with environmental impact assessment; in general.

In any case where an applicant for a section 36 consent¹ or a section 37 consent² which relates to EIA development³ has provided the Secretary of State⁴ with an environmental statement⁵, the applicant must, as soon after provision of that statement as is reasonably practicable, publish a notice containing the prescribed information⁶. Such a notice may be combined with any other notice which the applicant may be required to publish in respect of his application⁷. Subject to certain exceptions⁸, a reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an environmental statement to any person⁹.

The Secretary of State must send to the local planning authority¹⁰ within whose area the land which is the subject of the proposed application is situated (or, in relation to a proposed development in, on, over or under the sea, such local planning authority or local planning authorities as the Secretary of State considers appropriate) a copy of any screening opinion¹¹ or determination¹² and of any scoping opinion¹³, and the relevant local planning authority must take steps to ensure that such documents are made available for public inspection at all reasonable hours at the place where the register¹⁴ is kept¹⁵. If an application for a section 36 consent or a section 37 consent is made and any documents relating to it are sent to a local planning authority pursuant to the above provision, the local planning authority must take steps to ensure that the documents so received are also placed on Part I of the register¹⁶. If a local planning authority receives a copy of an environmental statement¹⁷, of further information¹⁸, of additional information¹⁹ or of certain notices²⁰, the local planning authority must also take steps to ensure that it is placed on Part I of the register²¹. Where an application for a section 36 consent or a section 37 consent which relates to EIA development is determined by the Secretary of State, the Secretary of State must send to the local planning authority or authorities to which a copy of the environmental statement pertaining to the application was provided²² and to the applicant a statement containing the prescribed information²³ and that local planning authority or those authorities must make that statement available for public inspection at all reasonable hours at the place where the register is kept²⁴. The Secretary of State must also make the statement provided in accordance with the above provision available to any EEA state consulted²⁵ in accordance with the prescribed procedure²⁶. Where an applicant receives a statement in accordance with the above provision the applicant must, as soon as is reasonably practicable, publish a notice specifying that the application has been determined, that section 36 or section 37 consent has either been granted or refused and that the statement containing the prescribed information²⁷ is available for public inspection at the local planning authority or authorities to which a copy of the environmental statement pertaining to the application was²⁸ provided²⁹.

Where an applicant submits to the Secretary of State an environmental statement relating to an application for a section 36 consent or a section 37 consent and also serves a copy of the environmental statement on any of the consultative bodies³⁰, he must:

- 3202 (1) serve with it a copy of the application and any plan submitted with it (unless he has already served those documents on the consultative body in question);

3203 (2) inform the consultative body that representations may be made to the Secretary of State; and

3204 (3) inform the Secretary of State of the name of every consultative body whom he has so served and of the date on which he did so³¹.

Where the Secretary of State receives an environmental statement in connection with an application for a section 36 consent or a section 37 consent he must within two weeks of receiving the environmental statement give notice to such of the consultative bodies upon whom the applicant has not served a copy of the environmental statement that an environmental statement will be taken into consideration in determining the application and that they may make representations or express their views, and he must elicit whether any such consultative body wishes to receive a copy of the environmental statement³². He must also give the applicant notice of the copies of the environmental statement required by those consultative bodies and of the names and addresses of the consultative bodies concerned³³. The applicant must serve copies of the environmental statement on any consultative body of whom he receives such notice and must inform the Secretary of State of the date on which he did so³⁴. Where an applicant submits an environmental statement to the Secretary of State relating to an application for a section 36 consent or a section 37 consent, the applicant must serve a copy of the environmental statement on the local planning authority within whose area the land which is the subject of the proposed development is situated (or, in relation to a proposed development in, on, over or under the sea, such local planning authority or authorities as the Secretary of State is to direct) and must inform the Secretary of State of the date on which he did so³⁵. The Secretary of State must not determine the application until after the later of 14 days from the last date on which a copy of the environmental statement was served in accordance with these provisions and the date stated in the notice published³⁶ by the applicant³⁷.

The Secretary of State, when dealing with an application for a section 36 consent or a section 37 consent in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as may be specified concerning any matter which is required to be, or may be, dealt with in the environmental statement³⁸. He may also in writing require an applicant to produce such evidence as he may reasonably call for to verify any information in the applicant's environmental statement³⁹. In any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development is so required to provide further information, the applicant must publish a notice containing the specified information⁴⁰. The applicant must serve a copy of the further information on any person on whom was served a copy of the environmental statement⁴¹ together with a copy of the above-mentioned notice⁴². A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the further information to any person except that the copies served pursuant to the above requirement must be supplied free of charge⁴³. The Secretary of State must not determine the application until after the later of 14 days from the last date on which a copy of the further information was so served and the date stated in the notice published⁴⁴ pursuant to the above requirements⁴⁵.

1 For the meaning of 'section 36 consent' see PARA 1254 note 1 ante.

2 For the meaning of 'section 37 consent' see PARA 1254 note 2 ante.

3 For the meaning of 'EIA development' see PARA 1254 ante.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 For the meaning of 'environmental statement' see PARA 1254 note 21 ante.

6 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 9(1) (substituted by SI 2007/1977). This is subject to the Electricity Works (Environmental

Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 12(5) (see PARA 1258 post): reg 9(1) (as so substituted). A notice to which reg 9(1) (as substituted) applies must be published in two successive weeks in the London Gazette, and in one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development): reg 9(1A) (added by SI 2007/1977). The notice must: (1) describe the application in question, state that it is accompanied by an environmental statement and, where relevant, state that it is likely to have significant effects on the environment in another EEA state; (2) state that copies of the environmental statement may be inspected at or obtained from an address in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, an address in England and Wales) and specify the amount of any payment required to be paid for a copy of the environmental statement; (3) state a date, not less than four weeks after the date on which the notice is to be last published in accordance with reg 9(1A) (as added), by which any person may make representations in relation to the application in question to the Secretary of State and specify the address to which any such representations are to be sent; (4) describe the procedures under regs 14, 14A (as amended and added respectively: see the text and notes 40-45 infra; and PARA 1259 post) in accordance with which any person may make representations in relation to (a) further information provided by the applicant pursuant to a requirement imposed under reg 13(1) (see the text and note 38 infra); or (b) additional information; (5) describe the circumstances under the Electricity Act 1989 in which the Secretary of State may cause a public inquiry to be held into the application; and (6) set out the nature of possible decisions to be taken in relation to the application: Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 9(2) (amended by SI 2007/1977).

7 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 9(3).

8 The copies served pursuant to *ibid* reg 11(1) or (3) (as amended) or reg 11(3A) (as added) (see the text and notes 30, 34-35 infra) must be supplied free of charge: reg 9(4) (amended by SI 2000/1927). As to the service of notices and documents see PARA 1255 note 8 ante.

9 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 9(4).

10 For the meaning of 'local planning authority' see PARA 1254 note 23 ante.

11 For the meaning of 'screening opinion' see PARA 1254 note 14 ante.

12 *Ie* under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 6: see PARA 1255 ante.

13 For the meaning of 'scoping opinion' see PARA 1254 note 22 ante.

14 'Register' means the register kept pursuant to the Town and Country Planning Act 1990 s 69 (as amended and prospectively substituted: see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 466): Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 2(1).

15 *Ibid* reg 10(1).

16 *Ibid* reg 10(2) (amended by SI 2007/1977).

17 *Ie* pursuant to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(3A) (as added): see the text and note 35 infra.

18 *Ie* pursuant to *ibid* reg 14(3) (as amended): see the text and notes 41-42 infra.

19 *Ie* pursuant to *ibid* reg 14A(1)(a) (as added): see PARA 1259 post. For the meaning of 'additional information' see PARA 1254 note 23 ante.

20 *Ie* a copy of a notice pursuant to *ibid* reg 14(3) (as amended) or reg 14A(5) (as added): see PARA 1259 post.

21 *Ibid* reg 10(2A) (added by SI 2007/1977).

22 *Ie* under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(3A) (as added): see the text and note 35 infra.

23 A statement to which *ibid* reg 10(3) (as substituted) applies must contain the following information: (1) the content of the Secretary of State's determination and any conditions attached to any consent granted; (2) a

summary of the main concerns and opinions expressed by the persons affected or likely to be affected by, or having an interest in, the application; (3) in the light of the concerns and opinions referred to in head (2) *supra*, the main reasons and considerations on which the Secretary of State's determination is based; (4) a description where necessary of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and (5) the availability of judicial review procedures, including details of where further information in relation to such procedures can be obtained: reg 10(3A) (added by SI 2007/1977).

24 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 10(3) (substituted by SI 2007/1977).

25 *Ie* in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 12 (as amended): see PARA 1258 *post*. For the meaning of 'EEA state' see PARA 1254 note 18 *ante*.

26 *Ibid* reg 10(4) (amended by SI 2007/1977).

27 *Ie* the information referred to in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 10(3A) (as added): see note 23 *supra*.

28 *Ie* under *ibid* reg 11(3A) (as added): see the text and note 35 *infra*.

29 *Ibid* reg 10(5) (reg 10(5), (6) added by SI 2007/1977). A notice to which the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 10(5) (as added) applies must be published in two successive weeks in the London Gazette and in one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development): reg 10(6) (as so added).

30 For the meaning of 'the consultative bodies' see PARA 1254 note 23 *ante*.

31 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(1) (reg 11(1), (2)(b), (3) amended by SI 2007/1977).

32 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(2)(a) (substituted by SI 2007/1977).

33 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(2)(b) (as amended: see note 31 *supra*).

34 *Ibid* reg 11(3) (as amended: see note 21 *supra*).

35 *Ibid* reg 11(3A) (added by SI 2007/1977).

36 *Ie* pursuant to *ibid* reg 9(1) (as substituted): see the text and notes 1-6 *supra*.

37 *Ibid* reg 11(4).

38 *Ibid* reg 13(1).

39 *Ibid* reg 13(2).

40 *Ibid* reg 14(1) (reg 14(1) substituted, reg 14(1A) added, and reg 14(2), (3) amended by SI 2007/1977). A notice to which the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 14(1) (as substituted) applies must be published in two successive weeks in the London Gazette, and in one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development): reg 14(1A) (as so added). The notice must (1) describe the application in question and state that further information has been provided; (2) state that copies of the further information may be inspected at or obtained from an address in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, an address in England and Wales) and specify the amount of any payment required to be paid for a copy of the further information; and (3) state a date not less than four weeks after the date on which the notice is to be last published in accordance with reg 14(1A) (as added) by which any person may make representations in relation to the further information to the Secretary of State and specify the address to which any such representations are to be sent: reg 14(2) (as so amended).

41 *Ie* under *ibid* reg 11(1) or 11(3) (as amended) or reg 11(3A) (as added): see the text and notes 30, 34-35 *supra*.

- 42 Ibid reg 14(3) (as amended: see note 40 supra).
- 43 Ibid reg 14(4).
- 44 Ie published pursuant to ibid reg 14(1) (as amended).
- 45 Ibid reg 14(5).

UPDATE

1257 Publicity and procedures in connection with environmental impact assessment; in general

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1258. Projects affecting other EEA states.

1258. Projects affecting other EEA states.

Where either an applicant submits to the Secretary of State¹ an application for EIA development² and it appears to the Secretary of State that the proposed EIA development is likely to have significant effects on the environment in another EEA state³, or another EEA state likely to be significantly affected by any proposed EIA development so requests, the Secretary of State must send to the EEA state in question as soon as possible and no later than the date on which the environmental statement⁴ in respect of that proposed EIA development is made available to the public⁵, except in a case where a request is made by an EEA state after that date:

- 3205 (1) a description of the proposed EIA development, together with any available information on its possible significant effects on the environment in the other EEA state; and
- 3206 (2) a notice explaining the nature of the decision as to whether or not to grant consent for the proposed EIA development and informing the EEA state in question that it may, within such reasonable period as may be specified in the notice, indicate that it wishes to participate in the prescribed⁶ procedure⁷.

Where an EEA state indicates that it wishes to participate in that procedure in relation to the proposed EIA development, the Secretary of State must, save to the extent he has already done so, send to that EEA state:

- 3207 (a) a copy of the notice published in accordance with the prescribed procedure⁸;
- 3208 (b) the environmental statement in respect of the proposed EIA development; and
- 3209 (c) to the extent that it is not included in the items referred to in head (a) or head (b) above, and subject to the provision for the exclusion of confidential information⁹, any other available information which is relevant to the proposed EIA development¹⁰.

The Secretary of State, in so far as he is concerned, must also arrange for the information referred to above¹¹ to be made available, within a reasonable time, to the specified authorities¹² and the public concerned in the territory of the EEA state likely to be significantly affected¹³. He must ensure that those authorities and the public concerned are given an opportunity, before consent for the development is given, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied¹⁴. The Secretary of State must enter into consultations with the EEA state concerned, for such reasonable period as may have been agreed with that EEA state, regarding, among other things, the possible significant effects of the proposed EIA development on the environment in that EEA state and the measures envisaged to reduce or eliminate such effects¹⁵. Where the Secretary of State notifies an applicant for EIA development that the above provisions¹⁶ apply in respect of the development, the applicant must not make available to the public¹⁷ the specified items¹⁸ until the Secretary of

State has notified the applicant that he has sent to the EEA state concerned the information referred to in heads (1) and (2) above¹⁹.

- 1 As to the Secretary of State see PARA 601 note 1 ante.
- 2 For the meaning of 'EIA development' see PARA 1254 ante.
- 3 For the meaning of 'EEA state' see PARA 1254 note 18 ante.
- 4 For the meaning of 'environmental statement' see PARA 1254 note 21 ante.
- 5 le in accordance with ibid reg 9 (as amended): see PARA 1257 ante.
- 6 le the procedure provided by the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927 (as amended): see PARAS 1254-1257 ante, PARA 1259 post.
- 7 Ibid reg 12(1).
- 8 le published in accordance with ibid reg 9(1) (as substituted): see PARA 1257 ante.
- 9 le subject to ibid reg 15(2) (confidential information): see PARA 1255 note 9 ante.
- 10 Ibid reg 12(2) (amended by SI 2007/1977)
- 11 le the information referred to in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 12(1), (2) (as amended): see the text and notes 1-10 supra.
- 12 le the authorities referred to in EEC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 6(1) (as substituted).
- 13 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 12(3)(a).
- 14 Ibid reg 12(3)(b).
- 15 Ibid reg 12(4).
- 16 le ibid reg 12 (as amended).
- 17 le in accordance with ibid reg 9 (as amended): see PARA 1257 ante.
- 18 le the items referred to in ibid reg 9 (as amended): see PARA 1257 ante.
- 19 Ibid reg 12(5).

UPDATE

1258 Projects affecting other EEA states

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/B. PRESERVATION OF AMENITY; ASSESSMENT OF ENVIRONMENTAL IMPACT/1259. Additional information and timing of determination.

1259. Additional information and timing of determination.

Where additional information¹ is made available to the Secretary of State² he must:

- 3210 (1) serve a copy of the additional information on the local planning authority³ or local planning authorities on whom was served a copy of the environmental statement⁴;
- 3211 (2) notify the applicant that additional information has been served on the local planning authority or local planning authorities in accordance with head (1) above; and
- 3212 (3) in any case where the additional information is provided to the Secretary of State by a person other than the applicant, serve a copy of the additional information on the applicant⁵.

On the first occasion on which the applicant is notified of the service of additional information in accordance with head (2) above, the applicant must:

- 3213 (a) publish a notice⁶ containing the specified information⁷; and
- 3214 (b) serve a copy of that notice on the Secretary of State⁸.

On receipt of a such notice, the Secretary of State must serve a copy of that notice on any person on whom was served⁹ a copy of the environmental statement¹⁰. The Secretary of State must not determine the application until after the later of:

- 3215 (i) 14 days from the last date on which a copy of the notice pursuant to head (a) above was so served by the Secretary of State; and
- 3216 (ii) the date stated in the notice so published as the date by which any person may make representations to the Secretary of State in relation to the additional information¹¹.

1 For the meaning of 'additional information' see PARA 1254 note 23 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'local planning authority' see PARA 1254 note 23 ante.

4 Ie under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 11(3A) (as added): see PARA 1257 the text and note 35 ante.

5 Ibid reg 14A(1) (reg 14A added by SI 2007/1977).

6 Ie in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927, reg 14A(3) (as added). Such a notice must be published in two successive weeks in the London Gazette and in one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development): reg 14A(3) (as added: see note 5 supra).

7 le the information specified in *ibid* reg 14A(4) (as added). The notice must: (1) describe the application in question and state that the Secretary of State has received additional information; (2) identify the local planning authority or local planning authorities to which the Secretary of State is required to forward a copy of the additional information pursuant to reg 14A(1)(a) (as added) (see head (1) in the text); (3) state that the local planning authority or local planning authorities identified in head (2) *supra* are required to place the additional information on the register; (4) state that requests for copies of the additional information may be sent to the Secretary of State and specify an address for that purpose; (5) state a date not less than four weeks after the date on which the notice is to be last published in accordance with reg 14A(3) (as added) (see note 6 *supra*) by which any person may make representations to the Secretary of State in relation to the additional information and specify the address to which any such representations are to be sent; and (6) state that the details set out in heads (2)-(4) *supra* will also apply in respect of any additional information received by the Secretary of State after publication of the notice: reg 14A(4) (as added: see note 5 *supra*). For the meaning of 'the register' see PARA 1257 note 14 *ante*.

8 *Ibid* reg 14A(2) (as added: see note 5 *supra*).

9 le under *ibid* reg 11(1) or (3) (as amended) or reg 11(3A) (as added): see PARA 1257 the text and notes 30, 34-35 *ante*.

10 *Ibid* reg 14A(5) (as added: see note 5 *supra*).

11 See *ibid* reg 14A(6) (as added: see note 5 *supra*).

UPDATE

1259 Additional information and timing of determination

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12(5)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1260. Applications for consent; in general.

C. APPLICATIONS FOR CONSENT

1260. Applications for consent; in general.

An application for a consent¹ of the Secretary of State² must be in writing and must describe by reference to a map the land to which the application relates, that is, the land on which the generating station³ is proposed to be constructed⁴, extended⁵ or operated, or across which the electric line⁶ is proposed to be installed or kept installed⁷. Where, however, an application for consent⁸ relates to the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority⁹, or to the extension of a generating station at or to a place the whole or a part of which is not within such an area, then the application must describe by reference to a map the place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated¹⁰.

Where an application for a declaration extinguishing, suspending or restricting public rights of navigation¹¹ is made with an application for a consent relating to a generating station¹², the application for the declaration is to be treated¹³ as part of the application for the consent¹⁴.

An application for a consent in relation to an electric line¹⁵ must also state the length of the proposed line and its nominal voltage¹⁶ and whether all necessary wayleaves¹⁷ have been agreed with owners and occupiers of land proposed to be crossed by the line¹⁸, and must be supplemented, if the Secretary of State so directs¹⁹, by such additional information²⁰ as may be specified in the direction²¹.

The Secretary of State may by regulations²² make provision for determining the fees to be paid on applications for consent and the circumstances in which they are to be paid²³. Any sums so received by the Secretary of State must be paid into the Consolidated Fund²⁴.

Notice of an application for a consent in relation to a generating station²⁵ which is not an offshore generating station²⁶ must be published by the applicant:

- 3217 (1) in two successive weeks in one or more local newspapers circulating in the locality in which the land to which the application relates is situated; and
- 3218 (2) in the London Gazette, or in Scotland in the Edinburgh Gazette, and in one or more national newspapers²⁷.

The notice must describe, by reference to a map, the land to which the application relates, and name a place within the locality in which such land is situated where such map may be inspected²⁸; but these requirements do not apply where an application for consent is made in respect of the extension of a generating station or of the change in the manner of operation of a generating station which extension or change the Secretary of State considers to be of a minor character and where the Secretary of State gives a direction dispensing with such requirements²⁹.

The applicant must publish notice of an application for a consent to construct, extend or operate an offshore generating station³⁰, together with any application for a declaration relating to rights of navigation³¹ which is made with that application:

- 3219 (a) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development;
- 3220 (b) in Lloyd's List and in one or more national newspapers;
- 3221 (c) if there are in circulation one or more appropriate fishing trade journals which are published at intervals not exceeding one month, in at least one such trade journal; and
- 3222 (d) in the London Gazette, or, in respect of certain applications³², in the Belfast Gazette³³.

The notice must describe, by reference to a map, the location to which the application relates, and must provide that the map may be inspected, during normal office hours, by members of the public either:

- 3223 (i) at the offices of each local planning authority in England and Wales upon whom the applicant serves notice of that application³⁴ or of any relevant planning authority upon whom the applicant serves notice of the application³⁵; or
- 3224 (ii) at an address which is reasonably accessible to those likely to be affected by the consent applied for if it is granted³⁶.

These requirements do not, however, apply to an application for an extension or change in the manner of operation where the Secretary of State considers the extension or change to be of a minor character and gives a direction dispensing with such requirements³⁷.

Notice of an application for a consent³⁸ in respect of the installing or keeping installed of an electric line of a nominal voltage of not less than 132 kilovolts must be published by the applicant in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the line is proposed to pass or passes is situated or circulating respectively in the several localities in which different parts of that land are situated³⁹. A notice so published must describe, by reference to a map, the land over which the line is proposed to pass or passes, and must name a place within each locality in which such land is situated where that map may be inspected⁴⁰.

1 le under the Electricity Act 1989 s 36 (as amended) (see PARA 1249 ante) or s 37 (see PARA 1252 ante).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'generating station' see PARA 1041 note 6 ante.

4 For the meaning of 'constructed' see PARA 1312 note 4 post; and as to the application of this definition see PARA 1249 note 2 ante.

5 For the meaning of 'extended' see PARA 1249 note 3 ante.

6 For the meaning of 'electric line' see PARA 1041 note 5 ante.

7 Electricity Act 1989 s 36(8), Sch 8 para 1(1).

8 le an application for consent under *ibid* s 36 (as amended).

9 For the purposes of *ibid* Sch 8 (as amended), 'relevant planning authority' means: (1) in relation to land in England which is not in a National Park for which a National Park authority is the local planning authority, a local planning authority within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY

PLANNING vol 46(1) (Reissue) PARA 28 et seq), except that in relation to a non-metropolitan county and an application for consent under the Electricity Act 1989 s 37 it includes the county planning authority only where the line will have a nominal voltage of not less than 132 kilovolts; (2) in relation to land in England which is in a National Park for which a National Park authority is the local planning authority, that National Park authority; and (3) in relation to Wales, a local planning authority: Sch 8 paras 2(6), 8(1) (Sch 8 para 2(6) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 83(1); the Local Government (Wales) Act 1994 ss 20(4), 66(8), Sch 6 para 22, Sch 18; the Environment Act 1995 ss 78, 120, Sch 10 para 30(3)(a), (b), (6), Sch 24).

The Local Government, Planning and Land Act 1980 s 149(3)(a) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1464) has effect in relation to the provisions of the Electricity Act 1989 Sch 8 (as amended) so far as applying to applications for consent under s 37 as it has effect in relation to the provisions referred to therein: Sch 8 para 8(2).

10 Electricity Act 1989 Sch 8 para 7A(1)-(3) (added by the Energy Act 2004 s 93(2)).

11 Ie an application for a declaration under the Electricity Act 1989 s 36A (as added): see PARA 1250 ante.

12 See note 8 supra.

13 Ie for the purposes of the Electricity Act 1989 Sch 8 (as amended): see the text and notes 1-12 supra, 14-40 infra; and PARA 1261 et seq post.

14 Ibid Sch 8 para 8(3) (added by the Energy Act 2004 s 99(2)).

15 Ie an application for a consent under the Electricity Act 1989 s 37.

16 Ibid Sch 8 para 1(2)(a). The provisions relating to objections by the local planning authority are modified in relation to electric lines with a nominal voltage of less than 132 kilovolts: see Sch 8 para 2(5); and PARA 1261 post.

17 As to wayleaves generally see PARAS 1292-1294 post.

18 Electricity Act 1989 Sch 8 para 1(2)(b).

19 As to directions generally see ibid s 107; and PARA 1306 post.

20 For the meaning of 'information' see PARA 1044 note 10 ante.

21 Electricity Act 1989 Sch 8 para 1(2).

22 As to the making of regulations generally see ibid ss 60, 106 (as amended); and PARA 1306 post.

23 Ibid Sch 8 para 1(3). In exercise of the power so conferred, the Secretary of State has made (1) the Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 11, which do not apply to applications for consent relating to offshore generating stations; (2) the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 9. As to the functions of the Secretary of State to be taken into account in fixing the fees for such applications, and as to the matters specified in relation to those functions for the purposes of the Finance (No 2) Act 1987 s 102(4), see the Electricity Act 1989 (Fees) Order 1990, SI 1990/184, arts 2, 3, Sch 1 Pt I, Sch 2 paras 1-4, 8.

24 Electricity Act 1989 Sch 8 para 1(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

25 Ie a consent under ibid s 36 (as amended).

26 The Electricity (Applications for Consent) Regulations 1990, SI 1990/455, do not apply to an application to which the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, apply: see reg 10. For the meaning of 'offshore generating station' for those purposes see note 30 infra.

27 Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 4(1).

28 Ibid reg 4(2).

29 Ibid reg 4(3).

30 For these purposes, 'offshore generating station' means a generating station that is, or is to be, located (1) within the renewable energy zone; or (2) within waters in or adjacent to England and Wales which are between the mean low water mark and the seaward limits of the territorial sea; and 'renewable energy zone'

means so much of the area designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668, as does not include the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005, SI 2005/3153, as an area in relation to which the Scottish Ministers are to have functions: Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 3. As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

31 Ie a declaration under the Electricity Act 1989 s 36A (as added): see PARA 1250 ante.

32 Ie in respect of an application relating to an offshore generating station located or to be located in that part of the Renewable Energy Zone that lies within the part of the sea which is to be treated as adjacent to Northern Ireland for the purposes of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, SI 2002/791, art 3(1).

33 Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, regs 3, 4(1). Any notice published or served pursuant to reg 4(1) must state the time (which must not be less than 28 days from the date or latest date of publication of the notice, or less than 28 days from the date of service of the notice) within which, and the manner in which, objections to the application may be made to the Secretary of State, by persons other than any relevant planning authority: reg 7(1).

34 Ie under *ibid* reg 6(2) or pursuant to a direction of the Secretary of State under reg 6(4): see PARA 1262 post.

35 Ie under the Electricity Act 1989 Sch 8 para 2(1): see PARA 1261 post.

36 Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 4(2).

37 *Ibid* reg 4(3).

38 Ie under the Electricity Act 1989 s 37: see PARA 1252 ante.

39 Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 5(1).

40 *Ibid* reg 5(2).

UPDATE

1260 Applications for consent; in general

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1261. Objections by the relevant planning authority.

1261. Objections by the relevant planning authority.

Where an application is made to the Secretary of State¹ for his consent², notice of the application must be served³ on the relevant planning authority⁴. This does not, however, apply in the case of an application in relation to a generating station⁵ where no part of the place to which the application relates is within the area of a relevant planning authority⁶. Except in such cases, or in a case where the Secretary of State proposes to accede to the application subject to such modifications⁷ or conditions as will give effect to the objection of the relevant planning authority⁸, where the relevant planning authority notifies the Secretary of State that it objects to the application and its objection is not withdrawn, the Secretary of State must cause a public inquiry to be held⁹ and must, before determining whether to give his consent, consider the objection and the report of the person who held the inquiry¹⁰. The Secretary of State may make regulations¹¹:

- 3225 (1) limiting the time within which notification of objections may be made to him by relevant planning authorities and providing that objections which are not notified within the time so limited may be disregarded for these purposes¹²; and
- 3226 (2) providing that, in relation to applications for consent¹³ for electric lines¹⁴ of a nominal voltage less than 132 kilovolts, the above provisions are to have effect with such modifications as may be prescribed¹⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie under the Electricity Act 1989 s 36 (as amended) (see PARA 1249 ante) or s 37 (see PARA 1252 ante).

3 As to service of documents generally see *ibid* s 109; and PARA 1307 post. Notices or documents required to be served by the Electricity (Applications for Consent) Regulations 1990, SI 1990/455 (as amended) (see PARA 1260 ante; the text and notes 12-15 *infra*; and PARA 1262 post) may be sent by post: reg 10.

4 Electricity Act 1989 s 36(8), Sch 8 para 2(1). For the meaning of 'the relevant planning authority' see PARA 1260 note 9 ante. Schedule 8 para 2(1) does not apply where the Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 9 applies: see note 15 *infra*.

5 Ie an application for consent under the Electricity Act 1989 s 36 (as amended): see PARA 1249 ante.

6 See *ibid* Sch 8 para 7A(1), (2), (4) (added by the Energy Act 2004 s 93(2)).

7 For the meaning of 'modifications' see PARA 1035 note 3 ante.

8 See the Electricity Act 1989 Sch 8 para 2(4).

9 *Ibid* Sch 8 para 2(2)(a). As to public inquiries see PARA 1263 post. See also note 12 *infra*.

10 *Ibid* Sch 8 para 2(2)(b). See also note 12 *infra*.

11 As to the making of regulations generally see *ibid* ss 60, 106 (as amended); and PARA 1306 post.

12 *Ibid* Sch 8 para 2(3). Where an application for consent under s 36 (as amended), other than one relating to an offshore generating station, or an application for consent under s 37 is made, the relevant planning authority must serve notification of any objection by it to the application on the Secretary of State within four months, in the case of an application under s 36 (as amended), or two months, in the case of an application

under s 37, of the date of the application, or within any longer period as may be agreed in writing by the authority with both the Secretary of State and the applicant: Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 8(1). The Secretary of State may disregard, for the purposes of the Electricity Act 1989 Sch 8 para 2(2), any objection not so notified: Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 8(2). Regulation 8 does not have effect where reg 9 applies: see note 15 infra. As to the disapplication of the 1990 Regulations in the case of an application relating to an offshore generating station see PARA 1260 note 26 ante; and for the meaning of 'offshore generating station' see PARA 1260 note 30 ante.

A relevant planning authority must serve notification of any objection by it to an application under the Electricity Act 1989 s 36 (as amended) for a consent to construct, extend or operate offshore generating station, together with any application under s 36A (as added) (see PARA 1250 ante) for a declaration relating to rights of navigation which is made with the application under s 36 (as amended), upon the Secretary of State within four months of the date of the application, or within any longer period as may be agreed in writing by the authority with both the Secretary of State and the applicant: Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, regs 3, 7(2). The Secretary of State may, for the purposes of the Electricity Act 1989 Sch 8 para 2(2), disregard any objection not notified by a relevant planning authority in accordance with the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 7(2): reg 7(3).

13 le under the Electricity Act 1989 s 37: see PARA 1252 ante.

14 For the meaning of 'electric line' see PARA 1041 note 5 ante.

15 Electricity Act 1989 Sch 8 para 2(5). For the meaning of 'prescribed' see PARA 1096 note 11 ante. Where such an application is made, and written notice of the proposal to make such application was sent to the relevant planning authority before the application was made, then if that authority has sent written notification to the applicant of whether or not it would object to an application in the terms of that proposal, the Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 8 (see note 12 supra) does not have effect; and the Electricity Act 1989 Sch 8 para 2 (as amended) has effect with the modification that Sch 8 para 2(1) does not apply: Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 9.

UPDATE

1261 Objections by the relevant planning authority

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1262. Objections by other persons.

1262. Objections by other persons.

The Secretary of State¹ may make provision by regulations² for securing:

- 3227 (1) that notice of any application for consent³ is to be published, in such circumstances and in such manner as may be prescribed by the regulations⁴;
- 3228 (2) that notice of any such application is to be served, in such circumstances as may be prescribed by the regulations or where the Secretary of State so directs⁵, on such persons as may be so prescribed or, as the case may be, specified in the direction⁶;
- 3229 (3) that every notice published or served in pursuance of the regulations is to state the time within which, and the manner in which, objections to the application may be made by persons other than the relevant planning authority⁷, and that the time so stated is not to be less than such minimum period as may be prescribed by the regulations⁸; and
- 3230 (4) that, in so far as any such notice requires objections to be sent to any person other than the Secretary of State, copies of the objections are to be sent to the Secretary of State by that person⁹.

In relation to applications for consent to the extension¹⁰ of a generating station¹¹ or to the operation of such a station in a different manner, the regulations may include provision for enabling the Secretary of State to give directions dispensing with the requirements of the regulations in such cases as he thinks fit¹².

Where in the case of an application for consent¹³ the Secretary of State is not required¹⁴ to cause a public inquiry to be held but objections or copies of objections have been sent to the Secretary of State in pursuance of regulations so made, the Secretary of State must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, he must cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application¹⁵.

¹ As to the Secretary of State see PARA 601 note 1 ante.

² As to the making of regulations generally see the Electricity Act 1989 ss 60, 106 (as amended); and PARA 1306 post.

³ I.e. under the Electricity Act 1989 s 36 (as amended) (see PARA 1249 ante) or s 37 (see PARA 1252 ante).

⁴ Electricity Act 1989 Sch 8 para 3(1)(a). As to publication of such notice see PARA 1260 ante.

⁵ As to directions generally see *ibid* s 107; and PARA 1306 post.

⁶ *Ibid* Sch 8 para 3(1)(b). See also the Electricity (Applications for Consent) Regulations 1990, SI 1990/445, reg 6(b); the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, regs 5, 6(4).

Where all or part of the land to which the application relates is designated as a site of special scientific interest, then notice of the application must be served on Natural England or the Countryside Council for Wales as

appropriate: Electricity (Applications for Consent) Regulations 1990, SI 1990/455, regs 3(1), 6(a) (reg 6(a) amended by virtue of the Environmental Protection Act 1990 s 139, Sch 11 para 9; the Natural Environment and Rural Communities Act 2006 s 1(4)).

In the case of an application under the Electricity Act 1989 s 36 (as amended) for a consent to construct, extend or operate an offshore generating station, together with any application under s 36A (as added) (see PARA 1250 ante) for a declaration relating to rights of navigation which is made with the application under s 36 (as amended), the applicant must serve notice of an application upon (1) the Joint Nature Conservation Committee; (2) Natural England, except in the case of development in Wales; (3) the Countryside Council for Wales, in the case of development in Wales; (4) the Environment Agency; (5) English Heritage, except in the case of development in Wales; (6) Cadw, in the case of development in Wales; (7) the Maritime and Coastguard Agency; (8) a harbour authority (within the meaning of the Harbours Act 1964 s 57: see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619) in the case of development in or adjacent to a harbour under the control of that authority; (9) the National Assembly for Wales (or the Welsh Ministers), in the case of development in Wales; and (10) such other persons as the Secretary of State may direct: Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, regs 3, 5 (reg 5 amended by virtue of the Natural Environment and Rural Communities Act 2006 s 1(4)). Where no part of the place to which such an application relates is within the area of a relevant planning authority, but in the applicant's opinion any local planning authority in England and Wales, any planning authority in Scotland or the Department of the Environment in Northern Ireland is likely to have an interest in the application, the applicant must serve notice of the application upon that body and, within seven days of such service, inform the Secretary of State in writing of its identity and provide him with a copy of the notice: Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 6(1), (2). Where, in the applicant's opinion, no such body is likely to have an interest in the application, the applicant must inform the Secretary of State of that fact: reg 6(3). Where in the Secretary of State's opinion any such body is likely to have an interest in the application, the Secretary of State may, unless he has received a notice under reg 6(2) to the effect that a notice of the application has been served on that body, direct that the applicant must serve notice of an application upon that body: reg 6(4). For the meaning of 'local planning authority' for these purposes see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28 et seq (meaning applied by reg 6(5)).

7 For the meaning of 'relevant planning authority' see PARA 1260 note 9 ante.

8 Electricity Act 1989 Sch 8 para 3(1)(c). Any notice of application published pursuant to the Electricity (Applications for Consent) Regulations 1990, 1990/455, regs 4, 5 (see PARA 1260 ante) or served pursuant to reg 6 (as amended: see note 6 supra) must state the time, which must not be less than 28 days from the date or latest date of publication or service, within which, and the manner in which, objections to the application may be made to the Secretary of State by persons other than the relevant planning authority: reg 7. Similarly, any notice published pursuant to the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 4(1) (see PARA 1260 ante) or served pursuant to reg 5 (as amended) or reg 6 (see note 6 supra) must state the time (which must not be less than 28 days from the date or latest date of publication of the notice, or less than 28 days from the date of service of the notice) within which, and the manner in which, objections to the application may be made to the Secretary of State, by persons other than any relevant planning authority: reg 7(1).

9 Electricity Act 1989 Sch 8 para 3(1)(d). At the date at which this title states the law, no such provision had been made by regulations.

10 For the meaning of 'extension' see PARA 1249 note 3 ante.

11 For the meaning of 'generating station' see PARA 1041 note 6 ante.

12 Electricity Act 1989 Sch 8 para 3(1). See the Electricity (Applications for Consent) Regulations 1990, SI 1990/455, reg 4(3); the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 4(3); and PARA 1260 ante.

13 Ie under the Electricity Act 1989 s 36 (as modified) or s 37.

14 Ie by virtue of ibid Sch 8 para 2(2): see PARA 1261 ante.

15 Ibid Sch 8 para 3(2). As to public inquiries see PARA 1263 et seq post.

UPDATE

1262 Objections by other persons

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1263. Public inquiries; in general.

1263. Public inquiries; in general.

Where a public inquiry is to be held¹ in respect of an application for consent², the Secretary of State³ must inform the applicant accordingly; and the applicant must in two successive weeks publish a notice⁴ stating:

- 3231 (1) the fact that the application has been made, and the purpose of it, together with a description of the land⁵ or place⁶ to which it relates⁷;
- 3232 (2) a place in the locality or, in the case of an application relating to a generating station at a place not within, or not wholly within, the area of a relevant planning authority⁸, in the area specified in or determined in accordance with regulations made by the Secretary of State⁹, where a copy of the application, and of the map referred to in it, can be inspected¹⁰; and
- 3233 (3) the place, date and time of the public inquiry¹¹.

The notice must be published in one or more local newspapers circulating:

- 3234 (a) in the locality in which the land in question is situated, or circulating respectively in the several localities in which different parts of that land are situated, as the applicant may consider appropriate¹²; or
- 3235 (b) in the case of an application relating to such a generating station as is mentioned in head (2) above, in the specified¹³ area¹⁴.

If it appears to the Secretary of State that, in addition to the publication of such a notice, further notification of the public inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information¹⁵ specified in heads (1) to (3) above is sufficiently made known to persons in the locality¹⁶, or to persons who are likely to be affected by the consent applied for if it is given¹⁷, the Secretary of State may direct the applicant to take such further steps for that purpose as may be specified in the direction¹⁸.

Where a public inquiry is to be held in respect of an application for consent and the Secretary of State is proceeding concurrently in relation to a compulsory purchase order, an application for a wayleave or a reference concerning the felling or lopping of trees¹⁹, the public inquiry must extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry must indicate, in addition to any other matters required to be stated in it, the extent of the inquiry accordingly²⁰.

Where a public inquiry is to be held and the application for consent relates to land in the areas of two or more relevant planning authorities:

- 3236 (i) the application is not to be the subject of a public inquiry in so far as it relates to land which is not within the area of a planning authority which has notified the Secretary of State that it objects to the application, unless the Secretary of State otherwise directs having regard to objections by other persons of which he has notice²¹; and

- 3237 (ii) in so far as the application is to be the subject of a public inquiry in relation to land in the areas of two or more relevant planning authorities, the Secretary of State may direct that separate public inquiries are to be held²².

For the purposes of head (i) above, a relevant planning authority which has notified the Secretary of State that it objects to the application is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection²³.

Heads (i) and (ii) above do not, however, apply in the case of an application relating to such a generating station as is mentioned in head (2) above²⁴. Instead, where a public inquiry is to be held²⁵ and the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities, the following provisions apply²⁶. Except in so far as the Secretary of State otherwise directs, an inquiry held where there is an objection by a relevant planning authority²⁷ must be confined to so much of the application as relates to land within the area of the authority by which an objection has been made²⁸. The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give such a direction and in determining, where he gives one, what direction to give²⁹; and for these purposes a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection³⁰. The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following:

- 3238 (A) so much of the application as relates to land within the area of a particular relevant planning authority;
 3239 (B) so much of the application as relates to anywhere that is not within the area of a relevant planning authority³¹.

The procedure on any public inquiry in respect of an application for consent³² which is caused by the Secretary of State to be held in England and Wales³³ and which commences on or after 6 April 2007 is governed by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007³⁴, as set out below³⁵. Any such inquiry which commenced before that date³⁶ is subject to the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990³⁷, which continue to apply for such transitional purposes³⁸.

1 le in accordance with the Electricity Act 1989 s 36(8), Sch 8 paras 2(2) or 3(2): see PARAS 1261-1262 ante.

2 le for consent under *ibid* s 36 (as amended) (see PARA 1249 ante) or s 37 (see PARA 1252 ante).

3 As to the Secretary of State see PARA 601 note 1 ante.

4 As to notices generally see PARA 1307 post.

5 le in a case not falling within the Electricity Act 1989 s 36(8), Sch 8 para 7A(4)(a)(i) (as added): see note 6 *infra*.

6 le in a case where an application for a consent under *ibid* s 36 (as amended) relates to (1) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or (2) the extension of a generating station at or to a place the whole or a part of which is not within such an area: see Sch 8 para 7A(1), (2), (5)(a)(i) (Sch 8 para 7A added by the Energy Act 2004 s 93(2)). For the meaning of 'construction' see PARA 1312 note 4 post, and as to the application of this definition see PARA 1249 note 2 ante; for the meaning of 'generating station' see PARA 1041 note 6 ante; and for the meaning of 'relevant planning authority' see PARA 1260 note 9 ante.

7 Electricity Act 1989 Sch 8 para 4(1)(a) (modified by Sch 8 para 7A(1), (2), (5)(a)(i) (as added): see note 6 *supra*).

8 le in a case falling within *ibid* Sch 8 para 7A(1) (as added): see note 6 *supra*.

9 As to the making of regulations generally see *ibid* ss 60, 106 (as amended); and PARA 1306 post. Where a public inquiry is to be held in respect of the construction, extension or operation of a generating station, the whole or part of which is to be or is at a place that is not within the area of a relevant planning authority, and the applicant serves notice of the same pursuant to Sch 8 para 4(1), the notice must state that a copy of the application, and of the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 4(2) (see PARA 1260 ante) or, if in relation to any such location that is not possible, at a suitable alternative location as near as possible to it: reg 8.

10 Electricity Act 1989 Sch 8 para 4(1)(b) (modified by Sch 8 para 7A(1), (2), (5)(a)(ii) (as added: see note 6 *supra*)). As to the form of application and the map see PARA 1260 ante.

11 *Ibid* Sch 8 para 4(1)(c).

12 *Ibid* Sch 8 para 4(2).

13 le the area specified in or determined in accordance with regulations made by the Secretary of State. The area for the purposes of *ibid* Sch 8 para 4(2) (as modified by Sch 8 para 7A (as added)) is to be the same area within which the local newspapers referred to in the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 4(1)(a) (see PARA 1260 ante) circulate: reg 8(b).

14 Electricity Act 1989 Sch 8 para 4(2) (modified by Sch 8 para 7A(1), (2), (5)(b) (as added: see note 6 *supra*)).

15 For the meaning of 'information' see PARA 1044 note 10 ante.

16 le in a case not falling within the Electricity Act 1989 Sch 8 para 7A(1) (as added): see note 6 *supra*.

17 le in a case falling within *ibid* Sch 8 para 7A(1) (as added): see note 6 *supra*.

18 *Ibid* Sch 8 para 4(3) (modified by Sch 8 para 7A(1), (2), (5)(c) (as added: see note 6 *supra*)). As to directions generally see s 107; and PARA 1306 post.

19 le is proceeding concurrently as mentioned in *ibid* s 61(2) or (4): see PARA 1298 post.

20 *Ibid* Sch 8 para 4(4).

21 *Ibid* Sch 8 para 5(1)(a). As to objections by planning authorities and other persons see PARA 1262 ante.

22 *Ibid* Sch 8 para 5(1)(b). Where the Secretary of State gives any such directions, the provisions of Sch 8 paras 2-4 (as amended) apply with the necessary modifications: Sch 8 para 5(1). For the meaning of 'modifications' see PARA 1035 note 3 ante.

23 *Ibid* Sch 8 para 5(2). As to the general powers of the Secretary of State to order a public inquiry under the Electricity Act 1989 see s 62 (as amended); and PARA 1299 post.

24 *Ibid* Sch 8 para 7A(1), (2), (6) (as added: see note 6 *supra*).

25 See note 1 *supra*.

26 See note 24 *supra*.

27 le an inquiry held in accordance with the Electricity Act 1989 Sch 8 para 2(2): see PARA 1261 ante.

28 *Ibid* Sch 8 para 7A(1), (2), (7) (as added: see note 6 *supra*).

29 *Ibid* Sch 8 para 7A(1), (2), (8) (as added: see note 6 *supra*).

30 *Ibid* Sch 8 para 7A(1), (2), (10) (as added: see note 6 *supra*).

31 *Ibid* Sch 8 para 7A(1), (2), (9) (as added: see note 6 *supra*).

32 See note 2 *supra*.

33 See note 1 *supra*.

34 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, rr 1(1), (2)(a). The 2007 Rules also apply to any public inquiry caused by the Secretary of State to be held in England and Wales under the Electricity Act 1989 s 62 (as amended) (see PARA 1299 post) in relation to any application notice of which was not required to be published by regulations under Sch 8 para 3(1) (see PARA 1262 ante): Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 1(2)(b).

35 See PARA 1265 et seq post.

36 For these purposes, an inquiry is to be taken to have commenced on the day on which the Secretary of State issued the relevant notice under the 1990 Rules of his intention to cause the inquiry to be held: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 28(2).

37 See the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990, SI 1990/528 (revoked subject to transitional provisions).

38 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 28(2).

UPDATE

1263 Public inquiries; in general

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1264. Additional inspectors.

1264. Additional inspectors.

The following provisions apply in the case of:

- 3240 (1) a public inquiry in England and Wales held¹ in respect of an application for consent²; or
- 3241 (2) a public inquiry in England and Wales which is a combination³ into one inquiry of two or more such inquiries, or of one or more such inquiries and one or more other inquiries⁴.

At any time after appointing a person to hold the inquiry ('the lead inspector'), the Secretary of State⁵ may direct⁶ him:

- 3242 (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
- 3243 (b) to make recommendations to the Secretary of State about those matters⁷.

After considering the recommendations of the lead inspector, the Secretary of State may:

- 3244 (i) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and
- 3245 (ii) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector⁸.

An additional inspector must comply with every direction as to procedural matters given to him by the lead inspector⁹ and must report to the lead inspector on every matter allocated to him¹⁰. It is to be for the lead inspector to report to the Secretary of State on the consideration of both the matters which he considered himself¹¹ and the matters the consideration of which was allocated to additional inspectors¹².

The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector¹³. Accordingly:

- 3246 (A) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
- 3247 (B) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment¹⁴.

1 le in accordance with the Electricity Act 1989 s 36(8), Sch 8 paras 2(2) or 3(2): see PARAS 1261-1262 ante.

2 le for consent under *ibid* s 36 (as amended) (see PARA 1249 ante) or s 37 (see PARA 1252 ante).

3 le under *ibid* s 62 (as amended): see PARA 1299 post.

4 *Ibid* s 36(8), Sch 8 para 5A(1) (Sch 8 para 5A added by the Energy Act 2004 s 182(1)).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 A direction by any person under the Electricity Act 1989 Sch 8 para 5A (as added) may be varied or revoked by a subsequent direction by that person: Sch 8 para 5A(8) (as added: see note 4 supra). As to directions generally see s 107; and PARA 1306 post.

7 Ibid Sch 8 para 5A(2) (as added: see note 4 supra).

8 Ibid Sch 8 para 5A(3) (as added: see note 4 supra).

9 Ibid Sch 8 para 5A(4)(a) (as added: see note 4 supra).

10 Ibid Sch 8 para 5A(4)(b) (as added: see note 4 supra).

11 Ibid Sch 8 para 5A(5)(a) (as added: see note 4 supra).

12 Ibid Sch 8 para 5A(5)(b) (as added: see note 4 supra).

13 Ibid Sch 8 para 5A(6) (as added: see note 4 supra).

14 Ibid Sch 8 para 5A(7) (as added: see note 4 supra).

UPDATE

1264 Additional inspectors

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 12.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1265. Preliminary procedure on public inquiry.

1265. Preliminary procedure on public inquiry.

The Secretary of State¹ must send the applicant² and the relevant planning authority³ in writing⁴:

- 3248 (1) notice that an inquiry⁵ is to be held;
- 3249 (2) notice that there will be a pre-inquiry meeting⁶ or that he has decided not to hold one⁷, as the case may be; and
- 3250 (3) a statement of the matters which, in his view, are the matters to be considered at the inquiry; and where another Minister of the Crown or a government department has expressed in writing to the Secretary of State a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, the Secretary of State must set this out in his statement⁸.

The Secretary of State must send a copy of the statement described in head (3) above to the minister or government department concerned⁹. He may at any time modify that statement and if he does so he must send the modified statement to the applicant who must publish by local advertisement¹⁰ a notice of the modification made¹¹. Where the Secretary of State has modified that statement he must also publish a notice of the modification made on a website¹².

The Secretary of State must as soon as practicable after the issue of a relevant notice¹³:

- 3251 (a) inform the applicant and any qualifying planning authority¹⁴ in writing of the name and address¹⁵ of any qualifying objector¹⁶;
- 3252 (b) send to each person entitled to appear at the inquiry¹⁷ or whom he knows to have an interest in the proposal a copy of the statement sent by the Secretary of State under head (3) above and a registration form¹⁸.

On receipt of the relevant notice, the applicant must publish by local advertisement a notice stating:

- 3253 (i) that the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007¹⁹ apply to the inquiry;
- 3254 (ii) the matters contained in the statement sent by the Secretary of State under head (3) above;
- 3255 (iii) the arrangements for the first pre-inquiry meeting, if any; and
- 3256 (iv) that persons interested in participating in the inquiry should obtain from the Secretary of State a registration form²⁰;

and the Secretary of State must as soon as practicable after the issue of the relevant notice publish the notice referred to in heads (i) to (iv) above on a website²¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'application' means, except where the context requires otherwise, an application made under the Electricity Act 1989 s 36(8), Sch 8 para 1 (see PARA 1260 ante) for (1) consent under s 36 (as amended) (see PARA 1249 ante) to construct, extend or operate a generating station, together with any application under s 36A (as added) (see PARA 1250 ante) for a declaration relating to rights of navigation which is made with that application for consent; (2) consent under s 37 (see PARA 1252 ante) to install or keep installed an electric line above ground; and 'applicant' means the person making an application: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1)). For the meaning of 'generating station' see PARA 1041 note 6 ante (definition applied by r 2(1)). The statutory definition of 'electric line' (see PARA 1041 note 5 ante) is not specifically so applied.

3 For the meaning of 'relevant planning authority' see PARA 1260 note 9 ante (definition applied by ibid r 2(1)).

4 Notices or documents required or authorised to be sent under the 2007 Rules may be sent either by post or by using electronic communications to send or supply the notice or document to a person at such address as may for the time being be specified by the person for that purpose: ibid r 26(1).

A requirement of the 2007 Rules that any document is to be in writing is fulfilled where that document satisfies the criteria in ibid r 3(3); r 3(6). In those rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically: (1) the expression 'address' includes any number or address used for the purposes of such communications, except that where any provision of the rules requires any person to provide a name and address to any other person, the requirement is not fulfilled unless the person subject to the requirement provides a postal address; (2) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: r 3(1). Rule 3(3)-(7) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement of those rules to give or send any statement, notice or other document to any other person ('the recipient'): r 3(2). The requirement is to be taken to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is (a) capable of being accessed by the recipient; (b) legible in all material respects; and (c) sufficiently permanent to be used for subsequent reference (r 3(3)); and for these purposes, 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form (r 3(4)). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: r 3(5). A requirement in the rules to send more than one copy of a statement, notice or other document may be complied with by transmitting one copy only of the statement, notice or other document in question: r 3(7).

For these purposes, 'document' includes a photograph, map or plan; and 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 s 15(1) (as amended) (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1).

5 'Inquiry' means a public inquiry in relation to which the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, apply (see r 1(1), (2), cited in PARA 1263 ante); and where an inquiry is conducted by means of concurrent sessions, it includes any such session: r 2(1).

6 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held about the same inquiry, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: ibid r 2(1).

7 le under ibid r 9(2): see PARA 1267 post.

8 Ibid r 4(1).

9 Ibid r 4(2).

10 'By local advertisement', in relation to a notice, means by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application relates is situated: ibid r 2(1). If, however, the application relates to (1) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or (2) the extension of a generating station at or to a place the whole or a part of which is not within such an area, then that definition is modified to read as follows: 'by local advertisement', in relation to a notice, means by publication of the notice in at least one newspaper which is likely to come to the attention of those likely to be affected by the consent applied for if it is given: see rr 1(3), 27(1)(a)(i).

'Land' means the land (including trees, buildings or other structures, and land covered with water) to which an inquiry relates: r 2(1).

11 Ibid r 4(3).

12 Ibid r 4(4). A requirement imposed by the 2007 Rules on the Secretary of State to publish a notice on a website is met (1) by publication of the notice, or of the details required to be contained in that notice, on a website maintained by the Secretary of State; or (2) by publication of a link on a website maintained by the Secretary of State to another website on which the notice is published, or the details required to be contained in that notice are published: r 2(6).

13 'Relevant notice' means (except in ibid r 28(2): see PARA 1263 ante) the Secretary of State's written notice under r 4(1): r 2(1).

14 'Qualifying planning authority' means (1) where the Secretary of State has caused a public inquiry to be held under the Electricity Act 1989 Sch 8 para 2 (as amended) (see PARA 1261 ante) in respect of an application, any relevant planning authority who has objected to the application in accordance with regulations under Sch 8 para 2(3) and whose objection has not been withdrawn; (2) where the Secretary of State has caused a public inquiry to be held under s 62 (as amended) (see PARA 1299 post) in respect of an application, notice of which was not required to be published by regulations under Sch 8 para 3(1) (see PARA 1262 ante), any relevant planning authority: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1).

15 See note 4 supra.

16 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 5. 'Qualifying objector' means (1) where the Secretary of State has caused a public inquiry to be held under the Electricity Act 1989 Sch 8 para 2 (as amended) (see PARA 1261 ante) or Sch 8 para 3 (see PARA 1262 ante) in respect of an application, anyone who has objected to the application in accordance with regulations under Sch 8 para 3(1); (2) where the Secretary of State has caused a public inquiry to be held under s 62 (as amended) (see PARA 1299 post) in respect of an application, notice of which was not required to be published by regulations under Sch 8 para 3(1) (see PARA 1262 ante), anyone who has made a written objection in respect of the application to the Secretary of State or the relevant planning authority before the date of the relevant notice, and whose objection has not been withdrawn: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1).

17 'Person entitled to appear at an inquiry' means a person described in ibid r 15(1) (see PARA 1272 post) and cognate expressions are to be construed accordingly: r 2(1).

18 Ibid r 6(1). 'Registration form' means a form for completion by persons who wish to participate in the inquiry: r 2(1). The registration form must: (1) include the address to which completed forms must be returned, and the date by which that must be done, which must be not later than eight weeks after the date of the relevant notice; and (2) request the following information: (a) the name, address and telephone number of the person registering; (b) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person; (c) whether or not the person registering has an interest in any land which will be affected by the proposal; (d) whether or not the person registering is likely to want to be represented formally and to play a major part in the inquiry; (e) if not, whether or not the person registering will wish to give oral evidence at the inquiry or will wish only to submit representations in writing; and (f) two copies of an outline statement from the person registering: r 6(4).

'Outline statement' means a written statement of the principal submissions which a person proposes to put forward at an inquiry: r 2(1). The Secretary of State may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of an outline statement as mentioned in r 6(4)(b)(vi) (see head (2)(f) supra) sent in accordance with r 6(4)(a) (see head (1) supra); and must specify the time within which such documents should be received by him; and any person so requested must ensure that the copies are received by the Secretary of State within the period specified: r 25(1)(a), (2).

The Secretary of State must, as soon as practicable after the date by which the registration form must be returned under head (1) supra, circulate each outline statement received by him as mentioned in head (2)(f) supra: r 6(5). Subject to r 2(5), a requirement imposed by the 2007 Rules on the Secretary of State or the inspector to circulate a document is met by sending a copy of that document to (i) the relevant planning authority; (ii) the applicant; and (iii) each qualifying objector who has indicated in accordance with head (2)(d) supra that he is likely to want to be represented formally and to play a major part in the inquiry (r 2(3)); but nothing in r 2(3) requires the Secretary of State or the inspector to send a copy of a document to the person from whom it was received (r 2(5)). 'Inspector' includes a lead inspector and an additional inspector; 'lead inspector' means a person appointed by the Secretary of State to hold an inquiry or a reopened inquiry; and 'additional inspector' means an inspector appointed by the Secretary of State under the Electricity Act 1989 Sch 8 para 5A(3)(a) (as added) (see PARA 1264 ante): Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1).

19 The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841: see the text and notes 1-18 *supra*, 20-21 *infra*; and PARA 1266 *et seq post*.

20 *Ibid* r 6(2).

21 *Ibid* r 6(3); and see note 12 *supra*.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1266. Technical advisers, mediators and assessors.

1266. Technical advisers, mediators and assessors.

If it appears to the Secretary of State¹ that evidence to be given to the inquiry² is, or is likely to be, of such technical or scientific nature that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of that evidence were to be made, he may at any time appoint a technical adviser for that purpose³. A technical adviser must be a person appearing to the Secretary of State to have such qualifications and experience as enable him to conduct an expert assessment of scientific or technical evidence to be given to the inquiry⁴. Where the Secretary of State appoints a technical adviser, he may in writing⁵ require the applicant⁶ to publish by local advertisement⁷ and within such period as he may specify a notice stating the name of the person so appointed and specifying the evidence to be assessed⁸; and where he requires the applicant to publish such a notice, as soon as reasonably practicable thereafter the Secretary of State must publish that notice on a website⁹.

The technical adviser must, in consultation with the persons entitled to appear at the inquiry¹⁰ either jointly or separately, assess the evidence so specified and must report his assessment in writing to the inspector¹¹. The technical adviser's report must include a description of any areas of disagreement between the parties and must state his view of the significance of each such disagreement¹². Within seven days of receipt of the technical adviser's report, the inspector must circulate it¹³.

The technical adviser must give evidence on his report at the inquiry and is to be subject to cross-examination to the same extent as any other witness¹⁴. The inspector may allow the technical adviser to alter or add to his report so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition¹⁵.

If it appears to the Secretary of State that:

- 3257 (1) there is an absence of agreement between persons entitled to appear at the inquiry on a matter which is relevant to the inquiry;
- 3258 (2) the inquiry would be conducted more efficiently and expeditiously if agreement could be reached in relation to that matter or any disagreement in relation to it could be defined and narrowed; and
- 3259 (3) such a result is capable of being achieved by mediation,

then he may at any time appoint a mediator for that purpose¹⁶. A mediator must be a person appearing to the Secretary of State to have been trained in mediation techniques by an independent mediation organisation¹⁷. Where the Secretary of State appoints a mediator, he may in writing require the applicant to publish by local advertisement and within such period as he may specify a notice stating the name of the person so appointed and the matter in relation to which he is to mediate¹⁸; and where he requires the applicant to publish such a notice, as soon as reasonably practicable thereafter the Secretary of State must publish that notice on a website¹⁹.

The mediator must determine the procedure for the mediation²⁰. Within seven days from the conclusion of the mediation, the mediator must give to the inspector a report describing the mediation procedure and its outcome and the inspector must, as soon as practicable after receipt, send the report to persons entitled to appear at the inquiry²¹. The inspector must permit any person entitled to appear at the inquiry to address him on that report, but the mediator is not to give evidence at the inquiry²².

The Secretary of State may also appoint an assessor to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State may specify²³. Where he appoints an assessor, he must notify in writing every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector²⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'inquiry' see PARA 1265 note 5 ante.

3 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 7(1).

4 Ibid r 7(2).

5 As to the use of electronic communications see PARA 1265 note 4 ante.

6 For the meaning of 'applicant' see PARA 1265 note 2 ante.

7 For the meaning of 'by local advertisement' see PARA 1265 note 10 ante.

8 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 7(3).

9 Ibid r 7(4). As to publication on a website see PARA 1265 note 12 ante.

10 For the meaning of 'persons entitled to appear at the inquiry' see PARA 1265 note 17 ante.

11 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 7(5). For the meaning of 'inspector' see PARA 1265 note 18 ante.

12 Ibid r 7(6).

13 Ibid r 7(7). As to circulation of documents see PARA 1265 note 18 ante.

The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the 2007 Rules, and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: r 24.

14 Ibid r 7(8). As to procedure at the inquiry see PARA 1272 post.

15 Ibid r 7(9).

16 Ibid r 8(1).

17 Ibid r 8(2).

18 Ibid r 8(3).

19 Ibid r 8(4).

20 Ibid r 8(5).

21 Ibid r 8(6).

22 Ibid r 8(7).

23 See *ibid* rr 2(1), 13.

24 Ibid r 13.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1267. Pre-inquiry and other meetings.

1267. Pre-inquiry and other meetings.

The Secretary of State¹ must² hold one or more pre-inquiry meetings³; but this does not apply where the Secretary of State considers that holding a pre-inquiry meeting would not result in the inquiry being conducted more efficiently and expeditiously⁴.

The pre-inquiry meeting or, where there is more than one, the first pre-inquiry meeting, must be held within 12 weeks of the date of the relevant notice⁵. The Secretary of State must give not less than three weeks' written notice⁶ of the pre-inquiry meeting or, where there is more than one, the first pre-inquiry meeting, to:

- 3260 (1) any person entitled to appear at the inquiry⁷; and
- 3261 (2) any other person whose presence at the pre-inquiry meeting seems to him to be desirable⁸.

The Secretary of State may in writing require the applicant⁹ to take one or more of the following steps:

- 3262 (a) not less than two weeks before the date fixed for the first pre-inquiry meeting to publish by local advertisement¹⁰ a notice of the pre-inquiry meeting;
- 3263 (b) to send a notice of that pre-inquiry meeting to such persons or classes of persons as he may specify, within such period as he may specify;
- 3264 (c) to post a notice of that pre-inquiry meeting:
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- 454. (i) in such places near to the land¹¹; or
- 455. (ii) if the application relates to the construction or operation of a generating station¹² the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority¹³, or the extension of a generating station at or to a place the whole or a part of which is not within such an area, in such places that it is likely to come to the attention of those likely to be affected by the consent applied for if it is given¹⁴,
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- 3265 and within such period, as he may specify¹⁵.

A notice of the pre-inquiry meeting published, sent or posted pursuant to heads (a) to (c) above must state:

- 3266 (A) the fact that the application¹⁶ has been made, and the purpose of it, together with a description of the land or, in the case of such an application as is described in head (c)(ii) above, the place¹⁷ to which it relates;
- 3267 (B) a place¹⁸ where a copy of the application, and of the map referred to in it, can be inspected; and
- 3268 (C) the place, date and time of the pre-inquiry meeting¹⁹.

The inspector²⁰ must preside at each pre-inquiry meeting and must determine the matters to be discussed and the procedure to be followed²¹. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify²². He may at any time and for any purpose connected with the inquiry²³ hold such other meetings as he considers necessary, and he must arrange for such notice to be given of those meetings as appears to him necessary²⁴.

If the Secretary of State requests any further information from the applicant, any qualifying planning authority²⁵, any qualifying objector²⁶ or any other person at the pre-inquiry meeting, that person must ensure that two copies²⁷, in the case of the applicant or any qualifying planning authority, or three copies in the case of any other person, of the information have been received by the Secretary of State within such period as he may specify; and the Secretary of State must, as soon as practicable after receipt, circulate²⁸ all information received by him under this provision²⁹.

As soon as practicable after the end of each pre-inquiry meeting the inspector must prepare a note of the proceedings at that meeting and must send a copy of that note to the Secretary of State³⁰; and as soon as practicable after sending the copy of the note to the Secretary of State, the inspector must circulate it³¹. The inspector must also, as soon as practicable after making recommendations to the Secretary of State on a timetable for the proceedings³² or the matters which he is directed to consider³³, circulate a copy of those recommendations³⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The subject to the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(2): see the text and note 4 infra.

3 Ibid r 9(1). For the meaning of 'pre-inquiry meeting' see PARA 1265 note 6 ante.

4 Ibid r 9(2). In that case, r 9(3)-(8) (see the text and notes 5-22, 25-29 infra) does not apply: r 9(2).

5 Ibid r 9(3). For the meaning of 'relevant notice' see PARA 1265 note 13 ante; and as to allowing further time see PARA 1266 note 13 ante.

6 As to giving notice, and the use of electronic communications, see PARA 1265 note 4 ante.

7 For the meaning of 'person entitled to appear at the inquiry' see PARA 1265 note 17 ante.

8 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(4).

9 For the meaning of 'applicant' see PARA 1265 note 2 ante.

10 For the meaning of 'by local advertisement' see PARA 1265 note 10 ante.

11 For the meaning of 'land' see PARA 1265 note 10 ante.

12 For the meaning of 'generating station' see PARA 1041 note 6 ante (definition applied by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1)).

13 For the meaning of 'relevant planning authority' see PARA 1260 note 9 ante (definition applied by ibid r 2(1)).

14 See ibid rr 1(3), 27(1)(b)(i).

15 Ibid r 9(5) (modified by r 27(1)(b)(i)).

16 For the meaning of 'application' see PARA 1265 note 2 ante.

17 For these purposes, 'place' means, unless the context otherwise requires, the place to which an inquiry relates, that is, the place where it is proposed to construct the generating station, where the proposed

extension will be or where the station proposed to be operated is situated: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1) (definition added by r 27(1)(a)(ii)).

18 Ie a place in the locality or, in the case of such an application as is described in head (c)(ii) in the text, a place which must be the same location or locations where, under the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, regs 4(2), 8 (see *PARAS* 1260, 1263 ante) a copy of the application, and of the map referred to in it, can be inspected: see the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(6)(b) (modified by r 27(1)(b)(iii)).

19 Ibid r 9(6) (modified by r 27(1)(b)(ii), (iii)).

20 For the meaning of 'inspector' see *PARA* 1265 note 18 ante.

21 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(7)(a), (b).

22 Ibid r 9(7)(c), (d).

23 For the meaning of 'inquiry' see *PARA* 1265 note 5 ante.

24 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(9). Rule 9(7) (see the text and notes 20-22) applies to such meetings: r 9(9).

25 For the meaning of 'qualifying planning authority' see *PARA* 1265 note 14 ante.

26 For the meaning of 'qualifying objector' see *PARA* 1265 note 16 ante.

27 The Secretary of State may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of any document or information sent to the Secretary of State before or during an inquiry, and must specify the time within which such documents should be received by him; and any person so requested must ensure that the copies are received by the Secretary of State within the period specified: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 27(1)(d), (2).

28 As to circulation of documents see *PARA* 1265 note 18 ante.

29 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9(8).

30 Ibid r 10(1).

31 Ibid r 10(2).

32 Ie in accordance with *ibid* r 12(2): see *PARA* 1269 post.

33 Ie under the Electricity Act 1989 s 36(8), Sch 8 para 5A(2)(a) (as added): see *PARA* 1264 ante.

34 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 10(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(6) PROTECTION OF THE PUBLIC INTEREST/(ii) Works requiring Consent of the Secretary of State/C. APPLICATIONS FOR CONSENT/1268. Receipt of statements of case etc.

1268. Receipt of statements of case etc.

The applicant¹ must:

- 3269 (1) ensure that within the specified period² two copies of his statement of case³ have been received by the Secretary of State⁴; and
- 3270 (2) as soon as reasonably practicable after sending the statement of case to the Secretary of State, send a copy of it to every other person whom the applicant knows to be entitled⁵ to appear at the inquiry⁶.

The following persons, namely:

- 3271 (a) any qualifying planning authority⁷;
- 3272 (b) any qualifying objector⁸ who has indicated⁹ that he is likely to want to be represented formally and to play a major part in the inquiry; and
- 3273 (c) any other person who is required¹⁰ to send a statement of case¹¹,

must also ensure that within the specified period¹² two copies of their statement of case have been received by the Secretary of State¹³. As soon as reasonably practicable after sending the statement of case to the Secretary of State, they must send a copy of it to every other person whom they know to be entitled¹⁴ to appear at the inquiry¹⁵. An authority¹⁶ required to send a statement of case under this provision must include in that statement of case details of the time and place where the opportunity to inspect and take copies¹⁷ is to be afforded¹⁸; and any person referred to in head (a) or head (b) above must in their statements of case identify each part of the applicant's statement of case with which they agree and each part with which they do not agree, and must state the reasons for each disagreement¹⁹.

Any person who sends a statement of case to the Secretary of State must send with it a copy of any document, or the relevant part of any document, referred to in the list comprised in that statement of case, unless a copy of the document or part of the document in question is already available²⁰ for inspection²¹. The Secretary of State must, as soon as practicable after receipt by him of each statement of case and copies of any documents or relevant part of any documents, deposit²² them²³.

The applicant, and any person referred to in head (a) or head (b) above, may in writing²⁴ request from any other person who is required to provide a statement of case a copy of any document, or of the relevant part of any document, referred to in the list of documents comprised in that person's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the person who requested it²⁵.

The Secretary of State or the inspector may in writing require any person, who has sent a statement of case in accordance with these provisions, to provide a specified number of additional copies of the statement, or such further information about the matters contained in the statement as he may specify, and must specify the time within which the copies or information must be received by him²⁶. Any person required to provide additional copies or further information must:

- 3274 (i) ensure that the additional copies have been received by the Secretary of State or inspector, within the specified time;
- 3275 (ii) ensure that two copies of the further information have been received by the Secretary of State or the inspector, within the specified time; and the Secretary of State or the inspector must, as soon as practicable after receipt, deposit that further information; and
- 3276 (iii) as soon as reasonably practicable after sending the further information to the Secretary of State or the inspector, send a copy of it to every other person whom the person providing the information knows to be entitled²⁷ to appear at the inquiry²⁸.

The authority in question²⁹ must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of:

- 3277 (A) any statement of case, written comments, information or other document a copy of which has been deposited in accordance with these provisions; and
- 3278 (B) the statement of case, if any, of that authority and any written comments, information or other documents sent by that authority pursuant to these provisions,

subject to the payment by that person of a reasonable charge³⁰.

If any person who sends a statement of case under these provisions wishes to comment on another person's statement of case they must ensure that within four weeks of its receipt two copies of their written comments have been received by the Secretary of State; and the Secretary of State must, as soon as practicable after receipt, deposit such comments³¹. As soon as practicable after sending their comments to the Secretary of State, they must send a copy of them to every other person whom they know to be entitled³² to appear at the inquiry³³.

The Secretary of State must, as soon as practicable after receipt, send to the inspector any statement of case, document or further information or written comments sent to him in accordance with these provisions and received by him within the relevant period, if any, specified therein³⁴.

1 For the meaning of 'applicant' see PARA 1265 note 2 ante.

2 I.e. the period specified in the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(3). Unless the Secretary of State specifies another period by notice in writing, the periods within which statements of case must be received by the Secretary of State are, in the case of an applicant (1) where a pre-inquiry meeting is held, four weeks from the conclusion of it; (2) otherwise 12 weeks from the date of the relevant notice: r 11(3)(a). For the meaning of 'pre-inquiry meeting' see PARA 1265 note 6 ante; and as to allowing further time see PARA 1266 note 13 ante. As to 'notice in writing' see PARA 1265 note 4 ante; and as to the Secretary of State see PARA 601 note 1 ante.

3 'Statement of case' means a written statement which contains (1) full particulars of the case which a person proposes to put forward at an inquiry; (2) a list of any documents which that person intends to refer to or put in evidence; (3) a list of the individuals whom that person proposes to call as witnesses; and (4) the subject-matter of the evidence of each such witness: *ibid* r 2(1). For the meaning of 'document' see PARA 1265 note 4 ante; and for the meaning of 'inquiry' see PARA 1265 note 5 ante.

4 *Ibid* r 11(1)(a). The Secretary of State may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of a statement of case or comments sent in accordance with r 11 and must specify the time within which such documents should be received by him; and any person so requested must ensure that the copies are received by the Secretary of State within the period specified: r 25(1)(b), (2).

5 I.e. in accordance with *ibid* r 15(1): see PARA 1270 post.

6 *Ibid* r 11(1)(b).

7 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.

8 For the meaning of 'qualifying objector' see PARA 1265 note 16 ante.

9 In accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 6(4)(b)(iv): see PARA 1265 note 18 ante.

10 In accordance with *ibid* r 11(5). The Secretary of State may in writing require any other person who has notified him of an intention or wish to appear at the inquiry, to send to him two copies of their statement of case and in this case the Secretary of State must (1) send a written statement of the matters referred to in r 4(1)(c) (see PARA 1265 ante) to that person; and (2) as soon as practicable inform that person of the name and address of every person to whom his statement of case is required to be sent: r 11(5).

11 See *ibid* r 11(4).

12 In the period specified in *ibid* r 11(3). Unless the Secretary of State specifies another period by notice in writing, the periods within which statements of case must be received by the Secretary of State are, in the case of any person to whom r 11(2) applies: (1) where a pre-inquiry meeting is held, six weeks from the conclusion of it; (2) otherwise 14 weeks from the date of the relevant notice: r 11(3)(b).

13 *Ibid* r 11(2)(a).

14 See note 5 *supra*.

15 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(2)(b).

16 In a relevant planning authority or, if the application relates to the construction, operation or extension of a generating station and no part of the place to which the application relates is within the area of a relevant planning authority, an interested authority: see *ibid* r 11(6) (modified by rr 1(3), 27(2)(b)). 'Interested authority' means any body upon whom the applicant has served a notice of the application in accordance with the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006, SI 2006/2064, reg 6 (see PARA 1262 ante); Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1) (definition added for these purposes by r 27(2)(a)). For the meaning of 'generating station' see PARA 1041 note 6 ante; and for the meaning of 'relevant planning authority' see PARA 1260 note 9 ante (definitions applied by r 2(1)).

17 In described in *ibid* r 11(13) (as modified): see the text and notes 29-30 *infra*.

18 *Ibid* r 11(6) (as modified: see note 16 *supra*).

19 *Ibid* r 11(7).

20 In pursuant to *ibid* r 11(13) (as modified): see the text and notes 29-30 *infra*.

21 *Ibid* r 11(12).

22 Subject to *ibid* r 2(5), a requirement imposed by the 2007 Rules on the Secretary of State or the inspector to deposit a document is met by sending a copy of it to the relevant planning authority (or, if the application is as described in note 16 *supra*) to the interested authority: r 2(4) (modified by r 27(2)(b)). Nothing in r 2(4) (as modified), however, requires the Secretary of State or the inspector to send a copy of a document to the person from whom it was received: r 2(5). For the meaning of 'inspector' see PARA 1265 note 18 ante.

23 *Ibid* r 11(8).

24 See PARA 1265 note 4 ante.

25 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(9).

26 *Ibid* r 11(10).

27 See note 5 *supra*.

28 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(11).

29 le the relevant planning authority or, if the application is as described in note 16 *supra*, the interested authority: see *ibid* r 11(13) (modified by r 27(2)(b)).

30 See *ibid* r 11(13) (as modified: see note 29 *supra*). Where the relevant planning authority is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any document, an opportunity is to be taken to have been afforded to a person where the person is notified of (1) publication of the relevant document on a website; (2) the address of the website; and (3) the place on the website where the document may be accessed, and how it may be accessed: r 26(2). Note that r 26(2) is not modified so as to apply to 'interested authorities'.

31 *Ibid* r 11(14)(a).

32 See note 5 *supra*.

33 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(14)(b).

34 *Ibid* r 11(15).

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1269. Inquiry timetable; date and notification of inquiry.

The inspector¹ must at a pre-inquiry meeting²:

- 3279 (1) propose a timetable for the proceedings at, or at part of, an inquiry³; and
- 3280 (2) specify the date by which any proof of evidence and summary⁴, and any statement of common ground⁵, must be received by the Secretary of State⁶,

and must give written notice⁷ of the date so specified to every person entitled to appear at the inquiry⁸. As soon as practicable after that pre-inquiry meeting, he must make recommendations to the Secretary of State on the proposed timetable⁹. No later than four weeks¹⁰ before the start of the inquiry, the inspector must send to every person entitled to appear at the inquiry a copy of the timetable for the proceedings approved by the Secretary of State¹¹. He may subsequently vary the timetable¹² with the approval of the Secretary of State, except that where the inquiry has already started, and the variation would not result in the inquiry closing on a date later than the date on which it was to close under the timetable which is being varied, the approval of the Secretary of State is not required¹³.

Where no pre-inquiry meeting is held, the inspector:

- 3281 (a) may arrange a timetable for the proceedings at, or at part of, an inquiry; and
- 3282 (b) must specify the date by which any proof of evidence and summary¹⁴ and any statement of common ground¹⁵ must be received by the Secretary of State,

and must give written notice of the timetable, if any, and date so specified to every person entitled to appear at the inquiry within ten weeks of the date of the relevant notice¹⁶. He may, at any time, vary any timetable so arranged¹⁷.

The date fixed by the Secretary of State for the holding of an inquiry must be, unless he considers such a date impracticable, not later than:

- 3283 (i) where a pre-inquiry meeting is held, ten weeks after the conclusion of it;
- 3284 (ii) otherwise 18 weeks from the date of the relevant notice¹⁸.

Where the Secretary of State considers it impracticable to fix a date in accordance with heads (i) and (ii) above, the date fixed must be the earliest date after the end of the period applicable under those heads which he considers to be practicable¹⁹.

Unless the Secretary of State agrees a lesser period of notice with the applicant²⁰ and any qualifying planning authority²¹, he must give not less than four weeks' written notice²² of the date, time and place fixed by him for the holding of an inquiry to every person entitled to appear at the inquiry²³. The Secretary of State may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period applicable under heads (i) and (ii) above, and the above requirement as to notice applies to a variation of a date as it applied to the date originally fixed²⁴.

The Secretary of State may vary the time or place for the holding of an inquiry and must give such notice of any variation as appears to him to be reasonable²⁵.

1 For the meaning of 'inspector' see PARA 1265 note 18 ante.

2 He held in accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 9: see PARA 1267 ante. For the meaning of 'pre-inquiry meeting' see PARA 1265 note 6 ante.

3 For the meaning of 'inquiry' see PARA 1265 note 5 ante.

4 He sent in accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 17: see PARA 1271 post.

5 He sent in accordance *ibid* r 18: see PARA 1271 post.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 As to written notice see PARA 1265 note 4 ante.

8 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, 12(1). For the meaning of 'person entitled to appear at the inquiry' see PARA 1265 note 17 ante.

9 *Ibid* r 12(2).

10 As to allowing further time see PARA 1266 note 13 ante.

11 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, 12(3).

12 He the timetable mentioned in *ibid* r 12(2): see the text and note 9 *supra*.

13 *Ibid* r 12(4).

14 See note 4 *supra*.

15 See note 5 *supra*.

16 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, 12(5).

17 *Ibid* r 12(6).

18 *Ibid* r 14(1).

19 *Ibid* r 14(2).

20 For the meaning of 'applicant' see PARA 1265 note 2 ante.

21 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.

22 A written notice is to be taken to have been given by the Secretary of State for these purposes where he and any person entitled to appear at the inquiry have agreed that notice of the matters mentioned in the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 14(3) may instead be accessed by that person via a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State has published that notice on the website; and (3) not less than four weeks before the date fixed by the Secretary of State for the holding of the inquiry, the person is notified of (a) the publication of the notice on the website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: r 14(6). As to publication on a website see PARA 1265 note 12 ante.

23 *Ibid* r 14(3).

24 *Ibid* r 14(4).

25 *Ibid* r 14(5).

Where the 2007 Rules apply to an inquiry by virtue of r 1(2)(b) (see PARA 1263 ante), r 9(5), (6) (see PARA 1267 ante) applies, in addition to r 14(1)-(6), in relation to that inquiry as if references in r 9(5), (6) to a pre-inquiry meeting or the first pre-inquiry meeting were references to the inquiry: r 14(7).

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1270. Appearance and representation at the inquiry

The persons entitled to appear at an inquiry¹ are:

- 3285 (1) the applicant²;
- 3286 (2) a qualifying planning authority³;
- 3287 (3) any of the following bodies if the land⁴ is situated in their area and they are not the relevant planning authority:
- 309
- 456. (a) a county, county borough or district council, including the council of the Isles of Scilly;
- 457. (b) a joint planning board⁵;
- 458. (c) an urban development corporation⁶;
- 310
- 3288 (4) where the land is in an area previously designated as a new town, the Commission for the New Towns⁷;
- 3289 (5) a qualifying objector⁸ who has returned a registration form⁹;
- 3290 (6) any other person who has sent¹⁰ a statement of case¹¹.

Nothing in heads (1) to (6), however, prevents the inspector¹² from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld¹³.

Any person entitled or permitted to appear may do so on his own behalf or be represented by any other person¹⁴. An inspector may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry¹⁵.

Where another Minister of the Crown or any government department has expressed a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions¹⁶, and the Secretary of State¹⁷ has included its terms in a statement sent in accordance with the prescribed procedure¹⁸, any person entitled to appear may, not later than four weeks¹⁹ before the date of an inquiry, apply in writing to the Secretary of State for a representative of the other minister or department concerned to be made available at the inquiry²⁰. Where an application is so made, the Secretary of State must send the application to the other minister or department, who must make a representative available to attend the inquiry²¹. Any person attending an inquiry as a representative in pursuance of this provision must state the reasons for the expressed view and is to give evidence and be subject to cross-examination to the same extent as any other witness²²; but nothing in that provision requires a representative of a minister or a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy²³.

1 For the meaning of 'inquiry' see PARA 1265 note 5 ante.

2 For the meaning of 'applicant' see PARA 1265 note 2 ante.

3 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.

4 For the meaning of 'land' see PARA 1265 note 10 ante.

- 5 le a joint planning board constituted under the Town and Country Planning Act 1990 s 2(1) (as amended) or s 2(1B) (as added): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 30.
- 6 le an urban development corporation established by order under the Local Government, Planning and Land Act 1980 s 135(1): see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1428.
- 7 As to the Commission for the New Towns (now part of English Partnerships) see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1383 et seq.
- 8 For the meaning of 'qualifying objector' see PARA 1265 note 16 ante.
- 9 le in accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 6(4)(a): see PARA 1265 note 18 ante.
- 10 le in accordance with ibid r 11(2): see PARA 1268 ante.
- 11 Ibid r 15(1).
- 12 For the meaning of 'inspector' see PARA 1265 note 18 ante.
- 13 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 15(2).
- 14 Ibid r 15(3).
- 15 Ibid r 15(4).
- 16 le has expressed a view described in ibid r 4(1)(c): see PARA 1265 ante.
- 17 As to the Secretary of State see PARA 601 note 1 ante.
- 18 le in accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 4: see PARA 1265 ante.
- 19 As to allowing further time see PARA 1266 note 13 ante.
- 20 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 16(1).
- 21 Ibid r 16(2).
- 22 Ibid r 16(3).
- 23 Ibid r 16(4).

UPDATE

1270 Appearance and representation at the inquiry

TEXT AND NOTE 11--SI 2007/841 r 15(1) amended: SI 2008/2831.

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1271. Proofs of evidence and statement of common ground.

Any person entitled to appear at an inquiry¹ who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must send two copies of the proof of evidence, in the case of a qualifying planning authority² and the applicant³, or three copies in any other case, to the Secretary of State⁴. Where a copy of a proof of evidence so sent contains more than 1,500 words, it must be accompanied by a written summary, which, unless the inspector permits otherwise, must not contain more than 1,500 words⁵. Where a person sends copies of a proof of evidence and summary, if any, that person must at the same time send a copy to every other person whom that person knows to be entitled to appear at the inquiry⁶ unless such a person has indicated in writing⁷ that he does not require to be sent a copy⁸.

The proof of evidence and any summary must be received by the Secretary of State no later than the date specified by the inspector⁹ and as soon as practicable after receipt, the Secretary of State must deposit¹⁰ each such proof of evidence and each such summary¹¹.

The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with the above provisions¹².

Any person required by these provisions to send copies of a proof of evidence to the Secretary of State must send with them the same number of copies of the whole, or the relevant part, of any document¹³ referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available¹⁴ for inspection¹⁵.

The Secretary of State or the inspector may in writing require any person who has sent a copy of a proof of evidence or summary in accordance with these provisions to provide such additional copies of the proof or summary as he may specify and must specify the time within which the copy of the proof or summary must be received by him¹⁶. Any person required to provide additional copies must ensure that the copies have been received by the Secretary of State or the inspector within the specified time¹⁷.

The Secretary of State may in writing require the relevant planning authority¹⁸ and the applicant to prepare together an agreed statement of common ground¹⁹. Where an agreed statement of common ground is so prepared, the applicant must:

- 3291 (1) ensure that, by the date specified by the inspector²⁰, two copies of the statement have been received by the Secretary of State; and the Secretary of State must, as soon as practicable after receipt, deposit that statement;
- 3292 (2) at the same time as he sends the statement to the Secretary of State, send a copy of it to every other person whom the applicant knows to be entitled to appear at the inquiry²¹, except the relevant planning authority; and
- 3293 (3) afford to any other person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the statement²².

¹ For the meaning of 'person entitled to appear at an inquiry' see PARA 1265 note 17 ante, and as to such persons see PARA 1270 ante. For the meaning of 'inquiry' see PARA 1265 note 5 ante.

- 2 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.
- 3 For the meaning of 'applicant' see PARA 1265 note 2 ante.
- 4 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 17(1). As to additional copies see the text and notes 16-17 infra. As to the Secretary of State see PARA 601 note 1 ante.
- 5 Ibid r 17(2). For the meaning of 'inspector' see PARA 1265 note 18 ante.
- 6 Ie in accordance with ibid r 15(1): see PARA 1270 ante.
- 7 As to the use of electronic communications see PARA 1265 note 4 ante.
- 8 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 17(3).
- 9 Ie pursuant to ibid r 12(1)(b) or r 12(5)(b): see PARA 1269 ante.
- 10 As to depositing documents see PARA 1268 note 22 ante.
- 11 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 17(4).
- 12 Ibid r 17(5).
- 13 For the meaning of 'document' see PARA 1265 note 4 ante.
- 14 Ie pursuant to the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 11(13) (as modified): see PARA 1268 ante.
- 15 Ibid r 17(6).
- 16 Ibid r 17(7).
- 17 Ibid r 17(8). As to the provision of additional copies of proofs of evidence see also r 25(1)(d), (2).
- 18 For the meaning of 'relevant planning authority' see PARA 1260 note 9 ante (definition applied by ibid r 2(1)).
- 19 Ibid r 18(1).
- 20 See note 9 supra.
- 21 See note 6 supra.
- 22 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 18(2).

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1272. Procedure at public inquiry; site inspections.

Except as otherwise provided, the inspector¹ must determine the procedure at an inquiry². At the start of the inquiry the inspector must identify the matters to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear³. He may direct that in relation to such matters as he may specify, either or both of the following are to apply:

- 3294 (1) evidence is not to be read out at the inquiry, or where a summary of evidence is sent⁴, only the summary is to be read out; and
- 3295 (2) persons giving evidence are not to be subject to cross-examination on those matters⁵;

but nothing in the above provisions precludes any person entitled or permitted to appear from:

- 3296 (a) referring to matters which they consider relevant to the consideration of the application but which were not matters identified by the inspector⁶; and
- 3297 (b) making oral submissions on any matters which are the subject of a direction under heads (1) and (2) above⁷.

Unless in any particular case the inspector otherwise determines, the applicant⁸ is to begin and has the right of final reply; and the other persons entitled or permitted to appear are to be heard in such order as the inspector may determine⁹. Subject to any direction under heads (1) and (2) above, a person entitled to appear at an inquiry is to be entitled to call evidence and the applicant and a qualifying planning authority¹⁰ are to be entitled to cross-examine persons giving evidence¹¹. The inspector may, however, refuse to permit the giving or production of evidence, cross-examination of persons giving evidence or presentation of any other matter which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing¹² before the close of the inquiry¹³.

The inspector may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to him that permitting such cross-examination or allowing it to continue would have the effect that the timetable approved by the Secretary of State¹⁴ or arranged by the inspector¹⁵ could not be met¹⁶. He must not require or permit the giving or production of any evidence, whether written or oral, which he considers would be contrary to the public interest; but otherwise, the inspector may direct that documents¹⁷ tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry¹⁸.

Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹⁹, the proof of evidence is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone, and, subject to any direction under head (2) above, the person whose evidence the proof of evidence contains must then be subject to cross-examination on it to the same extent as if it were evidence he had given orally²⁰. Where, however, the inspector gives a

direction under head (1) above, any proof of evidence received by the Secretary of State²¹ which covers matters which are the subject of that direction is, to the extent that it covers those matters, to be treated as tendered in evidence, unless:

- 3298 (i) the person has provided a summary²² and that person has notified the inspector that he now wishes to rely on the contents of that summary alone, in which case the summary is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction;
- 3299 (ii) the person alters or adds to the proof of evidence²³, in which case the proof of evidence, as altered, is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction; or
- 3300 (iii) the person who has sent the proof of evidence notifies the inspector that he no longer wishes to give or call that evidence²⁴.

The inspector may direct that facilities are to be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection²⁵. He may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or permit him to return only on such conditions as he may specify; but any such person may submit to him any evidence or other matter in writing before the close of the inquiry²⁶.

The inspector may allow any person to alter or add to a statement of case²⁷ or a proof of evidence²⁸ so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition²⁹.

The inspector may proceed with an inquiry in the absence of any person entitled to appear at it³⁰. He may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry³¹.

The inspector may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required³².

Any person who appears at an inquiry and makes a closing submission must by the close of the inquiry provide the inspector with a copy of his closing submission in writing³³.

The inspector may make an unaccompanied inspection:

- 3301 (A) of the land³⁴; or
- 3302 (B) in the case of an application which relates to the construction or operation of a generating station³⁵ the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority³⁶, or to the extension of a generating station at or to a place the whole or a part of which is not within such an area, of the place³⁷,

before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry³⁸. During an inquiry or after its close, the inspector may inspect the land or the place in the company of the applicant, any qualifying planning authority, and any qualifying objector³⁹ who has returned⁴⁰ a registration form⁴¹; but where the inspector inspects the land or the place after the close of an inquiry, a qualifying objector is only entitled to accompany him on that inspection if that objector appeared at the inquiry⁴². In all cases where the inspector intends to make an accompanied site inspection he must announce during the inquiry the date and time at which he proposes to make it⁴³; and he is not bound to defer an

accompanied inspection⁴⁴ where any person mentioned above is not present at the time appointed⁴⁵.

- 1 For the meaning of 'inspector' see PARA 1265 note 18 ante.
- 2 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 19(1). For the meaning of 'inquiry' para 1265 note 5 ante.
- 3 Ibid r 19(2)(a). For the meaning of 'person entitled to appear at an inquiry' see PARA 1265 note 17 ante; and as to persons entitled or permitted to appear see PARA 1270 ante.
- 4 Ie in accordance with ibid r 17(4): see PARA 1271 ante.
- 5 Ibid r 19(2)(b).
- 6 Ie pursuant to ibid r 19(2)(a): see the text and note 3 supra.
- 7 Ibid r 19(3).
- 8 For the meaning of 'applicant' see PARA 1265 note 2 ante.
- 9 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 19(4).
- 10 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.
- 11 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 19(5).
- 12 As to the use of electronic communications see PARA 1265 note 4 ante.
- 13 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 19(6).
- 14 As to the Secretary of State see PARA 601 note 1 ante.
- 15 Ie under the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 12: see PARA 1269 ante.
- 16 Ibid r 19(7).
- 17 For the meaning of 'document' see PARA 1265 note 4 ante.
- 18 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 19(8).
- 19 Ie his proof of evidence received by the Secretary of State under ibid r 17: see PARA 1271 ante.
- 20 Ibid r 19(9).
- 21 Ie under ibid r 17: see PARA 1271 ante.
- 22 Ie in accordance with ibid r 17.
- 23 Ie under ibid r 19(13): see the text and notes 27-29 infra.
- 24 Ibid r 19(10).
- 25 Ibid r 19(11).
- 26 Ibid r 19(12).
- 27 Ie a statement of case received by the Secretary of State under ibid r 11: see PARA 1268 ante. For the meaning of 'statement of case' see PARA 1268 note 3 ante.
- 28 Ie received by the Secretary of State under ibid r 17.

- 29 Ibid r 19(13).
- 30 Ibid r 19(14).
- 31 Ibid r 19(15).
- 32 Ibid r 19(16).
- 33 Ibid r 19(17).
- 34 For the meaning of 'land' see PARA 1265 note 10 ante.
- 35 For the meaning of 'generating station' see PARA 1041 note 6 ante (definition applied by the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 2(1)).
- 36 For the meaning of 'relevant planning authority' see PARA 1260 note 9 ante (definition applied by ibid r 2(1)).
- 37 See ibid r 20(1) (r 20 modified by rr 1(3), 27(1)(c)). For the meaning of 'place' for these purposes see PARA 1267 note 17 ante.
- 38 Ibid r 20(1) (as modified: see note 37 supra).
- 39 For the meaning of 'qualifying objector' see PARA 1265 note 16 ante.
- 40 Ie in accordance with the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 6(4)(a): see PARA 1265 note 18 ante.
- 41 Ibid r 20(2) (as modified: see note 37 supra).
- 42 Ibid r 20(3) (as modified: see note 37 supra).
- 43 Ibid r 20(4).
- 44 Ie an inspection of the kind referred to in ibid r 20(2) (as modified): see the text and notes 39-41 supra.
- 45 Ibid r 20(5).

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1273. Procedure after public inquiry; decision.

After the close of an inquiry¹, the lead inspector² must by such date as the Secretary of State³ may determine make a report in writing⁴ to the Secretary of State which must include:

- 3303 (1) his consideration of the application⁵;
- 3304 (2) the consideration by any additional inspector⁶ of the matters relating to the application which that additional inspector has been directed to consider;
- 3305 (3) his conclusions; and
- 3306 (4) his recommendations or his reasons for not making any recommendation⁷.

Where the Secretary of State determines a date by which the lead inspector is to report to him, he must give notice in writing of that determination to the lead inspector and to all persons entitled to appear at the inquiry⁸.

Where an assessor⁹ has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector¹⁰ in respect of the matters on which he was appointed to advise¹¹. Where an assessor makes such a report, the inspector must append it to his own report and must state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement¹².

When making his decision the Secretary of State may disregard any written representations, evidence or any other document received after the close of the inquiry¹³. If, after the close of an inquiry, the Secretary of State:

- 3307 (a) differs from an inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
- 3308 (b) takes into consideration any new evidence or new matter of fact, not being a matter of government policy,

and is for that reason disposed to disagree with a recommendation made by the lead inspector, he must not come to a decision which is at variance with that recommendation without first notifying in writing the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it and affording them an opportunity of making written representations to him or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy, of asking for the reopening of the inquiry¹⁴. Those persons so making written representations or requesting the inquiry to be reopened must ensure that such representations or requests are received by the Secretary of State within three weeks¹⁵ of the date of the Secretary of State's notification¹⁶. The Secretary of State may, as he thinks fit, cause an inquiry to be reopened, and he must do so if asked by the applicant¹⁷ or a qualifying planning authority¹⁸ in the circumstances¹⁹ and within the period²⁰ mentioned above²¹. Where an inquiry is reopened, whether by the same or a different lead inspector, the Secretary of State must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited²².

The Secretary of State must, as soon as practicable, notify his decision on an application, and his reasons for it, in writing to all persons entitled to appear at the inquiry who did appear and to any other person who, having appeared at the inquiry, has asked to be notified of the decision²³. Where a copy of the lead inspector's report²⁴ is not sent with the notification of the decision, the notification must be accompanied by a statement of his conclusions and of any recommendations made by him, and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application to the Secretary of State²⁵. Any person so applying to the Secretary of State must ensure that his application is received by the Secretary of State within four weeks of the Secretary of State's determination²⁶.

Where a decision of the Secretary of State on an application in respect of which an inquiry has been held is quashed in proceedings before any court, the Secretary of State:

- 3309 (i) must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purposes of his further consideration of the application;
- 3310 (ii) must afford to those persons the opportunity of making written representations to him in respect of those matters or of asking for the reopening of the inquiry; and
- 3311 (iii) may, as he thinks fit, cause the inquiry to be reopened, whether by the same or a different lead inspector²⁷.

Those persons making representations or asking for the inquiry to be reopened under head (ii) above must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the written statement sent under head (i) above²⁸.

1 For the meaning of 'inquiry' see PARA 1265 note 5 ante.

2 For the meaning of 'lead inspector' see PARA 1265 note 18 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 As to the use of electronic communications see PARA 1265 note 4 ante.

5 For the meaning of 'application' see PARA 1265 note 2 ante.

6 For the meaning of 'additional inspector' see PARA 1265 note 18 ante.

7 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 21(1).

8 Ibid r 21(2). For the meaning of 'person entitled to appear at the inquiry' see PARA 1265 note 17 ante; and as to such persons see PARA 1270 ante.

9 For the meaning of 'assessor' see PARA 1266 ante.

10 For the meaning of 'inspector' see PARA 1265 note 18 ante.

11 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 21(3).

12 Ibid r 21(4).

13 Ibid r 21(5).

14 Ibid r 21(6).

15 As to allowing further time see PARA 1266 note 13 ante.

16 Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 21(7).

17 For the meaning of 'applicant' see PARA 1265 note 2 ante.

18 For the meaning of 'qualifying planning authority' see PARA 1265 note 14 ante.

19 In the circumstances mentioned in the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841, r 21(6): see the text and note 14 supra.

20 In within the period mentioned in *ibid* r 21(7): see the text and notes 15-16 supra.

21 *Ibid* r 21(8).

22 *Ibid* r 21(8)(a). Rule 14(3)-(6) (see PARA 1269 ante) applies in relation to the reopened inquiry as if references therein to an inquiry were references to the reopened inquiry; and r 9(5), (6) (see PARA 1267 ante) applies in relation to the reopened inquiry as if references therein to the pre-inquiry meeting were references to the reopened inquiry: r 21(8)(b), (c).

23 *Ibid* r 22(1). Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State and the person have agreed that decisions and reasons required under r 22 to be given in writing may instead be accessed by that person via a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State has published the decision and reasons on a website; and (4) the person is notified, in the manner for the time being agreed between him and the Secretary of State, of (a) the publication of the decision and reasons on a website; (b) the address of the website; and (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: r 22(2). As to publication on a website see PARA 1265 note 12 ante.

24 For these purposes, 'report' includes any assessor's report appended to an inspector's report and an additional inspector's report appended to the lead inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State in writing, within six weeks of the date of the Secretary of State's decision, for an opportunity of inspecting any such documents and the Secretary of State must afford him that opportunity: *ibid* r 22(4).

25 *Ibid* r 22(3).

26 *Ibid* r 22(5).

27 *Ibid* r 23(1).

28 *Ibid* r 23(3).

Where the Secretary of State causes an inquiry to be reopened, r 14(3)-(6) (see PARA 1269 ante) applies in relation to the reopened inquiry as if references therein to an inquiry were references to the reopened inquiry; and r 9(5), (6) (see PARA 1267 ante) applies in relation to the reopened inquiry as if references therein to the pre-inquiry meeting were references to the reopened inquiry: r 23(2)(a), (b).

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1274. Special provisions relating to overhead lines.

Where an application for consent in relation to an overhead electric line¹ states that all necessary wayleaves² have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Secretary of State³ may:

- 3312 (1) give notice⁴ to the applicant that he does not intend to proceed with the application until he is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to him for consent⁵ to the acquisition of wayleaves⁶; or
- 3313 (2) grant his consent subject to the condition, either in respect of the whole of the line or in respect of any part of it specified in the consent, that the work is not to proceed until he has given his permission⁷.

In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Secretary of State must have regard to the extent to which the necessary wayleaves have been agreed by that time⁸. In so far as any such wayleaves have not been granted in respect of any part of the line, he must take into account any prejudicial effect which, in his opinion, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves⁹.

In London¹⁰, it is not lawful for any person to erect or place any wire¹¹ over or upon any street¹² without the consent of the local authority¹³ or otherwise than upon and subject to such reasonable terms and conditions¹⁴ as the local authority may attach to such consent if given¹⁵ or to retain any such wire otherwise than upon and subject to the terms and conditions attached to the consent of the local authority to such erection and placing¹⁶. Any person who contravenes this provision is liable to a penalty not exceeding level 1 on the standard scale¹⁷ and the local authority may at any time after the date of any conviction for such an offence remove the wire in respect of which the offence was committed¹⁸. Provision was also made for the making of byelaws by the London County Council with respect to (a) the identification of wires by registration or otherwise and the charging of fees upon such registration; (b) the regulation of wires; (c) the strength of wires; and (d) the removal of disused wires and of wires erected, placed or retained otherwise than in accordance with the statutory provisions or the provisions of the byelaws¹⁹. The London County Council and its successor, the Greater London Council, have both been abolished and this power has therefore lapsed²⁰; but byelaws made before 1 April 1965 may continue to apply²¹.

Nothing in the restrictions relating to London²² extends or applies to any illuminated sign²³ affixed or proposed to be affixed to any building or any wire placed or proposed to be placed between any such illuminated sign and any part of the external wall of the building to which that sign is affixed or proposed to be affixed for the purpose of connecting the sign with that building or for the purpose of supplying electricity or any other means of illumination to the illuminated sign²⁴. Other exemptions apply to wires (i) for private use placed on private land and no part of which is liable to fall into any public street²⁵; (ii) in connection with any tramway, light railway or trolley vehicle undertaking²⁶; and (iii) erected, placed or maintained by a railway

company in certain circumstances²⁷. There are additional exemptions and protections for electronic communications code network operators²⁸, authorised electricity undertakers²⁹, certain port and navigation authorities³⁰ and the Inns of Court³¹.

In respect of England and Wales generally, no person may fix or place any overhead cable, wire or other similar apparatus over, along or across a highway without the consent of the highway authority for that highway, which may attach to its consent such reasonable terms and conditions as it thinks fit³². A person contravening this restriction, or the terms or conditions of any consent so given, is guilty of an offence and liable to a fine not exceeding level 1 on the standard scale³³. These provisions do not, however, apply to any works or apparatus belonging to a licence holder under the Electricity Act 1989³⁴ who is entitled to exercise any power³⁵ relating to street works³⁶.

It is also an offence to place any wire or other apparatus across a highway in such a manner as to be likely to cause danger to persons using the highway and without having taken all necessary means to give adequate warning of the danger³⁷.

1 Ie an application under the Electricity Act 1989 s 37: see PARA 1252 ante. For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 As to applications for wayleaves see further PARAS 1292-1294 post.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'notice' see PARA 1047 note 11 ante; and as to the giving of notices generally see PARA 1307 post.

5 Ie consent under the Electricity Act 1989 s 10(1), Sch 4 para 6: see PARA 1292 post.

6 Ibid s 38(6), Sch 8 para 6(1)(a).

7 Ibid Sch 8 para 6(1)(b).

8 Ibid Sch 8 para 6(2)(a).

9 Ibid Sch 8 para 6(2)(b).

10 The London Overground Wires, etc Act 1933 applies to the area formerly known as 'the administrative county of London': see s 2(1). The area of that county was defined by the London Government Act 1939 s 1, Sch 1 (repealed) and corresponds to the area known as 'Greater London' without the outer London boroughs (ie the inner London boroughs, the City of London and the Temples): see the London Government Act 1963 ss 1, 2 (as amended); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29 et seq. The London Overground Wires, etc Act 1933 continues to apply in that area by virtue of the London Government Act 1963 s 87(1)(a).

11 For these purposes, 'wire' means any cable, wire, conductor or other similar apparatus and any support thereof or attachment thereto other than a support or attachment to which the London Building Act 1930 Pts VI, VII (repealed) would have applied, and of which the whole is erected or placed or proposed to be erected or placed above ground in what was the area of the administrative county of London (see note 10 supra), over or upon any street there, or any land and situate at any point within a distance of 50 feet from such street: London Overground Wires, etc Act 1933 s 2(1). For the meaning of 'street' see note 12 infra.

12 For these purposes, 'street' includes any highway, road, bridge, lane, mews, footway, square, court, alley, passage whether a thoroughfare or not, and any part of any such highway, road etc: see ibid s 2(1).

13 For these purposes, 'local authority' means either the Common Council of the City of London (see ibid s 2(1)(b)); or the council of the borough concerned (see s 2(1)(c) which refers to the 'council of a metropolitan borough'; by virtue of the London Government Act 1963 s 87(1)(b)(i) this has effect as a reference to a London borough council). The London boroughs concerned are the inner London boroughs: see note 10 supra. The London Overground Wires, etc Act 1933 s 2(1)(a) refers to the London County Council; no fresh reference has been substituted for this reference, which is now obsolete. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 31, 32.

14 Ie not being a term or condition requiring the payment of a royalty or other monetary payment in the nature of a royalty as a condition of the granting of consent: ibid s 3(1)(a).

15 Ibid s 3(1)(a).

16 Ibid s 3(1)(b). A decision on an application for such a consent must be communicated within 28 days; and any consent must be in writing and may relate to more than one wire: see s 3(2), (3). As to appeals see s 3(4).

17 Ibid s 3(5) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 613 note 11 ante.

18 See the London Overground Wires, etc Act 1933 s 3(6).

19 See *ibid* s 5.

20 The London County Council was replaced by the Greater London Council with effect from 1 April 1965 by virtue of the London Government Act 1963 s 2(2)-(4) (repealed); the Greater London Council was abolished as from 1 April 1986 by the Local Government Act 1985 s 1. The Greater London Authority, established by the Greater London Authority Act 1999 ss 1, 2, has no powers to make such byelaws. As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79 et seq.

21 See the London Government Act 1963 s 87(1). No provision in the London Overground Wires, etc Act 1933 or in any byelaw made thereunder authorises a local authority to confer any powers of erecting, placing or retaining electric lines upon a person not authorised by statute or licence to do so: see s 16. Section 16 refers to an electric line as defined in the Electric Lighting Act 1882 (repealed); by virtue of the Interpretation Act 1978 s 17(2)(a), the definition contained in the Electricity Act 1989 s 64(1) (as amended) (see PARA 1041 note 5 ante) presumably now applies in this context.

22 *Ie* the London Overground Wires, etc Act 1933 or any byelaw made thereunder: s 21(1).

23 'Illuminated sign' includes an illuminated portico and any lamp or other appliance for providing outside lighting or flood lighting: *ibid* s 21(2).

24 *Ibid* s 21(1). Illuminated signs are subject to the general planning controls over advertisements: see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 769 et seq.

25 See *ibid* s 17(a)(i).

26 See *ibid* s 17(a)(ii).

27 See *ibid* s 17(b).

28 See *ibid* s 14 (amended by the Communications Act 2003 s 406(1), Sch 17 para 5(1), (3)).

29 See the London Overground Wires, etc Act 1933 s 15. No specific provision is made in the Electricity Act 1989 to bring licence holders within the definition of 'authorised electricity undertakers' for these purposes. The London Overground Wires, etc Act 1933 refers to persons carrying on electricity undertakings under a licence made or granted in accordance with the Electricity (Supply) Acts 1882-1928 (repealed). Such undertakings were transferred to the area boards and thence to the successor companies. The transitional provision made by the Electricity Act 1989 s 112(3), Sch 17 para 17 is presumably effective to bring the successor companies within the definition of 'authorised electricity undertakers' for these purposes. As to the successor companies see PARA 1034 ante.

30 See the London Overground Wires, etc Act 1933 ss 19-20.

31 See *ibid* s 18.

32 See the Highways Act 1980 s 178(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 367.

33 See *ibid* s 178(4) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 613 note 11 ante.

34 For the meaning of 'licence' see PARA 1041 note 12 ante.

35 *Ie* any power conferred by the Electricity Act 1989 Sch 4 para 1 (as amended): see PARA 1287 post.

36 See *ibid* s 112(1), Sch 16 para 2(4)(d); the Highways Act 1980 s 178(5) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 367.

37 See *ibid* s 162 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 374.

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(iii) Nuclear Liabilities

1275. Financial assistance for discharge of nuclear liabilities.

The Secretary of State¹ may², with the Treasury's approval:

- 3314 (1) make grants of such amounts as he thinks fit for the purpose of meeting qualifying expenditure, that is to say, expenditure incurred or to be incurred by any person, whether or not the same person as the person to whom the grant is made, in connection with:
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- 459. (a) the storage or reprocessing of nuclear fuel³;
 - 460. (b) the treatment, storage or disposal of radioactive waste⁴;
 - 461. (c) the cleaning-up of a principal nuclear site⁵; or
 - 462. (d) the decommissioning of a nuclear installation⁶;
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- 3315 (2) enter into an agreement with any person under which the Secretary of State undertakes that, if such conditions as may be specified in the agreement are satisfied, he will exercise the power conferred by head (1) above in such manner and to such extent as may be specified in the agreement⁷;
- 3316 (3) make loans of such amount as he thinks fit for the purpose of meeting such qualifying expenditure⁸; and
- 3317 (4) guarantee, in such manner and on such terms he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State for the purpose of meeting such qualifying expenditure⁹.

The Secretary of State must not, however,

- 3318 (i) make any grant or loan under these provisions for the purpose of meeting any expenditure; or
- 3319 (ii) give any guarantee in respect of borrowing undertaken for the purpose of meeting any expenditure,

if the expenditure is expenditure on anything for which the Nuclear Decommissioning Authority¹⁰ has a financial responsibility under the specified provision¹¹ of the Energy Act 2004¹².

It is the duty of the Secretary of State to prepare in respect of each financial year, in such form as the Treasury may direct, an account of sums issued to him for loans so made or sums received by him in repayment of such loans, and of the disposal by him of those sums and to send the account to the Comptroller and Auditor General¹³ not later than the end of November in the following financial year¹⁴. The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it and of his report before each House of Parliament¹⁵.

Immediately after a guarantee is given under head (4) above, the Secretary of State must lay a statement of the guarantee before each House of Parliament; and immediately after any sum is

paid for fulfilling a guarantee so given, the Secretary of State must so lay a statement relating to that sum¹⁶.

Any sums required by the Secretary of State for making such grants or loans or fulfilling any such guarantee must be paid out of money provided by Parliament¹⁷. Any sums received by him by way of repayment¹⁸ must be paid into the Consolidated Fund¹⁹.

Where the Secretary of State undertakes to make a grant under head (1) above in respect of qualifying expenditure incurred or to be incurred by any company, and in accordance with generally accepted accounting practice the company recognises the value of the undertaking in its balance sheet, and recognises a corresponding credit in its profit and loss account, no amount is to be brought into account in respect of that credit in computing the profits of the company for corporation tax purposes²⁰. This does not, however:

3320 (A) affect the amount, if any, to be brought into account in computing the profits of the company for corporation tax purposes as a result of any subsequent adjustment of the amount or estimated amount of the qualifying expenditure to which the undertaking relates, or the value of the undertaking²¹;

3321 (B) apply if the undertaking is given after 31 March 2008 or such later date, not later than 31 March 2011, as may be specified by the Treasury by order made by statutory instrument²².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 See, however, the text and notes 10-12 infra.

3 Electricity Act 1989 s 97, Sch 12 paras 1(1)(a), 5 (Sch 12 paras 1(1), (2), 2(1), 3(1) amended by the Electricity (Miscellaneous Provisions) Act 2003 s 3(1)-(4)). A grant may be made at such times, in such manner and subject to such conditions as the Secretary of State may with the Treasury's approval determine: Electricity Act 1989 Sch 12 para 1(3).

4 Electricity Act 1989 Sch 12 para 1(1)(b) (as amended: see note 3 supra). As to the making of the grant see note 3 supra.

5 Ibid Sch 12 para 1(1)(ba) (added by the Energy Act 2004 s 34(1)). As to the making of the grant see note 3 supra. For these purposes, 'cleaning-up' and 'principal nuclear site' have the same meanings as in Pt 1 Ch 1 (ss 1-37) (as amended) (see PARAS 1592 notes 2, 5 post): Electricity Act 1989 Sch 12 para 1(5) (added by the Energy Act 2004 s 34(2)).

6 Electricity Act 1989 Sch 12 para 1(1)(c) (substituted by the Energy Act 2004 s 34(1)). As to the making of the grant see note 3 supra. For these purposes, 'decommissioning' and 'nuclear installation' have the same meanings as in Pt 1 Ch 1 (as amended) (see PARA 1592 notes 2, 3 post): Electricity Act 1989 Sch 12 para 1(5) (as added: see note 5 supra).

7 Electricity Act 1989 Sch 12 para 1(2) (as amended: see note 3 supra).

8 Ibid Sch 12 para 2(1) (as amended: see note 3 supra). A loan may be made at such times, in such manner and subject to such conditions as the Secretary of State may with the Treasury's approval determine: Sch 12 para 2(2)(a). It must be repaid to him at such times and by such methods, and interest on it must be paid to him at such rates and at such times, as he may with the like approval from time to time direct: Sch 12 para 2(2)(b). As to directions generally see s 107; and PARA 1306 post.

9 Ibid Sch 12 para 3(1) (as amended: see note 3 supra).

10 As to the establishment and constitution of the Nuclear Decommissioning Authority see PARAS 1394-1395 post; and as to its functions see PARAS 1592-1595 post.

11 Ie under the Energy Act 2004 s 21: see PARA 1607 post.

12 Electricity Act 1989 Sch 12 para 3A (added by the Energy Act 2004 s 34(3)).

13 As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

14 Electricity Act 1989 Sch 12 para 2(5)(a), (b).

15 Ibid Sch 12 para 2(5).

16 Ibid Sch 12 para 3(2).

17 Ibid Sch 12 paras 1(4), 2(3), 3(3). If any sums are paid out in fulfilment of such a guarantee, the person whose obligations are fulfilled must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct, payments of (1) such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and (2) interest on what is outstanding for the time being in respect of sums so paid out at such rate as the Secretary of State may so direct; and the Treasury's approval is required for the giving of any such direction: Sch 12 para 3(4).

18 Ie under ibid Sch 12 paras 2(2) or 3(4): Sch 12 paras 2(4), 3(5).

19 Ibid Sch 12 paras 2(4), 3(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

20 Electricity (Miscellaneous Provisions) Act 2003 s 4(1), (4).

21 Ibid s 4(2).

22 Ibid s 4(3). No such order may be made unless a draft of it has been laid before and approved by a resolution of the House of Commons: s 4(3). At the date at which this title states the law, no such order had been made.

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(iv) Statistical Information; Promotion of New Techniques

1276. Provision of statistical information.

The Secretary of State¹ may, if he considers it expedient for the purpose of obtaining statistical information² relating to the generation³, transmission⁴ or supply⁵ of electricity or the use of electricity interconnectors⁶, serve a notice⁷ on any licence holder⁸ or any person who is authorised by an exemption⁹ to generate or supply electricity or to participate in the operation of electricity interconnectors¹⁰. Such a notice may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such statistical information about that person's business as may be so specified¹¹.

No information with respect to any particular business which has been so obtained and relates to the affairs of any individual or to any particular business may, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business¹². This restriction does not, however, apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to:

- 3322 (1) the quantities of electricity generated by particular methods or by the use of particular fuels¹³;
- 3323 (2) the quantities of particular fuels used for the generation of electricity¹⁴;
- 3324 (3) the quantities of electricity transferred between Great Britain¹⁵ and countries or territories outside Great Britain, or between England and Wales on the one hand and Scotland on the other¹⁶; or
- 3325 (4) the quantities of electricity supplied in England, Scotland or Wales either generally or to persons of any particular class or description¹⁷.

Nor does the restriction apply in relation to any disclosure which is made to the minister in charge of any government department or to the Scottish Ministers or for the purposes of any proceedings under these provisions¹⁸.

The Secretary of State may, after consultation with persons or bodies appearing to him to be representative of persons likely to be affected, by order¹⁹ amend heads (1) to (4) above so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business²⁰.

Any person who without reasonable excuse fails to furnish information in compliance with a requirement under these provisions is liable on summary conviction to a fine not exceeding level 1 on the standard scale²¹.

Any person who publishes or discloses any information in contravention²² of heads (1) to (4) above, or who, in purported compliance with a requirement under these provisions, knowingly or recklessly furnishes any information which is false in any material particular, is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not

exceeding the statutory maximum, or to both, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both²³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'information' does not include estimates as to future matters but, subject to that, has the same meaning as in the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1044 note 10 ante): s 98(9).

3 For the meaning of 'generate' and cognate expressions see PARA 1041 note 7 ante (definition applied by ibid s 98(9)).

4 For the meaning of 'transmission' see PARA 1041 note 6 ante (definition applied by ibid s 98(9)).

5 For the meaning of 'supply' see PARA 1041 note 10 ante (definition applied by ibid s 98(9)).

6 For the meaning of 'electricity interconnector' see PARA 1041 note 11 ante (definition applied by ibid s 98(9)).

7 For the meaning of 'notice' see PARA 1047 note 11 ante (definition applied by ibid s 98(9)). As to the service of notices generally see PARA 1307 post.

8 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante (definition applied by ibid s 98(9)).

9 For the meaning of 'exemption' see PARA 1046 note 7 ante (definition applied by ibid s 98(9)).

10 Ibid s 98(1) (amended by the Energy Act 2004 s 147(1), (8)). For the meaning of 'participating in the operation of an electricity interconnector' see PARA 1050 note 7 ante (definition applied by s 98(9)).

11 Ibid s 98(2).

12 Electricity Act 1989 s 98(3). Section 98(3) is subject to s 98(4), (5) (as amended) (see the text and notes 13-18 infra): s 98(3).

13 Ibid s 98(4)(a).

14 Ibid s 98(4)(b).

15 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

16 Electricity Act 1989 s 98(4)(c).

17 Ibid s 98(4)(d).

18 Ibid s 98(5) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 95).

19 As to the making of orders generally see the Electricity Act 1989 s 106 (as amended); and PARA 1306 post.

20 Ibid s 98(6). At the date at which this title states the law, no such order had been made.

21 Ibid s 98(7). As to the standard scale see PARA 613 note 11 ante.

22 For the meaning of 'contravention' see PARA 1070 note 20 ante.

23 Electricity Act 1989 s 98(8). As to the statutory maximum see PARA 689 note 2 ante; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

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1277. Promotion of new techniques in the national interest.

The Secretary of State¹ may exercise the power conferred on him regarding expenditure on research and development in science or technology² for the purpose of promoting such research into, and such development of, new techniques relating to the generation³, transmission⁴ or supply⁵ of electricity, as appears to him to be necessary in the national interest⁶.

The Secretary of State may, if he considers it expedient for purposes connected with the performance of this duty, serve notice⁷ on any licence holder⁸ or any person who is authorised by an exemption⁹ to generate or supply electricity¹⁰. Such a notice may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information¹¹ about that person's business as may be so specified¹².

The statutory restriction on the disclosure of statistical information¹³ applies for these purposes, but not in relation to any disclosure which is made to the minister in charge of any government department or to the Scottish Ministers or for the purpose of any proceedings against a person who fails to comply with a requirement to furnish information or who contravenes the restriction¹⁴.

Any person who without reasonable excuse fails to furnish information in compliance with the above provisions is liable on summary conviction to a fine not exceeding level 1 on the standard scale¹⁵. A person who publishes or discloses any information in contravention of such a requirement, or who in purported compliance with such a requirement knowingly or recklessly furnishes any information which is false in any material particular is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or to both, and on conviction or indictment to imprisonment for a term not exceeding two years or a fine, or to both¹⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. the power conferred on him by the Science and Technology Act 1965 s 5 (as amended): see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 973. Nothing in the Transfer of Functions (Science) Order 1992, SI 1992/1296, is to be taken as implying that the functions of the Secretary of State under the Electricity Act 1989 s 99 (see the text and notes 3-16 infra) are to be concurrently exercised by any other Minister of the Crown (see the Transfer of Functions (Science) Order 1992, SI 1992/1296, art 2(2)); and nothing in the Transfer of Functions (Scientific Research) Order 1999, SI 1999/2785, art 2, is to be taken as implying that those functions are to become exercisable concurrently by the Secretary of State for Environment, Food and Rural Affairs (see the Transfer of Functions (Scientific Research) Order 1999, SI 1999/2785, art 2(3); the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794). See also note 6 infra.

3 For the meaning of 'generate' and cognate expressions see PARA 1041 note 7 ante (definition applied by the Electricity Act 1989 ss 98(9), 99(4)).

4 For the meaning of 'transmission' see PARA 1041 note 6 ante (definition applied by ibid ss 98(9), 99(4)).

5 For the meaning of 'supply' see PARA 1041 note 10 ante (definition applied by ibid ss 98(9), 99(4)).

6 Ibid s 99(1). There is now a Technology Strategy Board, established as a research council, which has taken over responsibility for a number of contracts in the field of energy research and innovation which were entered into by the Secretary of State: see PARA 601 ante.

7 For the meaning of 'notice' see PARA 1047 note 11 ante (definition applied by *ibid* ss 98(9), 99(4)). As to the service of notices generally see PARA 1307 post.

8 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante (definition applied by *ibid* ss 98(8), 99(4)).

9 For the meaning of 'exemption' see PARA 1046 note 7 ante (definition applied by *ibid* ss 98(9), 99(4)).

10 *Ibid* s 99(2).

11 For the meaning of 'information' see PARA 1276 note 2 ante (definition applied by *ibid* s 99(4)).

12 *Ibid* s 99(3).

13 *Ie* *ibid* s 98(3) (applied by s 99(4)): see PARA 1276 ante.

14 See *ibid* s 98(5) (as amended); applied by s 99(4)); and PARA 1276 ante.

15 *Ibid* s 98(7) (applied by s 99(4)). As to the standard scale see PARA 613 note 11 ante.

16 *Ibid* s 98(8) (applied by s 99(4)). As to the statutory maximum see PARA 689 note 2 ante; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

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(v) Areas with High Distribution or Transmission Costs

1278. Assistance for areas with high distribution costs.

If it appears to the Secretary of State¹;

3326 (1) that the costs of distributing² electricity within a particular area of Great Britain³ are significantly higher (when calculated on a per customer basis) than in other areas of Great Britain; and

3327 (2) that within that area there are at least 100,000 premises⁴ that are connected to the same distribution system⁵,

he may make an order under these provisions⁶. Such an order is one that establishes a scheme which:

3328 (a) requires authorised transmitters⁷ to make a payment each year to relevant distributors⁸ distributing electricity in that area of Great Britain of such amount as may be determined in accordance with provision contained in the scheme;

3329 (b) requires the charges imposed by the authorised transmitters on authorised suppliers⁹ to be adjusted in accordance with the scheme for the purpose of enabling the transmitters to make that payment; and

3330 (c) requires relevant distributors in receipt of a payment under the order to secure, in accordance with the order, that the benefit of the payment is passed to the authorised suppliers supplying electricity in the area of Great Britain in question¹⁰.

Such an order establishing a scheme in relation to the distribution of electricity within a particular area must specify the area¹¹. For the purpose of facilitating the implementation of a scheme for which such an order provides, such an order may make such modifications¹² as the Secretary of State considers appropriate of the conditions of the licences¹³ of authorised suppliers, of authorised transmitters and of authorised distributors¹⁴.

For the purpose of carrying out the functions conferred on him by or under these provisions the Secretary of State may require an authorised supplier, an authorised distributor, or an authorised transmitter, to supply him, in a specified form and within a specified time, with information of a specified description¹⁵; but no person may be so required to supply information he could not be compelled to give in evidence in civil proceedings in the High Court¹⁶.

Before making such an order, the Secretary of State must consult such persons as he considers appropriate¹⁷.

Where a scheme established under these provisions in relation to the distribution of electricity within a particular area is in force, no scheme must be established under them in relation to the distribution of electricity outside that area¹⁸. Where a scheme is established under these provisions, it is the duty of the Secretary of State to carry out a review of that scheme:

- 3331 (i) three years after its establishment; and
- 3332 (ii) thereafter at three yearly intervals¹⁹.

Part I of the Electricity Act 1989²⁰ has effect as if every requirement or other duty imposed on a licence holder²¹ under these provisions were a relevant requirement²² for the enforcement purposes of that Part of the 1989 Act²³.

In the exercise of these powers, the Secretary of State has made a scheme to provide assistance for a specified area of Scotland in respect of the costs of distributing electricity within that area²⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'distribute' and cognate expressions see PARA 1041 note 5 ante (definition applied by the Energy Act 2004 s 184(13)).

3 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

4 For the meaning of 'premises' see PARA 1041 note 5 ante (definition applied by the Energy Act 2004 s 184(13)).

5 For the meaning of 'distribution system' see PARA 1041 note 5 ante (definition applied by ibid s 184(13)).

6 Energy Act 2004 s 184(1). Such an order is subject to the negative resolution procedure: s 184(9). As to the negative resolution procedure see PARA 602 note 2 ante.

7 For these purposes, 'authorised transmitter' means a person authorised by a licence under the Electricity Act 1989 s 6(1)(b) (as substituted) (see PARA 1065 ante) to participate in the transmission of electricity: Energy Act 2004 s 184(13).

8 For these purposes, 'relevant distributor' means an authorised distributor who distributes electricity by means of a distribution system to which at least 100,000 premises are connected: ibid s 184(13). For the meaning of 'authorised distributor' see PARA 1094 note 8 ante (definition applied by s 184(13)).

9 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante (definition applied by s 184(13)).

10 Ibid s 184(2).

11 Ibid s 184(3).

12 For the meaning of 'modifications' see PARA 733 note 8 ante.

13 For the meaning of 'licence' see PARA 1041 note 12 ante (definition applied by the Energy Act 2004 s 184(13)).

14 Ibid s 184(4).

15 Ibid s 184(5).

16 Ibid s 184(6).

17 Ibid s 184(7). Section 184(7) may be satisfied by consultation that took place wholly or partly before 5 October 2004 (ie the commencement of s 184: see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1): Energy Act 2004 s 184(8).

18 Ibid s 184(10).

19 Ibid s 184(11).

20 Ie the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1281 et seq post.

21 For the meaning of 'licence holder' see PARA 1041 note 12 ante (definition applied by the Energy Act 2004 s 184(13)).

22 Ie within the meaning of the Electricity Act 1989 s 25(8) (as amended): see PARA 1207 note 5 ante.

23 Energy Act 2004 s 184(12).

24 See the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005, SI 2005/528, which came into force on 1 April 2005: art 1(1).

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1279. Adjustment of transmission charges.

The Secretary of State¹ may make an order under these provisions if it appears to him:

- 3333 (1) that a particular area in Great Britain² is suitable as a location for the generation of electricity from renewable sources³;
- 3334 (2) that, as a result, that area represents an area of high potential for the development of the generation of electricity from such sources; and
- 3335 (3) that that development is likely to be deterred, or otherwise hindered in a material respect, by the level of charges that would otherwise be imposed by authorised transmitters⁴ on persons generating electricity in that area from renewable sources⁵.

Such an order is one that establishes a scheme which:

- 3336 (a) limits the amounts of charges that authorised transmitters may impose on persons so generating electricity in that area⁶ to amounts determined in accordance with provision contained in the scheme; and
- 3337 (b) requires the charges imposed by the authorised transmitters on authorised suppliers⁷ to be adjusted in accordance with the scheme for the purpose of making good shortfalls resulting from that limitation⁸.

An order under these provisions establishing a scheme in relation to the generation of electricity from renewable sources in a particular area must specify the area⁹. If heads (1) to (3) above are satisfied in the case of two or more separate areas in Great Britain, an order under these provisions may relate to both, or all, of those areas¹⁰. For the purpose of facilitating the implementation of a scheme, an order under these provisions may make such modifications¹¹ as the Secretary of State considers appropriate of the conditions of the licences¹² of authorised transmitters and of authorised suppliers¹³.

For the purpose of carrying out the functions conferred on him by or under these provisions the Secretary of State may require an authorised supplier, an authorised distributor¹⁴ or an authorised transmitter to supply him, in a specified form and within a specified time, with information of a specified description¹⁵; but no person may be so required to supply information he could not be compelled to give in evidence in civil proceedings in the High Court¹⁶.

Before making an order under these provisions the Secretary of State must:

- 3338 (i) publish a draft of any scheme proposed to be established by the order;
- 3339 (ii) publish an assessment of the costs likely to be incurred by different persons in consequence of the order; and
- 3340 (iii) consult authorised suppliers and such other persons likely to be affected by the order as he considers appropriate¹⁷.

An assessment published under head (ii) above must set out, in particular, the Secretary of State's assessment of the likely effect of the order on charges for electricity in Great Britain¹⁸.

Where a scheme in relation to the generation of electricity from renewable sources within a particular area¹⁹ is in force, no scheme must be established in relation to the generation of electricity from renewable sources outside that area²⁰. A scheme must not be applied:

- 3341 (A) in relation to a time later than 4 October 2024²¹;
- 3342 (B) for a period of more than five years, but it may, subject to head (A) above, be renewed at any time by a further order under these provisions for a period of no more than five years from the coming into force of the further order²².

Part I of the Electricity Act 1989²³ has effect as if every requirement or other duty imposed on a licence holder²⁴ under these provisions were a relevant requirement²⁵ for the enforcement purposes of that Part of the 1989 Act²⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 For these purposes, 'renewable sources' means sources of energy in relation to which the following condition is satisfied, namely, that the production of evidence in respect of electricity generated from those sources is capable of satisfying a renewables obligation imposed by an order under the Electricity Act 1989 s 32 (as substituted and amended) (obligation in respect of electricity generated from renewable sources: see PARA 1219 ante): Energy Act 2004 s 185(14).

4 For these purposes, 'authorised transmitter' means a person authorised by a licence under the Electricity Act 1989 s 6(1)(b) (as substituted) (see PARA 1065 ante) to participate in the transmission of electricity: Energy Act 2004 s 185(14).

5 Ibid s 185(1) (amended by the Climate Change and Sustainable Energy Act 2006 s 25(1), (2)). The power to make an order containing provision authorised by the Energy Act 2004 s 185 (as amended) is subject to the affirmative resolution procedure: s 185(15). As to the affirmative resolution procedure see PARA 754 note 17 ante. At the date at which this title states the law, no such order had been made.

6 Ibid s 185 (as amended) has effect in relation to an order which, by virtue of s 185(3A) (as added) (see the text and note 10 infra), relates to two or more areas as if references in s 185(2), (3) and (10) to the area to which the scheme established by the order relates (however expressed) were references to the combined area: s 185(3B) (s 185(3A), (3B) added by the Climate Change and Sustainable Energy Act 2006 s 25(1), (3)).

7 For the meaning of 'authorised supplier' see PARA 1094 note 7 ante (definition applied by the Energy Act 2004 s 185(14)).

8 Ibid s 185(2).

9 Ibid s 185(3); and see note 6 supra.

10 Ibid s 185(3A) (as added: see note 6 supra).

11 For the meaning of 'modifications' see PARA 733 note 8 ante.

12 For the meaning of 'licence' see PARA 1041 note 12 ante (definition applied by the Energy Act 2004 s 185(14)).

13 Ibid s 185(4).

14 For the meaning of 'authorised distributor' see PARA 1094 note 8 ante (definition applied by ibid s 185(14)).

15 Ibid s 185(5).

16 Ibid s 185(6).

17 Ibid s 185(7). Section 185(7) may be satisfied (1) by publications and consultation taking place wholly or partly before 5 October 2004 (ie the commencement of s 185 (now as amended): see the Energy Act 2004 (Commencement No 3) Order 2004, SI 2004/2575, art 2(1), Sch 1); (2) in relation to any order to be made thereunder after the commencement of the Climate Change and Sustainable Energy Act 2006 s 25 (ie 21 August 2006: see s 28(1)) by publications and consultation taking place wholly or partly before that commencement: Energy Act 2004 s 185(9); Climate Change and Sustainable Energy Act 2006 s 25(5).

18 Energy Act 2004 s 185(8).

19 See note 6 *supra*.

20 Energy Act 2004 s 185(10).

21 Ibid s 185(11) (amended by the Climate Change and Sustainable Energy Act 2006 s 25(1), (4)).

22 Electricity Act 1989 s 185(12).

23 Ie the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq ante*, PARA 1281 *et seq post*.

24 For the meaning of 'licence holder' see PARA 1041 note 12 *ante* (definition applied by the Energy Act 2004 s 185(14)).

25 Ie within the meaning of the Electricity Act 1989 s 25(8) (as amended): see PARA 1207 note 5 *ante*.

26 Energy Act 2004 s 185(13).

UPDATE

1279 Adjustment of transmission charges

NOTE 3--Definition of 'renewable sources' amended: Energy Act 2008 Sch 5 para 20.

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(vi) Decommissioning of Offshore Electric Lines

1280. Decommissioning programmes; in general.

Under the Energy Act 2004, the Secretary of State has power to require the submission of decommissioning programmes in relation to, among other things, certain offshore electric lines¹. He may either approve or reject such programmes² and, where he rejects a decommissioning programme, he may himself prepare one³. Decommissioning programmes are discussed in a later part of this title⁴.

1 See the Energy Act 2004 Pt 2 Ch 3 (ss 105-114); and PARA 1320 et seq post. As to the relevant electric lines see PARA 1320 note 1 post.

2 See *ibid* s 106; and PARA 1322 post.

3 See *ibid* s 107; and PARA 1323 post.

4 See PARA 1320 et seq post.

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(7) WORKS AND RIGHTS OVER LAND

(i) Powers with respect to Land and Water

1281. Power to acquire land by agreement.

The general powers of the former Electricity Council and Electricity Boards¹ under the Electricity Acts 1947 and 1957 included a power to acquire land by agreement². There is no specific provision³ in the Electricity Act 1989 conferring a general power to acquire land by agreement, although special types of land may be so acquired⁴. The general power of acquisition by agreement now derives from the Compulsory Purchase Act 1965⁵.

1 As to the Electricity Council and the Electricity Boards see PARA 1033 ante.

2 See in particular the Electricity Act 1947 s 2(5) (repealed); the Electricity Act 1957 ss 3(6), 42(1), Sch 4 Pt I (repealed).

3 For powers to acquire land by compulsory purchase see PARA 1283 post.

4 See the Electricity Act 1989 s 10(1) (as amended), Sch 3 para 3; and PARA 1283 post.

5 The consideration for an acquisition by agreement may be in money or money's worth: see the Compulsory Purchase Act 1965 s 3 (as amended); and see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

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1282. Source of powers to acquire land.

The statutory powers to acquire land¹ by compulsory purchase have effect in relation to the holder of a transmission licence² and, to the extent that his licence³ so provides, in relation to an electricity distributor⁴ or any other licence holder⁵. Where any provision conferring such a power is applied to a licence holder by his licence, it has effect subject to such restrictions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it⁶.

A licence holder who is entitled to exercise any such power is deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the Acquisition of Land Act 1981⁷.

1 In the Electricity Act 1989 s 10(1), Sch 3 (as amended): see PARA 1283 et seq post.

2 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

3 For the meaning of 'licence' see PARA 1041 note 12 ante.

4 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

5 Electricity Act 1989 s 10(1) (amended by the Utilities Act 2000 ss 53(1), (2), 108, Sch 8; the Energy Act 2004 s 143(1), Sch 19 paras 3, 9(1), (2)). For the meaning of 'licence holder' see PARA 1041 note 12 ante. References in the Electricity Act 1989 Sch 3 (as amended) to a licence holder are to be construed accordingly: s 10(1).

6 See *ibid* s 10(2).

7 See *ibid* s 112(1), Sch 16 para 2(2)(g). See further Sch 3 para 5; and PARA 1284 post; and see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

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1283. Compulsory acquisition of land.

The Secretary of State¹ may authorise a licence holder² to purchase compulsorily³ any land⁴ which is required⁵ for any purpose connected with the carrying on of the activities which he is authorised by his licence⁶ to carry on⁷ and this power includes a power to authorise the acquisition of rights over land by the creation of new rights as well as the acquisition of existing rights⁸. No order may, however, be made for authorising the compulsory purchase of land belonging to another licence holder except with the consent of the Gas and Electricity Markets Authority ('GEMA')⁹ and the Authority must not give its consent if:

- 3343 (1) the land is being used by the licence holder to whom it belongs for the purposes of an installation¹⁰ necessary for carrying on activities authorised by his licence¹¹; or
- 3344 (2) it appears to the Authority that the land will be so used and the use will commence, or that the necessary planning permission¹² or consent¹³ will be applied for, within the period of five years¹⁴ beginning with the date of the application for its consent¹⁵.

A consent which is not acted on within the period of six months beginning with the day on which it is granted ceases to have effect at the end of that period¹⁶.

Where for any purpose a licence holder has acquired or proposes to acquire any land which is or forms part of a common, open space, or fuel or field garden allotment¹⁷, or any right over any such land, and other land is required for the purpose of being given in exchange for it, the Secretary of State may authorise the licence holder to purchase that other land compulsorily or the licence holder may acquire it by agreement¹⁸.

Where a licence holder has acquired any land by virtue of his powers of compulsory purchase¹⁹ he may not dispose of it or any interest in or right over it except with the consent of the Authority²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 3-20 infra apply see PARA 1282 ante. A licence holder who is entitled to exercise any power conferred by the Electricity Act 1989 s 10(1), Sch 3 (as amended) is deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the New Towns Act 1981 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1344 et seq); the Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq); and the Civil Aviation Act 1982 ss 47-49, 51 (as amended), and s 46 (as amended), Sch 9 (see AIR LAW vol 2 (2008) PARA 199 et seq) (Electricity Act 1989 s 112(1), Sch 16 para 2(2)(f)-(h)); and it is immaterial for those purposes whether any power conferred by, or by any provision of, Sch 3 (as amended) on the holder of a licence under s 6(1) (as substituted and amended) (see PARA 1065 ante) is qualified by restrictions, exceptions or conditions included in the licence (Sch 16 para 2(9)).

3 For the procedure, compensation etc relating to the compulsory acquisition of land, rights over land and the acquisition of rights by creating new rights see note 8 infra; and PARA 1284 post. For the concurrent powers of the Secretary of State see *ibid* s 61 (as amended); and PARA 1298 post. For transitional provisions and savings relating to land compulsorily acquired under the Electricity Act 1947 s 9 (repealed) see the Electricity Act 1989 s 112(3), Sch 17 paras 8, 23.

4 'Land' for the purpose of *ibid* Sch 3 paras 1, 2 (as amended) includes any right over land other than, in Scotland, a right to abstract, divert and use water: Sch 3 para 1(2).

5 As to the meaning of 'required' in this context see *Sharkey v Secretary of State for the Environment and South Buckinghamshire District Council* (1990) 62 P & CR 126, [1990] 2 EGLR 191; *affd* (1991) 63 P & CR 332, [1992] RVR 29, CA (the land in question must be needed for the statutory purposes and the requirement must be a requirement that is more than merely desirable but not to the extent of being absolutely indispensable).

6 For the meaning of 'licence' see PARA 1041 note 12 *ante*. As to the restrictions etc which may be included in a licence see the Electricity Act 1989 s 10(2); and PARA 1282 *ante*.

7 *Ibid* Sch 3 para 1(1). See *Procter and Gamble Ltd v Secretary of State for the Environment* (1991) 63 P & CR 317, [1992] 1 EGLR 265, CA (a compulsory purchase order made for one purpose cannot lawfully be confirmed for another purpose or for a purpose additional to that for which it was made); considered in *Yorkshire Traction Co Ltd v Secretary of State for Transport* [1996] EGCS 13 (*affd* (1997) 75 P & CR 437, [1997] 2 EGLR 28, CA) in the context of the acquisition of land under the Transport Act 1968 s 10(3) (as amended)).

8 Electricity Act 1989 Sch 3 para 1(2). The Compulsory Purchase Act 1965 has effect with the modifications necessary to make it apply to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are to be read as referring to, or as including references to, the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context: Electricity Act 1989 Sch 3 para 6. For specific adaptations of the Compulsory Purchase Act 1965 in relation to the acquisition of new rights see the Electricity Act 1989 Sch 3 paras 7-13; and PARA 1284 *post*. For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 *ante*.

9 *Ibid* Sch 3 para 2(1) (Sch 3 paras 2, 4 amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 *et seq ante*; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 *ante*.

10 'Installation' refers to the construction or extension of a generating station (see the Electricity Act 1989 s 36 (as amended); and PARA 1249 *ante*) or the installation of overhead electric lines (see s 37; and PARA 1252 *ante*).

11 *Ibid* Sch 3 para 2(2)(a) (as amended: see note 9 *supra*).

12 'Planning permission' means a planning permission granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B (as amended)) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 *et seq*): Electricity Act 1989 Sch 3 para 2(5) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 83(1)).

13 *Ie* a consent granted under the Electricity Act 1989 s 36 (as amended) or s 37: see PARAS 1249, 1252 *ante*.

14 The Secretary of State may by order provide that *ibid* Sch 3 para 2(2) (as amended) is to have effect as if for the period of five years there were substituted such other period as may be specified in the order: Sch 3 para 2(3). At the date at which this title states the law, no such order had been made. As to the making of orders generally see s 106 (as amended); and PARA 1306 *post*.

15 *Ibid* Sch 3 para 2(2)(b) (as amended: see note 9 *supra*).

16 *Ibid* Sch 3 para 2(4).

17 *Ie* for the purposes of the Acquisition of Land Act 1981: Electricity Act 1989 Sch 3 para 3(1)(a). 'Common' includes any land subject to be inclosed under the Inclosure Acts 1845 to 1882, and any town or village green; 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or a disused burial ground; and 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: Acquisition of Land Act 1981 s 19(4). As to the compulsory acquisition of certain protected categories of land see ss 18, 19 (as amended) and s 28, Sch 3 paras 5, 6 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 533 *et seq*, 596 *et seq*. As to the Inclosure Acts 1845 to 1882 see COMMONS vol 13 (2009) PARA 419.

18 Electricity Act 1989 Sch 3 para 3(2). The Secretary of State could properly consider the planned or likely developments or future occurrences which it was intended or predicted would or might affect either the acquired land or the land given up in deciding whether or not to issue a certificate under the Acquisition of Land Act 1981 s 19 (as amended): *Greenwich London Borough Council v Secretary of State for the Environment, Yates v Secretary of State for the Environment* (1993) Times, 2 March, [1994] JPL 607. See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 531.

19 le under the provisions of the Electricity Act 1989 Sch 3 para 1.

20 Ibid Sch 3 para 4 (as amended: see note 9 *supra*). For transitional provisions relating to disposals of land effected in pursuance of a provision included in a transfer scheme by virtue of s 68(2)(c) or in pursuance of s 70, Sch 10 (see *PARA 1034 ante*), see s 112(3), Sch 17 para 23.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(i) Powers with respect to Land and Water/1284. Procedure, compensation etc with respect to compulsory acquisition.

1284. Procedure, compensation etc with respect to compulsory acquisition.

The Acquisition of Land Act 1981 applies to (1) the compulsory purchase by a licence holder¹ of land or rights over land in England and Wales²; and (2) the compulsory acquisition by a licence holder of a right by the creation of a new right³.

The enactments in force with respect to compensation for the compulsory purchase of land⁴ apply with the necessary modification as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land⁵.

In assessing the compensation to be paid by the acquiring authority under the Compulsory Purchase Act 1965, regard must be had not only to the extent, if any, to which the value of the land is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner by reason of the severance of that land from his other land or that other land being injuriously affected by the exercise of the statutory powers⁶. No person is to be required to grant any right over part only of (a) any house, building or manufactory⁷; or (b) a park⁸ or garden⁹ belonging to a house, if he is willing to sell the whole, unless the Lands Tribunal¹⁰ determines, in the case of head (a) above, that the part over which the right is proposed to be acquired can be acquired without material detriment to the remainder, or, in the case of head (b) above, it can be acquired without seriously affecting the amenity or convenience of the house¹¹. If the tribunal determines the part can be acquired without affecting the whole in the manner specified, it must award compensation in respect of any loss due to the acquisition of the right in addition to its value and, upon such award, the party with an interest in the buildings or land is required to grant that right over the part to the acquiring authority¹².

The statutory provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land¹³ are to be modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority¹⁴. The statutory provisions relating to powers of entry¹⁵ are to be modified so as to secure that with effect from the date on which the acquiring authority served notice to treat in respect of any right, it has power exercisable in the like circumstances and subject to the like conditions, to enter upon the land for the purpose of exercising that right¹⁶. The statutory provisions relating to protection for interests of tenants at will etc¹⁷ are to apply with such modifications as are necessary to secure that persons with interests so mentioned are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question¹⁸. Finally, the statutory provisions in respect of protection of the acquiring authority's possession in cases where, by inadvertence, an estate, a right or an interest has not been got in¹⁹, are to be modified so as to enable that authority, in circumstances corresponding to those mentioned, to continue entitled to exercise the right acquired by it, subject to its compliance with such provisions as relate to compensation²⁰.

- 1 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 2-20 infra apply see PARA 1282 ante.
- 2 Electricity Act 1989 s 10(1) (as amended), Sch 3 para 5(1).
- 3 Ibid Sch 3 para 5(1), applying the Acquisition of Land Act 1981 s 28, Sch 3 (as amended) for these purposes. Section 16 (as amended) and Sch 3 para 3 (as amended) (statutory undertakers' land excluded from compulsory purchase: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 564, 606, 607) does not, however, apply where the land or rights in question belong to another licence holder: Electricity Act 1989 Sch 3 para 5(2). As to the general adaptation of the Compulsory Purchase Act 1965 in relation to the creation of new rights see the Electricity Act 1989 Sch 3 para 6; and PARA 1283 note 8 ante.
- 4 See generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.
- 5 Electricity Act 1989 Sch 3 para 14.
- 6 Compulsory Purchase Act 1965 s 7 (substituted for these purposes by the Electricity Act 1989 Sch 3 para 8). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 810.
- 7 As to the meaning of 'house' and 'manufactory' see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 648.
- 8 A 'park' need not be large and land may be a 'park' although it is let for grazing: cf *Re Ripon (Highfield) Housing Confirmation Order 1938*, *White and Collins v Minister of Health* [1939] 2 KB 838, [1939] 3 All ER 548, CA.
- 9 As to the meaning of 'garden' see PARA 1292 note 17 post.
- 10 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 769 et seq.
- 11 Compulsory Purchase Act 1965 s 8(1) (substituted for these purposes by the Electricity Act 1989 Sch 3 para 9). In considering the extent of any material detriment to a house, building or manufactory, or the extent to which the amenity or convenience of a house is affected, the tribunal must have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase: Compulsory Purchase Act 1965 s 8(1A) (as so substituted). As to 'material detriment' and 'seriously affecting the amenity or convenience of the house' see *Ravenseft Properties Ltd v Hillingdon London Borough* (1968) 20 P & CR 483, Lands Tribunal.
- 12 Compulsory Purchase Act 1965 s 8(1) (as substituted: see note 11 supra).
- 13 Ie ibid s 9(4) (refusal by owners to convey); s 2, Sch 1 para 10(3) (owners under incapacity); s 5 (as amended), Sch 2 para 2(3) (absent and untraced owners); and s 21, Sch 4 paras 2(3), 7(2) (common land): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 629 et seq.
- 14 Electricity Act 1989 Sch 3 para 10.
- 15 Ie the Compulsory Purchase Act 1965 ss 11-13 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 663 et seq.
- 16 See the Electricity Act 1989 Sch 3 para 11.
- 17 Ie the Compulsory Purchase Act 1965 s 20 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 629 et seq.
- 18 See the Electricity Act 1989 Sch 3 para 12.
- 19 Ie the Compulsory Purchase Act 1965 s 22: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 713, 715.
- 20 See the Electricity Act 1989 Sch 3 para 13.

UPDATE

1284 Procedure, compensation etc with respect to compulsory acquisition

TEXT AND NOTE 11--Reference to the Lands Tribunal is now to the Upper Tribunal: Compulsory Purchase Act 1965 s 8(1) (amended by SI 2009/1307).

NOTE 16--1989 Act Sch 3 para 11 amended: Tribunals, Courts and Enforcement Act 2007 Sch 22 para 7.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(ii) Rights as to Water/1285. Rights to abstract water.

(ii) Rights as to Water

1285. Rights to abstract water.

The Secretary of State¹ may authorise a licence holder² to purchase a right to abstract, divert and use water in England and Wales for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on³.

Under the Water Resources Act 1991 the abstraction of water from a source of supply is prohibited other than in pursuance of a licence granted by the Environment Agency or under certain exceptions⁴. In relation to the imposition of charges for water abstraction, no charges⁵ are to be levied in respect of water authorised to be abstracted for use in the production of electricity, or any other form of power, by a generating station or apparatus of a capacity of not more than five megawatts⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions referred to in the text apply see PARA 1282 ante.

3 See the Electricity Act 1989 s 10(1) (as amended), Sch 3 para 1(1), (2); and PARA 1283 ante.

4 See the Water Resources Act 1991 s 24(1) (as amended); and WATER AND WATERWAYS vol 100 (2009) PARA 214.

5 Ie other than charges for the purpose of recovering administrative expenses attributable to the exercise by the Environment Agency of its functions in relation to the application for the licence: *ibid* s 125(1) (amended by the Environment Act 1995 s 120, Sch 22 para 128).

6 See *ibid* s 125(1) (as amended: see note 5 *supra*); and WATER AND WATERWAYS vol 100 (2009) PARA 274.

UPDATE

1285 Rights to abstract water

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1286. Source of powers for carrying out street works etc.

(iii) Powers to execute Works in Streets

1286. Source of powers for carrying out street works etc.

The statutory provisions conferring powers to carry out certain works¹ have effect in relation to the holder of a transmission licence² and, to the extent that his licence³ so provides, in relation to an electricity distributor⁴ any other licence holder⁵. Where any such provision is applied to a licence holder by his licence, it has effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it⁶.

A generation licence⁷ may provide that those statutory provisions are to have effect in relation to the licence holder as if:

- 3345 (1) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises⁸ of heat produced in association with electricity and steam produced from and air and water heated by such heat⁹; and
- 3346 (2) any reference to electric lines¹⁰ or electrical plant¹¹ included a reference to pipes and associated works¹² used or intended to be used for conveying heat so produced, and steam produced from and air and water heated by such heat¹³;

and this applies in relation to any purpose connected with the supply to any premises of any gas or liquid subjected to a cooling effect produced in association with electricity as it applies to a purpose mentioned in heads (1) and (2) above¹⁴.

A transmission licence may provide that, where the licence is modified¹⁵ so as to reduce in any respect the area in which the licence holder may carry on activities, those statutory provisions are to have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on¹⁶.

1 Ie the Electricity Act 1989 s 10(1), Sch 4 (as amended): see PARA 1287 et seq post.

2 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

3 For the meaning of 'licence' see PARA 1041 note 12 ante.

4 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

5 Electricity Act 1989 s 10(1) (amended by the Utilities Act 2000 ss 53(1), (2), 108, Sch 8; the Energy Act 2004 s 143(1), Sch 19 paras 3, 9(1), (2)). For the meaning of 'licence holder' see PARA 1041 note 12 ante. References in the Electricity Act 1989 Sch 3 (as amended) to a licence holder are to be construed accordingly: s 10(1).

6 See *ibid* s 10(2).

7 For the meaning of 'generation licence' see PARA 1065 ante at head (1) in the text.

8 For the meaning of 'premises' see PARA 1041 note 5 ante.

9 Electricity Act 1989 s 10(3)(a) (s 10(3) amended by the Utilities Act 2000 s 53(1), (3)). As to the powers of local authorities to establish combined heat and power schemes see the Local Government (Miscellaneous Provisions) Act 1976 s 11 (amended by the Electricity Act 1989 s 112(1), (4), Sch 16 para 20, Sch 18). The effect of the amendment is threefold: (1) it gives a local authority the necessary legal powers to sell electricity outside its own area; (2) save in such cases as may be prescribed, it prevents that authority from selling electricity which is produced otherwise than in association with heat; (3) it makes the authority subject to the requirements of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 et seq ante, PARA 1287 et seq post). Thus, in order to engage in combined heat and power projects, a local authority must operate under a licence or an exemption in the same way as any other licence holder, and it derives its powers to lay pipes, to carry out associated works and to execute street works from s 10 (as amended).

10 For the meaning of 'electric line' see PARA 1041 note 5 ante.

11 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

12 For these purposes, 'associated works', in relation to pipes, means any of the following connected with the pipes, ie any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed: Electricity Act 1989 s 10(3). For the meaning of 'prescribed' see PARA 1096 note 11 ante. At the date at which this title states the law, no regulations prescribing such works had been made.

13 Ibid s 10(3)(b) (as amended: see note 9 supra).

14 Ibid s 10(3A) (added by the Utilities Act 2000 s 53(1), (4)).

15 Ie under the Electricity Act 1989 s 6(6B) (as added) (see PARA 1065 ante), s 11 (as substituted and amended) (see PARA 1074 ante) or s 11A (as added and amended) (see PARA 1075 ante).

16 Ibid s 10(4) (substituted by the Energy Act 2004 s 143(1), Sch 19 paras 3, 9(1), (3)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1287. Powers to break up streets etc.

1287. Powers to break up streets etc.

A licence holder¹ may execute² the following kinds of works for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on:

- 3347 (1) installing under, over, in, on, along or across any street³ and from time to time inspecting, maintaining, adjusting, repairing, replacing or removing any electric lines⁴ or electrical plant⁵ and any structures⁶ for housing or covering them⁷; and
- 3348 (2) any works requisite for or incidental to the purposes of any such works, including for those purposes:
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- 463. (a) opening or breaking up any street⁸ or any sewers, drains or tunnels⁹ within or under any street;
- 464. (b) tunnelling or boring under any street; and
- 465. (c) removing or using all earth and materials in or under the street¹⁰.
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Nothing in heads (1) and (2) above, however, empowers a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use¹¹.

The power of a licence holder to place any structure for housing any electric line or plant on or over a street is exercisable only with the consent of the street authority¹² but such consent must not be unreasonably withheld¹³. Except in cases of emergency arising from faults in electric lines or electrical plant, a street which is not a maintainable highway may not be opened or broken up by virtue of the above provisions except with the consent of the street authority or that of the Secretary of State¹⁴.

In exercising the above powers, a licence holder must do as little damage as possible¹⁵ and must make compensation for any damage done in the exercise of those powers¹⁶. He is also required to exercise those powers in such a manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any street becomes a source of danger to the public¹⁷.

1 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 2-17 infra apply see PARA 1286 ante. A licence holder who is entitled to exercise any power conferred by the Electricity Act 1989 s 10(1), Sch 4 para 1 (as amended) (see the text and notes 2-17 infra) is deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the Public Health Act 1925 s 26, the Requisitioned Land and War Works Act 1945 s 17(1)(b) (as amended), the Highways Act 1980 and the Housing Act 1985 ss 296, 611 (as amended); and references in the Civil Aviation Act 1982 s 48(6) (as amended), the Local Government (Miscellaneous Provisions) Act 1953 s 6 (as amended), the Highways Act 1980 ss 176, 185 (as amended) and the Road Traffic Regulation Act 1984 s 74 (as amended), Sch 5 para 3 (as amended) to electricity undertakers are to be construed as references to licence holders so entitled: see the Electricity Act 1989 s 112(1), Sch 16 para 2(3), (4)(a), (b), (d), (e), (5)(a), (c), (d).

2 le subject to ibid s 10(1), Sch 4 para 1(2)-(10) (as amended: see the text and notes 3-17 infra): Sch 4 para 1(1). Nothing in Sch 4 para 1(1) affects the application to any operation of the Coast Protection Act 1949 ss 34-

36 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 533 et seq): Electricity Act 1989 Sch 4 para 1(8) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 123(4)).

3 For these purposes, 'street' means the whole or part of any of the following, irrespective of whether it is a thoroughfare: (1) any highway, road, lane, footway, alley or passage; (2) any square or court; and (3) any land laid out as a way whether it is for the time being formed as a way or not; and where a street passes over a bridge or through a tunnel, references to the street include that bridge or tunnel: New Roads and Street Works Act 1991 s 48(1); applied by the Electricity Act 1989 Sch 4 para 1(9) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 123(5)). A street need not be a thoroughfare: see *R v Goole Local Board* [1891] 2 QB 212; *Hill v Wallasey Local Board* [1894] 1 Ch 133, CA; *Midland Rly Co v Watton* (1886) 17 QBD 30, CA; *Taylor v Oldham Corpn* (1876) 4 ChD 395. It does not have to be linear in form and width is not relevant to define what is or is not a street since footpaths and alleys are included in the definition. A walkway in London is deemed to be a street for the purpose of statutory undertakers' works: see the Greater London Council (General Powers) Act 1969 s 24(1) (as amended). See also the New Roads and Street Works Act 1991 s 91(4) which applies the provisions of Pt III (ss 48-106) (as amended) to a street which consists of or forms part of a towing path by the side of a canal where the path or the subsoil is held or used for the purposes of the canal or inland navigation undertaking. See further HIGHWAYS, STREETS AND BRIDGES.

References to a bridge include so much of any street as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the street: see s 88(1)(a). Any statutory right to place apparatus in a street includes the right to place apparatus in and attach apparatus to the structure of the bridge and any other rights to execute works in relation to that apparatus extend to that situation also: s 88(3). See, however, s 88(5)(b) which requires an undertaker to comply with any reasonable conditions the bridge authority may wish to impose for the protection of the bridge or access to it. A wayleave agreement is no longer required when apparatus is attached to the bridge (see s 88(3)) but where apparatus is located elsewhere on the bridge, eg by cutting into the structure of the bridge, an agreement may be required (see *Glasgow Corpn v Glasgow and South Western Rly Co* [1895] AC 376, HL). See further HIGHWAYS, STREETS AND BRIDGES.

4 For the meaning of 'electric line' see PARA 1041 note 5 ante.

5 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

6 'Structures', which broadly correspond to a 'street box' under the Electric Lighting (Clauses) Act 1899 Sch 13(1) (repealed) are likely to include an underground or overground cable joint box, a meter or fuse box, a box containing switch gear or means of regulating the supply, a container or a compartment enclosing a substation. Such structures may be installed either above ground (on a verge or pavement) or below ground, though the last two items are now most usually below ground. Such 'structures' are not specifically defined in the Electricity Act 1989 though a general formulation is used to describe the structures which can be installed: see the definition of 'electrical plant' in s 64(1) (as amended). See *Hobday v Nicol* [1944] 1 All ER 302 at 303-304 per Humphreys J ('structure, as I understand it, is anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built together, constructed as to make one whole, which is then called a structure'. A structure, if constructed of brick or similar materials, is a 'building or structure of work' in respect of which, in London, a building notice must be given under the Building (Inner London) Regulations 1985, SI 1985/1936 (as amended). See *County of London Electric Supply Co Ltd v Perkins* (1908) 98 LT 870, DC, following *Whitechapel Board of Works v Crow* (1901) 84 LT 595, DC; and *Charing Cross and Strand Electricity Supply Corpn v Woodthorpe* (1903) 88 LT 772, DC. Cf *Moran & Son Ltd v Marsland* [1909] 1 KB 744, DC; *LCC v District Surveyors' Association and Willis* [1909] 2 KB 138, DC. The consistory court granted a faculty for the construction of two underground chambers in closed churchyards: *Re St Nicholas Cole Abbey*, *Re St Benet Fink, Churchyard* [1893] P 58; but see *Rector and Churchwardens of St Nicholas Acons v LCC* [1928] AC 469, PC; and ECCLESIASTICAL LAW vol 14 para 1073 note 6. The failure of a licence holder to provide proper ventilation may be negligence: see *Solomons v Stepney Borough Council* (1905) 69 JP 360, DC. See, however, *Goodbody v Poplar Borough Council* (1914) 84 LJKB 1230, DC (an explosion caused by an electric spark igniting gas which had leaked into a brick chamber containing fuses; local authority not liable on the ground that it was not responsible for the presence of gas in the chamber).

7 Electricity Act 1989 Sch 4 para 1(1)(a).

8 To break up a street without statutory authority is a nuisance at common law. An injunction restraining the unlawful breaking up of streets may be granted if the nuisance is substantial and permanent: *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304; *R v Longton Gas Co* (1860) 2 E & E 651; *Edgeware Highway Board v Harrow District Gas Co* (1874) LR 10 QB 92. See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 324.

9 'Tunnels' means tunnels ejusdem generis with 'sewers' and 'drains'; the term does not include a railway tunnel or a subway: *Caledonian Rly Co v Glasgow Corpn* (1901) 3 F 526, 8 SLT 457, Ct of Sess; *Schweder v Worthing Gas Light and Coke Co* [1912] 1 Ch 83.

10 Electricity Act 1989 Sch 4 para 1(1)(b). As to the rights of statutory undertakers to lay and maintain apparatus in supported walkways see the Walkways Regulations 1973, SI 1973/686 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 685 et seq.

For the application of the New Roads and Street Works Act 1991 to works carried out by statutory undertakers see PARA 1290 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 389 et seq. As to liability for noise (including vibration) that is emitted from or caused by a vehicle, machinery or equipment in a street see the Environmental Protection Act 1990 s 79(1)(ga) (added by the Noise and Statutory Nuisance Act 1993 s 2(2)(b)). See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 817 et seq; NUISANCE vol 78 (2010) PARAS 156, 165.

11 Electricity Act 1989 Sch 4 para 1(1). The exception applies only where no part of the land is dedicated: see *Schweder v Worthing Gas Light and Coke Co (No 2)* [1913] 1 Ch 118, where it was held that dedication between the owner and the highway authority involved not merely the occupation by the public of the surface but so much of the subjacent soil as was necessary for the proper maintenance of the street or road. A public footpath is land 'dedicated to public use' even though the footpath is not repairable by the inhabitants at large: see *Marriott v East Grinstead Gas and Water Co* [1909] 1 Ch 70. As to dedication generally see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 108 et seq.

12 'The street authority' means (1) if the street is a maintainable highway, the highway authority; and (2) if it is not, the street managers: New Roads and Street Works Act 1991 s 49(1) (definition applied by the Electricity Act 1989 Sch 4 para 1(9) (as substituted: see note 3 supra)). 'Maintainable highway' means a highway which for the purposes of the Highways Act 1980 is maintainable at the public expense; and 'highway authority' has the same meaning as in that Act: New Roads and Street Works Act 1991 s 86(1) (definition as so applied). 'Street managers' means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street: s 49(4).

13 Electricity Act 1989 Sch 4 para 1(2) (amended by the New Roads and Street Works Act 1991 Sch 8 para 123(1), (2)). Any question as to whether or not a consent is unreasonably withheld is to be determined by a single arbitrator to be appointed by the parties or, in default of agreement, by the Gas and Electricity Markets Authority ('GEMA'): Electricity Act 1989 Sch 4 para 1(3) (amended by virtue of the Utilities Act 2000 s 3(2)). As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

14 Electricity Act 1989 Sch 4 para 1(4) (amended by the New Roads and Street Works Act 1991 Sch 8 para 123(1), (3)). The Secretary of State may not entertain an application for his consent unless the licence holder has served notice of the application on the person whose consent would otherwise be required: Electricity Act 1989 Sch 4 para 1(5).

15 As to the duty of undertakers to reinstate the street after the execution of street works see the New Roads and Street Works Act 1991 s 70 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 457. See also s 65 (as amended) which lays down requirements as to safety to be observed in the execution of street works; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 451. As to any right of action by an individual see *Keating v Elvan Reinforced Concrete Co Ltd* [1968] 2 All ER 139, [1968] 1 WLR 722. See also *Pitman v Southern Electricity Board* [1978] 3 All ER 901, CA (metal plate placed over hole and protruding above pavement level a new and unexpected hazard; defendants liable in negligence); *Sullivan v South Glamorgan County Council* (1985) 84 LGR 415, Times, 7 August, CA.

16 Electricity Act 1989 Sch 4 para 1(6).

17 Ibid Sch 4 para 1(7). The Electric Lighting (Clauses) Act 1899 Schedule s 13(3) (repealed) placed a duty on electricity boards to maintain street boxes so as not to be a source of danger, 'whether by reason of inequality of surface or otherwise'. The provision was intended to prevent the principle in *Moore v Lambeth Waterworks Co* (1886) 17 QBD 462, CA, from applying in relation to street boxes (where a structure is lawfully fixed in the highway and is in good repair, no claim by the party injured by it will lie against the defendant undertaker). See also *Thompson v Brighton Corp* [1894] 1 QB 332, CA; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 397. It appears that this is still good law and that the words 'source of danger to the public' under the Electricity Act 1989 Sch 4 para 1(7) are intended to apply (inter alia) to the upper surface or the covering of apparatus referred to in note 6 supra.

UPDATE

1287 Powers to break up streets etc

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1288. Alteration of works.

1288. Alteration of works.

A licence holder¹ may execute works² notwithstanding that they involve a temporary or permanent alteration of any of the following:

- 3349 (1) any electric line³ or electrical plant⁴ under the control of another licence holder⁵;
- 3350 (2) any gas pipe operated by a gas transporter⁶;
- 3351 (3) any relevant pipe⁷ which (whether or not it is in a street) is under the control of the Environment Agency⁸, a water undertaker⁹ or a sewerage undertaker¹⁰;
- 3352 (4) any electronic communications apparatus used for the purpose of an electronic communications code network operated by a person to whom the electronic communications code applies¹¹; or
- 3353 (5) any system apparatus¹² of a licensed operator¹³ of a driver information system¹⁴.

Where a licence holder proposes to execute works which involve or are likely to involve any such alteration as is mentioned in head (1), head (2) or head (3) above, he must (except in the case of emergency works¹⁵) not less than one month before the works are commenced give the relevant undertaker¹⁶ a notice¹⁷ specifying the nature of the licence holder's works, the alteration or likely alteration involved and the time and place at which the works will be commenced¹⁸. Where a licence holder has given such notice, the relevant undertaker may within seven days beginning with the giving of the notice give the licence holder a counter-notice which may state either that the undertaker intends to make any alterations made necessary or expedient by the proposed works himself or that he requires the licence holder to make any such alteration under his supervision and to his satisfaction¹⁹.

Where such a counter-notice states that the relevant undertaker intends himself to make any alteration, he has the right²⁰, instead of the licence holder, to execute any works for the purpose of making the alteration and any expenses incurred by him in or in connection with the execution of such works and the amount of any loss or damage sustained by him in consequence of the alteration are recoverable from the licence holder in any court of competent jurisdiction²¹. Where a counter-notice states that any alteration is to be made under the supervision of and to the satisfaction of the relevant undertaker, the licence holder must not make any alteration except as required by the notice or where the undertaker fails to make the alteration within the specified period²² and any expenses incurred by the undertaker in or in connection with the supervision and the amount of any loss or damage sustained by him in consequence of the alteration are recoverable from the licence holder in any court of competent jurisdiction²³.

Where:

- 3354 (a) no such counter-notice is given; or
- 3355 (b) the relevant undertaker, having given such a notice, fails to make the alteration made necessary or expedient by the licence holders' proposed works

within such period as is specified²⁴ by the licence holder in a notice or where he unreasonably fails to provide the required supervision,

the licence holder may execute the works for the purpose of making the alteration with or without supervision but in either case the works must be carried out to the satisfaction of the undertaker²⁵.

A licence holder or any of his agents acting on his behalf who executes works without giving the required notice²⁶, or who unreasonably fails to comply with any reasonable requirements of the relevant undertaker, is liable on summary conviction to a fine not exceeding level three on the standard scale²⁷.

Certain persons or bodies²⁸ authorised by or under any enactment to execute street works²⁹ may execute those works notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant under the control of a licence holder³⁰, and, in such a case, the provisions relating to the giving of notices, compliance with requirements and other matters³¹ apply with the necessary modifications³².

1 For the meaning of 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 2-32 infra apply see PARA 1286 ante.

2 I.e. works in pursuance of the Electricity Act 1989 s 10(1), Sch 4 para 1 (as amended): see PARA 1287 ante.

3 For the meaning of 'electric line' see PARA 1041 note 5 ante.

4 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

5 Electricity Act 1989 Sch 4 para 3(1)(a).

6 Ibid Sch 4 para 3(1)(b) (amended by the Gas Act 1995 s 16(1), Sch 4 para 17(1); and by virtue of the Utilities Act 2000 s 76(7)). For the meaning of 'gas transporter' see PARA 805 ante (definition applied by the Electricity Act 1989 Sch 4 para 12 (amended for these purposes by virtue of the Utilities Act 2000 s 76(7))).

7 I.e. within the meaning of the Water Resources Act 1991 s 159 (as amended) or the Water Industry Act 1991 s 158 (as amended): see WATER AND WATERWAYS vol 101 (2009) PARA 462 note 4.

8 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to consents required to carry out works in the vicinity of flood defences see the Water Resources Act 1991 s 109 (as amended); the Land Drainage Act 1991 ss 66, 67 (as amended); and WATER AND WATERWAYS vol 101 (2009) PARAS 576, 603, 605-607.

9 As to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq.

10 Electricity Act 1989 Sch 4 para 3(1)(c) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 51(2)). As to sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

11 Electricity Act 1989 Sch 4 para 3(1)(d) (amended by the Communications Act 2003 s 406(1), Sch 17 para 99(1), (2)). Where a licence holder is proposing to execute works involving a temporary or permanent alteration of any electronic communications apparatus, the provisions of the Telecommunications Act 1984 s 10, Sch 2 para 23(1) (as amended) apply: see the Electricity Act 1989 s 112(1), Sch 16 para 1(6).

12 I.e. a 'system apparatus' within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 Pt II (ss 8-15) (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651): Electricity Act 1989 Sch 4 para 3(1)(e).

13 I.e. an operator of a driver information system licensed under the Road Traffic (Driver Licensing and Information Systems) Act 1989 Pt II (as amended): Electricity Act 1989 Sch 4 para 3(1)(e).

14 Ibid Sch 4 para 3(1)(e).

15 In relation to any emergency works, the licence holder must give the relevant undertaker notice as soon as practicable after commencing the works: *ibid* Sch 4 para 3(4). For the meaning of 'the relevant undertaker' see note 16 *infra*.

16 'The relevant undertaker' means the other licence holder, the gas transporter or the person supplying water in the exercise of statutory powers, as the case may be: Electricity Act 1989 Sch 4 para 3(2) (amended by virtue of the Utilities Act 2000 s 76(7)).

17 For the meaning of 'notice' see PARA 1047 note 11 *ante*. As to the service of notices see PARA 1307 *post*.

18 Electricity Act 1989 Sch 4 para 3(2)-(4) (as amended: see note 16 *supra*). As to the position where a licence holders' apparatus is affected by highway, bridge or transport works see the New Roads and Street Works Act 1991 ss 83-85 (as amended); and HIGHWAYS, STREETS AND BRIDGES.

19 Electricity Act 1989 Sch 4 para 3(5).

20 *Ie* subject to *ibid* Sch 4 para 3(8): see the text and notes 24-26 *infra*.

21 See *ibid* Sch 4 para 3(6).

22 *Ie* where *ibid* Sch 4 para 3(8) applies: see the text and notes 24-25 *infra*.

23 *Ibid* Sch 4 para 3(7).

24 The period specified must not be less than 48 hours: *ibid* Sch 4 para 3(8)(b).

25 See *ibid* Sch 4 para 3(8).

26 *Ie* a notice under *ibid* Sch 4 para 3(3): see the text and notes 15-18 *supra*.

27 *Ibid* Sch 4 para 3(9). As to the standard scale see PARA 613 note 11 *ante*.

28 *Ie* the persons or bodies set out in *ibid* Sch 4 para 4(1)(a)-(d) (as amended). Those persons and bodies are (1) any gas transporter; (2) the Environment Agency, any water undertaker or any sewerage undertaker; (3) any electronic communications code operator or former public telecommunications operator; and (4) any operator of a driver information system who is licensed under the Road Traffic (Driver Licensing and Information Systems) Act 1989 Pt II (as amended); and for these purposes, those persons and bodies are referred to as 'relevant undertakers': Electricity Act 1989 Sch 4 para 4(1) (amended by the Environment Act 1995 s 120, Sch 22; the Communications Act 2003 s 406(1), Sch 17 para 99(1), (3); and by virtue of the Utilities Act 2000 s 76(7)).

29 *Ie* any works corresponding to those authorised by the Electricity Act 1989 Sch 4 para 1 (as amended) (see PARA 1287 *ante*): Sch 4 para 4(1), (2).

30 *Ibid* Sch 4 para 4(1).

31 *Ie* the provisions of *ibid* Sch 4 para 3(3)-(9): see the text and notes 15-27 *supra*.

32 *Ibid* Sch 4 para 4(2). The provisions of Sch 4 para 3(3)-(9) apply as if (1) any reference to the licence holder were a reference to the relevant undertaker; and (2) any reference to the relevant undertaker were a reference to the licence holder: Sch 4 para 4(2)(a), (b).

UPDATE

1288 Alteration of works

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1289. Protection of electronic communications apparatus.

1289. Protection of electronic communications apparatus.

A licence holder¹ who installs or alters, or changes the mode of operation of, any electric line² or electrical plant³ is under a duty to take reasonable precautions for securing that the operation of the line or plant does not interfere with the operation of any electronic communications apparatus which is under the control of a person to whom the electronic communications code⁴ applies and which is not unusually sensitive to interference with its operation⁵. However, in the case of any electronic communications apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, this duty does not apply in relation to (1) any momentary interference⁶ with its operation; or (2) where it is installed in unreasonably close proximity to the electric line or plant, any other interference with its operation⁷.

The above provisions are to be read as also applying in the converse case of a person to whom the electronic communications code applies who installs or alters, or changes the mode of operation of, any electronic communications apparatus, and, in such a case, are to have effect as if (a) any reference to a licence holder were a reference to that person; (b) any reference to an electric line or electrical plant were a reference to such apparatus; and (c) any reference to such apparatus under the control of a person to whom the code applies were a reference to the line or plant under the control of the licence holder⁸.

Any dispute arising between the parties must be referred to arbitration by an arbitrator and, in default of agreement between the parties, the arbitrator must be appointed by the President of the Chartered Institute of Arbitrators⁹.

1 For the meaning of 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 2-9 infra apply see PARA 1286 ante.

2 For the meaning of 'electric line' see PARA 1041 note 5 ante.

3 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

4 As to the electronic communications code see TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

5 Electricity Act 1989 s 10(1) (as amended), Sch 4 para 5(1) (Sch 4 para 5 amended by the Communications Act 2003 s 406(1), Sch 17 para 99(1), (2)).

6 For these purposes, 'momentary interference' means any interference of momentary duration which is not a regular occurrence, whether caused by physical contact or otherwise: Electricity Act 1989 Sch 4 para 5(5).

7 Ibid Sch 4 para 5(2) (as amended: see note 5 supra).

8 Ibid Sch 4 para 5(3) (as amended: see note 5 supra).

9 Ibid Sch 4 para 5(4) (as amended: see note 5 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1290. Application of the New Roads and Street Works Act 1991.

1290. Application of the New Roads and Street Works Act 1991.

The New Roads and Street Works Act 1991 provides a nationally applicable and uniform set of provisions for the execution by undertakers¹ of works in streets² and for the protection of authorities, bodies and persons having the control or management of streets or sewers, drains or tunnels, transport undertakings or bridges³. Those provisions apply equally to all street works whether they are carried out in pursuance of a statutory right or of a street works licence⁴ and, subject to such exceptions and adaptations as may be prescribed, they are as relevant to private streets as they are to publicly-maintainable highways⁵. The relevant provisions are dealt with elsewhere in this work⁶.

1 'Undertaker' in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence: see the New Roads and Street Works Act 1991 s 48(4). 'Statutory right' means a right, whether expressed as a right, a power or otherwise, conferred by an enactment, whenever passed or made, other than a right exercisable by a street works licence: s 105(1). The rights of licence holders under the Electricity Act 1989 s 10(1), Sch 4 para 1 (as amended) (see PARA 1287 ante) to execute works thus come within this definition; and such licence holders are undertakers for these purposes. For the meaning of 'licence holder' see PARA 1041 note 12 ante.

2 For the meaning of 'street' see *ibid* s 48(1); and PARA 1287 note 3 ante.

3 See *ibid* Pt III (ss 48-106) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

4 As to street works licences see *ibid* s 50; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 414.

5 See *ibid* s 48(2); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 407.

6 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 406 et seq.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iii) Powers to execute Works in Streets/1291. Injury to apparatus by traffic.

1291. Injury to apparatus by traffic.

If the wires and apparatus of an electricity undertaker properly laid in a highway are injured by traffic of excessive weight on the highway, the undertaker has a cause of action against those responsible for the traffic¹, and has a similar cause of action in case of injury due to misfeasance on the part of the highway authority in repairing the highway².

1 See *Chichester Corpn v Foster* [1906] 1 KB 167, DC; *Armagh Union Guardians v Bell* [1900] 2 IR 371.

2 See *Gas Light and Coke Co v St Mary Abbott's, Kensington, Vestry* (1885) 15 QBD 1, CA; and *Alliance and Dublin Consumers' Gas Co v Dublin County Council* [1901] 1 IR 492, CA. See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 325.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(7) WORKS AND RIGHTS OVER LAND/(iv) Wayleaves over Private Land/1292. Power to place lines on private land.

(iv) Wayleaves over Private Land

1292. Power to place lines on private land.

Where it is necessary or expedient, for any purpose connected with the carrying on of the activities which he is authorised by his licence¹ to carry on, for a licence holder²:

- 3356 (1) to install and keep installed an electric line³ on, under or over any land⁴ and the owner or occupier⁵ of that land, after being given a notice⁶ requiring him to give the necessary wayleave⁷ within a specified period⁸, has either failed to give the necessary wayleave before the expiration of that period or has given the wayleave subject to terms and conditions to which the licence holder objects⁹; or
- 3357 (2) to keep an electric line installed on, under or over any land and the owner or occupier of that land has given notice¹⁰ requiring him to remove the electric line¹¹,

the following provisions apply¹². The Secretary of State¹³ may, on the application of the licence holder, himself grant the necessary wayleave subject to such terms¹⁴ and conditions as he thinks fit¹⁵. A wayleave so granted continues in force, unless previously terminated in accordance with a term in the wayleave, for such period as may be specified in the wayleave¹⁶. The Secretary of State may not, however, entertain an application for such a consent in any case where the land is covered by a dwelling¹⁷ and the line is to be installed on or over the land¹⁸. Before granting the necessary wayleave, the Secretary of State must give the occupier of the land and, where the occupier is not also the owner of the land, the owner, the opportunity of being heard by a person appointed by the Secretary of State¹⁹.

Where a wayleave is granted to a licence holder under the above provisions, the occupier of the land and, where the occupier is not also the owner of the land, the owner may recover compensation in respect of the grant²⁰.

Where in the exercise of any right conferred by a wayleave, any damage is caused to land or movables²¹, any person having an interest in the land or movables may recover compensation²² in respect of such damage and where, in consequence of the exercise of such a right, a person is disturbed in his enjoyment of any land or movables, he may recover compensation in respect of that disturbance²³.

1 For the meaning of 'licence' see PARA 1041 note 12 ante.

2 For the meaning of 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 3-23 infra apply see the Electricity Act 1989 s 10(1) (as amended); and PARAS 1282, 1286 ante.

3 For the meaning of 'electric line' see PARA 1041 note 5 ante. Where a licence holder makes an application to the Secretary of State for his consent for the installation of an overhead electric line and, for a purpose connected with the proposed installation of the line, makes one or more of the following: (1) a compulsory purchase order (see PARAS 1281-1284 ante); (2) an application to the Secretary of State for the necessary wayleave (see the text and notes 4-23 infra); and (3) a reference to him in respect of felling and lopping of trees (see PARA 1295 post), the proceedings in respect of these matters may (so far as is practicable) be taken concurrently with the proceedings required under *ibid* s 36(8), Sch 8 (as amended): see s 61 (as amended); and

PARA 1298 post. As to concurrent proceedings in connection with an application for a necessary wayleave and a reference in respect of felling and lopping of trees see PARA 1295 post.

As to the procedure for obtaining consent to the placing of an overhead line see Sch 8 (as amended); and PARA 1260 et seq ante. As to the special provisions in connection with consents granted under s 37 (ie where an application for such consent is made and that application states that all necessary wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line) see Sch 8 para 6; and PARA 1274 ante.

4 On the true construction of ibid Sch 4 para 6, the word 'land' includes installations or equipment attached to the land, and the phrase 'on, under or over ... land' includes 'through installations or equipment' on that land: *British Waterways Board v London Power Networks plc* [2002] EWHC 2417 (Ch), [2003] 1 All ER 187, [2003] 1 EGLR 111 (Secretary of State had power to grant a wayleave through a service tunnel). The expression 'land' used in connection with wayleaves for overhead lines must be taken to include the airspace above the ground: see note 7 infra.

5 As to the meaning of 'occupier' see PARA 1094 note 6 ante.

6 For the meaning of 'notice' see PARA 1047 note 11 ante. As to the requirement to serve a notice and the contents thereof see the Acquisition of Land Act 1981 ss 11, 12 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 559, 560. As to the service of notices generally see PARA 1307 post.

7 For these purposes, 'the necessary wayleave' means (1) in a case falling within head (1) in the text, consent for the licence holder to install and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line (Electricity Act 1989 s 10(1), Sch 4 para 6(1)); and (2) in a case falling within head (2) in the text, consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line (Sch 4 para 6(2)). A necessary wayleave granted under Sch 4 para 6 is not subject to the provisions of any enactment requiring the registration of interests in, charges over or any other obligation affecting the land but it binds any person who is at any time the owner or occupier of the land: Sch 4 para 6(6).

Where in pursuance of a wayleave granted under Sch 4 para 6, a licence holder has erected on any land supports for an electric line, he is deemed to have an interest in that land for the purposes of the Mines (Working Facilities and Support) Act 1966 s 7 (as amended) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 390): Electricity Act 1989 Sch 4 para 6(7).

Subject to the special provisions with regard to mines and minerals, it seems that the rights conferred by a necessary wayleave give a licence holder not an interest in land but simply a right of occupation: see *Newcastle-Under-Lyme Corp v Wolstanton Ltd* [1947] Ch 427 at 456-457, [1947] 1 All ER 218 at 223-224, CA (a case relating to gas pipes), where it was held that the local authority's exclusive right of occupation was limited to the space in the soil taken up by its pipes and so did not apply to any part of the soil on which the pipes rested; that therefore the only right to support for its pipes ever enjoyed by the authority was the implied right of support for the pipes themselves, as distinct from the right of support enjoyed by the owner of the soil, arising, on the principle in *Normanton Gas Co v Pope and Pearson Ltd* (1883) 52 LQB 629, CA, and *Re Dudley Corp* (1881) 8 QBD 86, CA, out of the exercise of the authority's statutory powers to lay the pipes. See also *London and North Western Ry Co v Evans* [1893] 1 Ch 16, CA; and EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 180 et seq. On that basis it appears that where electric lines are laid under the authority of a right conferred by a wayleave, a licence holder has the following rights: (a) where the line is underground, the exclusive right to occupy the space in the soil taken by the electric line; and (b) where the line is above ground, the right to occupy the airspace taken by the line and the right to occupy the surface of the land on which supports for the line are placed.

In *Central Electricity Generating Board v Jennaway* [1959] 3 All ER 409, [1959] 1 WLR 937 it was held that the power to place an electric line above ground conferred by the Electricity (Supply) Act 1919 s 22 (repealed) implied a power to place supports for the line, but some doubt was thrown on this proposition by *Sovmots Investments Ltd v Secretary of State for the Environment* [1979] AC 144, [1977] 2 All ER 385, HL (a case concerning a housing authority's ancillary rights over adjacent land). Since 'electric line' is now defined under the Electricity Act 1989 s 64(1) (as amended) as including any supports for such a line, the matter is put beyond doubt.

As to transitional provisions relating to wayleaves see s 112(3), Sch 17 para 9.

8 The period specified must not be less than 21 days: ibid Sch 4 para 6(1)(b).

9 Ibid Sch 4 para 6(1).

10 Ie under ibid Sch 4 para 8(2): see PARA 1294 post.

11 Ibid Sch 4 para 6(2).

12 Ibid Sch 4 para 6(1), (2).

13 As to the Secretary of State see PARA 601 note 1 ante.

14 In *West Midlands Joint Electricity Authority v Pitt, Minister of Transport v Pitt* [1932] 2 KB 1, CA, the expression 'terms' in the Electricity (Supply) Act 1919 s 22(1) (repealed) was held not to include pecuniary terms.

15 Electricity Act 1989 Sch 4 para 6(3). As to the discretionary nature of this power see *British Waterways Board v London Power Networks plc* [2002] EWHC 2417 (Ch), [2003] 1 All ER 187, [2003] 1 EGLR 111.

16 Electricity Act 1989 Sch 4 para 6(3).

17 This restriction also applies where the land will be covered by a dwelling on the assumption that any planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended: see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq) which is in force is acted on: Electricity Act 1989 Sch 4 paras 6(4)(a), 12 (Sch 4 para 12 amended for these purposes by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 83(1)). For these purposes, 'dwelling' means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling, and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part: Electricity Act 1989 Sch 4 para 6(8). The 'root idea' of a garden is that it is 'a substantially homogenous area, substantially devoted to the growth of fruits, flowers and vegetables': see *Bomford v Osborne* [1942] AC 14 at 40, [1941] 2 All ER 426 at 442, HL, per Lord Wright. Where there is a cultivated garden which is separated from an adjoining piece of rough pasture, the rough pasture cannot be regarded as part of the garden: *Methuen-Campbell v Walters* [1979] QB 525, [1979] 1 All ER 606, CA; considered in the context of the Town and Country Planning Act 1990 in *George Wimpey UK Ltd v First Secretary of State* [2004] EWHC 2419 (Admin), [2005] 2 P & CR 524, [2004] All ER (D) 139 (Sep); *McAlpine v Secretary of State for the Environment* [1995] 1 PLR 16, (1994) 159 LG Rev 429; *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* (1999) 78 P & CR 410, [2000] 2 PLR 102.

Where a licence holder wishes to place an electric line over a house or garden and the owner or occupier refuses, he will have to proceed by way of compulsory purchase (see the Electricity Act 1989 s 10(1), Sch 3 (as amended); and PARA 1283 et seq ante) thus bringing into play the Compulsory Purchase Act 1965 (as modified) which would, in certain circumstances, give the landowner the option to require the licence holder to purchase the entire house or garden (see PARA 1284 ante).

18 Electricity Act 1989 Sch 4 para 6(4). The restriction in Sch 4 para 6(4) does not, however, apply to the replacement of an existing electric line: *R v Secretary of State for Trade and Industry, ex p Wolf* (1997) 79 P & CR 299, CA.

19 Ibid Sch 4 para 6(5). For the prescribed procedure for such hearings see PARA 1293 post.

20 Ibid Sch 4 para 7(1).

21 'Movables' means chattels: ibid Sch 4 para 12.

22 Compensation may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other: ibid Sch 4 para 7(3). Any question of disputed compensation is to be determined by the Lands Tribunal and the Land Compensation Act 1961 s 2 (as amended), s 4 apply to any such determination: Electricity Act 1989 Sch 4 paras 7(4), 12. See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 715 et seq. As to the principles to be applied in determining compensation see *Welford v EDF Energy Networks (LPN) Ltd* [2007] EWCA Civ 293, [2007] RVR 172, [2007] All ER (D) 26 (Apr) (once the owner of the land has a business in existence, has made the investment in the land on which that business is to be carried out and has commenced work in connection with the business on it, the business has a sufficient relationship to the land for the land to have a special value to the owner arising out of that business so that compensation for the loss occasioned by its disturbance may be recoverable, even though the land is not yet being used for the business); and see *Macleod v National Grid Co plc* [1998] 2 EGLR 217, Lands Tribunal. See also *Radnor Trust Ltd v Central Electricity Generating Board* (1961) 12 P & CR 111, [1961] RVR 9, where costs reasonably incurred by the claimants after delivery of the claim but before referring the claim to the Lands Tribunal were held to fall within the basis of the decisions in *LCC v Tobin* [1959] 1 All ER 649, [1959] 1 WLR 354, CA (where legal and accountancy fees were recoverable as compensation), and *Harvey v Crawley Development Corp'n* [1957] 1 QB 485, [1957] 1 All ER 504, CA (where costs incurred by reason of the compulsory purchase were recoverable provided that they were not too remote), and to be recoverable from the Board as compensating authority). There is, however, no power to award costs after a wayleave hearing (as to which see PARA 1293 post): *R v Department of Trade and Industry, ex p Healaugh Farms* (1995) 72 P & CR 1, (1995) Times, 27 December. As to compensation for interference with land with development potential see also *Christian Salvesen (Properties) Ltd v Central Electricity Generating Board* (1984) 48 P & CR 465, where it was held that payment for a wayleave for an overhead line and its supports precluded the payment of additional compensation when successors in title to

the land were refused planning permission for residential development because of the line; the terms of the rights of the parties were governed exclusively by the deed of grant. Cf *Mayclose Ltd v Central Electricity Generating Board* [1987] RVR 268, [1987] 2 EGLR 18, CA. At the time the deed of grant was made, it was intended to encompass the whole of the relationship between the parties to it; it followed that any potential rights to compensation were excluded: see *Allen v South Eastern Electricity Board* [1988] 1 EGLR 171, CA. See also *Clouds Estate Trustees v Southern Electricity Board* [1983] RVR 184 (method for calculating proper annual rent for wayleaves).

23 Electricity Act 1989 Sch 4 para 7(2).

UPDATE

1292 Power to place lines on private land

NOTE 22--See also *Welford v EDF Energy Networks (LPN) plc* [2009] RVR 10. Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Electricity Act 1989 Sch 4 paras 7(4), 12 (amended by SI 2009/1307).

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1293. Procedure before grant of consent by Secretary of State.

On receipt of an application for his consent to the placing of an electric line¹ across land², the Secretary of State³ must fix a date, time and place for the hearing and notice⁴ of them must be given to every objector⁵ and to the licence holder⁶.

The licence holder must serve on each objector, no later than 14 days before the date of the hearing⁷, a written statement of his reasons for the proposed placing of the electric line and must supply a copy of the statement to the Secretary of State⁸; and where a government department has expressed in writing to the licence holder a view in support of the proposed placing of the electric line and the licence holder proposes to rely on that expression of view in its submissions at the hearing, the licence holder must include it in the statement and send a copy of the statement to the government department concerned⁹.

The licence holder may appear at the hearing by any of his officers appointed for the purpose or by counsel or solicitor, and an objector may appear on his own behalf or be represented by counsel, solicitor or any other person¹⁰. Any objector may, not later than seven days before the date of the hearing, apply in writing to the Secretary of State for a representative of any government department which has expressed a view on which the licence holder proposes to rely to be made available at the hearing¹¹. Any such application must be transmitted to the government department concerned which must make a representative so available¹².

Subject to the following provisions, the procedure at the hearing is determined at the discretion of the appointed person¹³. The hearing must take place in public unless the licence holder or any objector requests that it be held in private¹⁴. The licence holder begins and has the right of final reply, unless in any particular case the appointed person determines otherwise with the consent of the licence holder¹⁵; and the objectors are heard in such order as the appointed person may determine¹⁶. Evidence may be admitted at the discretion of the appointed person but he must not require or permit the giving or production of any evidence which would be contrary to the public interest¹⁷. If any objector does not appear at the hearing, the appointed person may at his discretion proceed with the hearing and, if he does so, he must take into account any previous written representations of that objector in so far as they appear to him to be proper and relevant to the matters in issue¹⁸.

The appointed person may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice is required¹⁹. He may make an unaccompanied inspection of the land before, during or after the hearing without giving notice of his intention to any person entitled to appear at the hearing²⁰ and must make an inspection after the close of the hearing if he is requested to do so by the licence holder or any objector before or during the hearing²¹. In the latter case he must announce during the hearing the date and time of the inspection²².

After the close of the hearing, the appointed person must make a report in writing to the Secretary of State which must include his findings of fact and recommendations, if any, or his reasons for not making any recommendations²³. Where the Secretary of State differs from the appointed person on a finding of fact, or receives any new evidence after the hearing, or takes into consideration any new issue of fact other than a matter of government policy, and is thereby disposed to disagree with a recommendation made by the appointed person, he may

not come to a decision without first notifying the licence holder and any objector who appeared at the hearing of his disagreement and the reasons for it and affording them an opportunity to make representations in writing within 21 days or, if he has received new evidence or taken into consideration any new issue of fact, of asking within 21 days for the hearing to be reopened²⁴. If he thinks fit, the Secretary of State may in any case cause the hearing to be reopened, and he must cause it to be reopened if asked to do so in accordance with the above provisions²⁵.

The Secretary of State must notify his decision, and his reasons for it, in writing to the licence holder and the objectors; and where a copy of the appointed person's report²⁶ is not sent with the notification, the notification must be accompanied by a summary of the appointed person's conclusions and recommendations²⁷.

1 For the meaning of 'electric line' see PARA 1041 note 5 ante.

2 Ie an application for consent under the Electricity Act 1989 s 10(1), Sch 4 para 6(3): see PARA 1292 ante.

3 The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, refer throughout to the 'Minister of Power' but this is now to be construed as a reference to the Secretary of State: see PARA 601 ante.

4 At least 21 days' notice must be given: *ibid* r 4(1).

5 'Objector' means an owner or occupier of the land or any part of it who has failed to give his consent to the placing of the electric line or who has attached to his consent any terms, conditions or stipulations to which the licence holder objects: *ibid* r 3(1). The Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, refer throughout to an 'electricity authority' (ie the former Central Electricity Generating Board or a former area board: see PARA 1033 ante); but by virtue of the Electricity Act 1989 (Consequential Modifications of Subordinate Legislation) Order 1990, SI 1990/526, art 2, Schedule, such references are now to be construed as references to a licence holder. For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante.

6 Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, r 4(1); Interpretation Act 1978 s 17(2). The date, time and place may be varied by the Secretary of State on reasonable notice; and the period of notice may be shorter than that prescribed with the written consent of the parties: see the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, r 4(1)(i), (ii).

7 A later date may be specified where a shorter period of notice was given under *ibid* r 4(1)(i): see r 4(2).

8 *Ibid* r 4(2). The statement must be accompanied by a list of any documents (including maps, photographs and plans) which the licence holder intends to refer to or put in evidence: see r 4(4). Every objector must be afforded a reasonable opportunity to inspect and take copies of the documents where practicable: r 4(4).

9 *Ibid* r 4(3).

10 *Ibid* r 5(1). Where there are two or more objectors having a similar interest, joint representation may be allowed: see r 5(2).

11 *Ibid* r 6(1).

12 *Ibid* r 6(2). At the hearing, the representative must state the reasons for the department's view and may give evidence and be cross-examined, but may not be required to answer any questions directed to the merits of government policy: see r 6(3).

13 *Ibid* r 7(1). The 'appointed person' means the person appointed by the Secretary of State to hold the hearing: r 3(1).

14 *Ibid* r 7(2).

15 *Ibid* r 7(3).

16 *Ibid* r 7(3). The licence holder and the objectors are entitled to call evidence and cross-examine persons giving evidence: r 7(4).

17 See *ibid* r 7(5). The appointed person may allow the licence holder to alter or add to the reasons contained in his statement or any list of documents, but must give every objector an adequate opportunity of considering any alterations or additions: see r 7(6).

18 *Ibid* r 7(7).

19 *Ibid* r 7(8).

20 *Ibid* r 8(1). 'The land' means the land across which consent to place an electric line is sought: r 3(1).

21 *Ibid* r 8(2).

22 *Ibid* r 8(2). The licence holder and the objectors are entitled to accompany the appointed person on any inspection held as a result of such a request, but if any such person is not present at the time appointed the inspection need not be deferred: see r 8(3).

23 *Ibid* r 9(1).

24 *Ibid* r 9(2).

25 *Ibid* r 9(3). If the hearing is reopened r 4(1) (see the text and notes 1-6 *supra*) applies as it applies to the original hearing: r 9(3).

26 For these purposes, 'report' does not include documents, maps, photographs or plans appended to the report but any person entitled to a copy of the report must be afforded an opportunity of inspecting such documents etc if he so wishes: *ibid* r 10(3).

27 *Ibid* r 10(1). If any person so entitled to be notified has not received a copy of the appointed person's report, he must be supplied with one on written application to the Secretary of State within one month from the date on which he is notified of the decision: r 10(2).

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1294. Temporary continuation of wayleaves.

Where at any time a necessary wayleave¹, whether granted by the Secretary of State² in exercise of the powers conferred on him³ or by agreement between the parties:

- 3358 (1) is determined by the expiration of the period specified in the wayleave;
- 3359 (2) is terminated by the owner or occupier⁴ of the land⁵ in accordance with a term in the wayleave; or
- 3360 (3) ceases to be binding on the owner or occupier by reason of a change in the ownership or occupation of the land following the grant of the wayleave,

the owner or occupier of the land may give to the licence holder⁶ a notice⁷ requiring him to remove the electric line⁸ from the land⁹. The licence holder is not, however, obliged to comply with such a notice except in the following circumstances and to the following extent¹⁰.

Where within the period of three months beginning with the date of the notice requesting the removal of the electric line, the licence holder makes neither an application for the grant of the necessary wayleave¹¹ nor an order authorising the compulsory purchase of the land¹², the licence holder must comply with the notice requesting removal at the end of that three-month period¹³. Where within that period the licence holder:

- 3361 (a) makes an application for the grant of the necessary wayleave and the application is refused by the Secretary of State¹⁴; or
- 3362 (b) makes an order authorising the compulsory purchase of the land¹⁵ and that order is not confirmed by the Secretary of State¹⁶,

the licence holder must comply with the notice at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify¹⁷.

1 Ie such a wayleave as is mentioned in the Electricity Act 1989 s 10(1) (as amended), Sch 4 para 6 (see PARA 1292 ante); Sch 4 para 8(1). For the meaning of 'necessary wayleave' see PARA 1292 note 7 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie the powers conferred by the Electricity Act 1989 Sch 4 para 6: see PARA 1292 ante.

4 As to the meaning of 'occupier' see PARA 1094 note 6 ante.

5 The expression 'land' used in connection with wayleaves for overhead lines must be taken to include the airspace above the ground: see PARA 1292 note 7 ante.

6 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 1-5 supra, 7-17 infra apply see the Electricity Act 1989 s 10(1) (as amended); and PARAS 1282, 1286 ante.

7 The periods specified for the owner or occupier to give the licence holder notice to remove the line are as follows: (1) in a case falling within head (1) in the text, at any time after or within three months before the end of that period specified in the wayleave; (2) in a case falling within head (2) in the text, at any time after the

termination of the wayleave; and (3) in a case falling within head (3) in the text, at any time after the change in ownership or occupation takes place: Electricity Act 1989 Sch 4 para 8(2)(a)-(c).

8 For the meaning of 'electric line' see PARA 1041 note 5 ante.

9 Electricity Act 1989 Sch 4 para 8(1), (2).

10 Ibid Sch 4 para 8(2).

11 Ie under ibid Sch 4 para 6: see PARA 1292 ante.

12 Ie an order made by virtue of ibid s 10(1) (as amended), Sch 3 para 1: see PARA 1283 ante.

13 Ibid Sch 4 para 8(3).

14 See ibid Sch 4 para 8(4)(a), (b).

15 See note 12 supra.

16 See the Electricity Act 1989 Sch 4 para 8(5)(a), (b).

17 Ibid Sch 4 para 8(4), (5).

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(v) Removing Obstructions

1295. Felling or lopping of trees etc.

Where any tree¹ is or will be in such close proximity to an electric line² or electrical plant³ which is kept installed or is being or is to be installed by a licence holder⁴ as:

- 3363 (1) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
- 3364 (2) to constitute an unacceptable source of danger whether to children or other persons,

the licence holder may give notice⁵ to the occupier⁶ of the land⁷ requiring him to fell or lop⁸ the tree or cut back its roots so as to prevent it from having the effects mentioned, subject to the payment to him of the expenses reasonably incurred by him in complying with the notice⁹.

If within 21 days from the giving of the notice, the requirements of the notice are not complied with and neither the owner nor occupier gives a counter-notice¹⁰, the licence holder may carry out the necessary work himself¹¹.

Where, within that 21 days' period, the owner or occupier gives a counter-notice objecting to the requirements of the notice, the matter must be referred to the Secretary of State¹² who, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just¹³. The order may empower the licence holder (after giving such notice to the person who gave the counter-notice as the order may direct) to do the work himself and may determine any question as to what expenses, if any, are to be paid¹⁴.

In exercising the powers conferred by the order, the licence holder must:

- 3365 (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- 3366 (b) cause the felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and
- 3367 (c) make good any damage done to the land¹⁵.

Where in the exercise of any such power any damage is caused to land or movables¹⁶, any person interested in the land or movables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or movables he may recover from that licence holder compensation in respect of that disturbance¹⁷.

Any person who intentionally obstructs a person acting in exercise of any power conferred under the above provisions is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁸.

Where for a purpose connected with the proposed installation of an electric line¹⁹, a licence holder makes an application to the Secretary of State for the necessary wayleave²⁰ and a reference in respect of the felling and lopping of trees, those proceedings may (so far as is practicable) be taken concurrently²¹.

1 'Tree' includes any shrub and references to felling or lopping, felled trees or lopped boughs are to be construed accordingly: Electricity Act 1989 s 10(1) (as amended), Sch 4 para 9(8).

2 For the meaning of 'electric line' see PARA 1041 note 5 ante. See also the Electricity Safety, Quality and Continuity Regulations 2002, SI 2002/2665, reg 18(5) (every overhead line must be so placed that it must not, so far as is reasonably practicable, come so close to any building, tree or structure as to cause danger); and PARA 1167 ante.

See also *Buckland v Guildford Gas Light and Coke Co* [1949] 1 KB 410, [1948] 2 All ER 1086 (undertaking which had installed high voltage electric wires across a field over the top of trees held liable for the death of a girl aged 13 who had climbed a tree unaware of the existence of the electric line); *Pye v Isaacs and South Western Electricity Board* (10 June 1958, unreported) (held at Devon Assizes before Hilbery J) (defendant liable for injuries received by an orchard worker bringing an aluminium ladder into contact with overhead electric lines).

3 For the meaning of 'electrical plant' see PARA 1041 note 5 ante.

4 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 5-22 infra apply see the Electricity Act 1989 s 10(1) (as amended); and PARAS 1282, 1286 ante.

5 For the meaning of 'notice' see PARA 1047 note 11 ante. As to the service of notices see PARA 1307 post.

6 Where the occupier is not also the owner of the land, a copy of any notice must be served on the owner: Electricity Act 1989 Sch 4 para 9(3). As to the meaning of 'occupier' see PARA 1094 note 6 ante.

7 'Land' in this context means the land on which the tree is growing: see *ibid* Sch 4 para 9(1).

8 'Power to lop' authorises the cutting of the lateral branches of a tree but not of the top: see *Unwin v Hanson* [1891] 2 QB 115, CA. As to tree preservation orders see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 847 et seq. The Town and Country Planning Act 1990 imposes no restrictions on making tree preservation orders over land owned by statutory undertakers, but there is power to exempt trees belonging to specified persons or bodies from the provisions relating to the preservation of trees in conservation areas: see s 212(2); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 878. Where provision is made by a tree preservation order for prohibiting the wilful destruction of trees except with the consent of the local planning authority, a statutory undertaker or his contractors may be guilty of contravening the order if, in the course of relaying underground cables, they sever the roots and thereby reduce the life expectancy of the trees in question: *Barnet London Borough Council v Eastern Electricity Board* [1973] 2 All ER 319, [1973] 1 WLR 430, DC.

9 Electricity Act 1989 Sch 4 para 9(1), (2). A licence from the Forestry Commissioners in respect of the felling of trees is not required in any case where the felling of a tree is carried out by or at the request of a licence holder because the tree is or will be in such close proximity to an electric line or electrical plant as to have the effect mentioned in heads (1)-(2) in the text: see the Forestry Act 1967 s 9(4)(c), (6) (as amended); the Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(2); and FORESTRY vol 52 (2009) PARAS 121-122.

10 *Ie* under the Electricity Act 1989 Sch 4 para 9(5): see the text and note 12 infra.

11 *Ibid* Sch 4 para 9(4). The necessary work is to cause the tree to be felled, lopped or its roots to be cut back so as to prevent it from having the effects mentioned in heads (1)-(2) in the text: Sch 4 para 9(4).

12 *Ibid* Sch 4 para 9(5). As to the Secretary of State see PARA 601 note 1 ante.

13 *Ibid* Sch 4 para 9(6). The power of the Secretary of State to make orders in respect of the felling or lopping of trees is not exercisable by statutory instrument: see s 106(1) (as amended); and PARA 1306 post.

14 *Ibid* Sch 4 para 9(6)(a), (b).

15 *Ibid* Sch 4 para 9(7).

16 For the meaning of 'movables' see PARA 1292 note 21 ante.

17 Electricity Act 1989 Sch 4 para 11(2). Any question of disputed compensation must be referred to and determined by the Lands Tribunal; and the Land Compensation Act 1961 s 2 (as amended), s 4 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 715 et seq) apply to any such determination: Electricity Act 1989 Sch 4 paras 11(3), 12.

18 Ibid Sch 4 para 11(1). The provisions of the Rights of Entry (Gas and Electricity Boards) Act 1954 (see PARAS 773-774 ante) do not appear to apply to the felling and lopping of trees.

19 See the Electricity Act 1989 s 37; and PARA 1252 ante.

20 See ibid Sch 4 para 6; and PARA 1292 ante.

21 See ibid s 61(5); and PARA 1298 post.

UPDATE

1295 Felling or lopping of trees etc

NOTE 17--Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Electricity Act 1989 Sch 4 paras 11(3), 12 (amended by SI 2009/1307).

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(vi) Power to enter upon Land for purposes of Exploration

1296. Entry on land.

Subject to the following provisions and without prejudice to any other right of entry¹, a person authorised in writing by a licence holder² may, at any reasonable time, enter upon and survey any land other than land covered by a building³ to ascertain whether that land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on⁴. A person so authorised may not demand entry as of right unless he gives the occupier⁵ 14 days' notice of his intended entry and he produces, if required to do so, evidence of his authority⁶.

The power to survey land includes power to search and bore in order to ascertain the nature of the subsoil but works may not be carried out on the land for this purpose unless:

- 3368 (1) notice of the proposed works is given under the above provisions; and
- 3369 (2) where land is held by statutory undertakers⁷ who object on the ground that carrying out such works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State⁸ gives his consent⁹.

Where any person exercises powers conferred under the above provisions, the licence holder under whose authority he acted must make good any damage done to the land¹⁰, and any person who intentionally obstructs a person exercising those powers is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹.

Where, in the exercise of any power of entry on land for the purposes of exploration, damage is caused to land or movables¹², any person having an interest in the land or movables may recover compensation from the licence holder on whose behalf the power was exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or movables he may recover from that licence holder compensation in respect of that disturbance¹³.

1 Powers relating to rights of entry to survey land and to search and bore for specified purposes are conferred by the Town and Country Planning Act 1990: see ss 324, 325 (as amended): and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 57-58. The Rights of Entry (Gas and Electricity Boards) Act 1954 (see PARAS 773-774 ante) does not appear to apply to powers of entry under the provisions of the Electricity Act 1989 s 10(1) (as amended), Sch 4 para 10: see the text and notes 2-10 infra.

2 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante. As to the licence holders to whom the provisions set out in the text and notes 3-13 infra apply see the Electricity Act 1989 s 10(1) (as amended); and PARAS 1282, 1286 ante.

3 See the Electricity Act 1989 Sch 4 para 10(3), which also applies where the land will be covered by a building on the assumption that any planning permission within the meaning of the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue para 217 et seq) which is in force is acted on: Electricity Act 1989 Sch 4 paras 10(3), 12 (Sch 4 para 12 amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 83(1)). For these purposes, 'building' includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building: Electricity Act 1989 Sch 4 para 10(6). As to the meaning of 'garden' see PARA 1292 note 17 ante.

- 4 Ibid Sch 4 para 10(1).
- 5 As to the meaning of 'occupier' see PARA 1094 note 6 ante.
- 6 Electricity Act 1989 Sch 4 para 10(2).
- 7 'Statutory undertakers' has the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1009 et seq): Electricity Act 1989 Sch 4 para 12 (as amended: see note 4 supra).
- 8 As to the Secretary of State see PARA 601 note 1 ante.
- 9 Electricity Act 1989 Sch 4 para 10(4). See also the Town and Country Planning Act 1990 s 325(9); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 57.
- 10 Electricity Act 1989 Sch 4 para 10(5).
- 11 Ibid Sch 4 para 11(1). As to the standard scale see PARA 613 note 11 ante.
- 12 For the meaning of 'movables' see PARA 1292 note 21 ante.
- 13 Electricity Act 1989 Sch 4 para 11(2). Any question of disputed compensation must be referred to and determined by the Lands Tribunal; and the Land Compensation Act 1961 s 2 (as amended), s 4 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 715 et seq) apply to any such determination: Electricity Act 1989 Sch 4 paras 11(3), 12.

UPDATE

1296 Entry on land

NOTE 13--Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Electricity Act 1989 Sch 4 paras 11(3), 12 (amended by SI 2009/1307).

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(vii) Application to Crown Land

1297. Crown land.

No power (whether a power of compulsory acquisition¹ or other compulsory power, a power to carry out works² or a power of entry³) which is conferred by or under Part I of the Electricity Act 1989⁴ is, except with the consent of the appropriate authority⁵, exercisable in relation to land in which there is a Crown or Duchy interest⁶. A consent given for the purposes of the above provisions may be given on such financial or other conditions as the appropriate authority may consider appropriate⁷.

1 As to compulsory acquisition of land or rights over land see PARAS 1282-1285 ante; as to the acquisition of wayleaves see PARAS 1292-1294 ante.

2 As to powers to carry out works see PARAS 1286-1290 ante.

3 As to powers of entry upon land see PARA 1296 ante; as to powers of entry upon premises see PARAS 773-774, 1107 ante.

4 Ie conferred by the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante.

5 For these purposes the appropriate authority, in relation to land belonging (1) to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) to Her Majesty in right of the Crown (other than land falling within head (1) supra), means the government department having the management of that land; (3) to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy of Lancaster; (4) to the Duchy of Cornwall, means such person as the Duke of Cornwall or the possessor for the time being of that Duchy appoints; and (5) to a government department or held in trust for Her Majesty for the purposes of a government department, means that department; and if any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury whose decision is final: *ibid* s 63(4).

6 *Ibid* s 63(1). Subject to s 63(1), the provisions of Pt I (as amended) have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest: s 63(3). A Crown or Duchy interest is an interest (1) belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall; or (2) belonging to a government department or held in trust for Her Majesty for the purposes of a government department: s 63(1)(a), (b).

7 *Ibid* s 63(2).

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(vii) Concurrent Proceedings and Public Inquiries

1298. Concurrent proceedings.

Where a licence holder¹ makes an application to the Secretary of State² for his consent for the construction or extension of a generating station³, and makes a compulsory purchase order⁴ for a purpose connected with the proposed construction or extension of that station, then the proceedings which are required to be taken⁵ for the purpose of confirming that order may be taken concurrently, so far as practicable, with the proceedings required to be taken in relation to that application for consent⁶ and with any related proceedings applying for a safety zone notice⁷ under the Energy Act 2004⁸.

Where a licence holder makes an application to the Secretary of State for his consent for the installation of an electric line⁹ above ground¹⁰, and makes, for a purpose connected with the proposed installation of that line, one or more of the following, that is:

- 3370 (1) a compulsory purchase order;
- 3371 (2) an application to the Secretary of State for a necessary wayleave¹¹; and
- 3372 (3) a reference to him relating to the felling and lopping of trees¹²,

then the proceedings which are required to be taken:

- 3373 (a) for the purpose of confirming that order¹³;
- 3374 (b) in relation to that application¹⁴; or
- 3375 (c) in relation to that reference¹⁵,

may be taken concurrently, so far as practicable, with the proceedings required to be taken¹⁶ in relation to that application for consent¹⁷.

Where, for a purpose connected with the proposed installation of an electric line, a licence holder makes an application to the Secretary of State for the necessary wayleave¹⁸ and a reference in relation to the felling and lopping of trees¹⁹, then the proceedings required to be taken²⁰ in relation to that reference may be taken concurrently, so far as practicable, with the proceedings required to be taken²¹ in relation to that application²².

1 For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 I.e. an application under the Electricity Act 1989 s 36 (as amended); see PARA 1249 ante. For the meaning of 'generating station' see PARA 1041 note 6 ante; for the meaning of 'extension' in relation to a generating station see PARA 1249 note 3 ante; for the meaning of 'construction' see PARA 1312 note 4 post; and as to the application of the latter definition see PARA 1249 note 2 ante.

4 As to the compulsory acquisition of land and rights over land see PARA 1282 et seq ante.

5 I.e. the proceedings which are required to be taken by the Acquisition of Land Act 1981 Pt II (ss 10-16) (as amended); see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq.

- 6 le the proceedings which are required to be taken by the Electricity Act 1989 s 36(8), Sch 8 (as amended): see PARA 1260 et seq ante.
- 7 le any related proceedings under the Energy Act 2004 s 95(9), Sch 16: see PARA 1315 post.
- 8 Electricity Act 1989 s 61(1), (2) (amended by the Energy Act 2004 s 102(1), (2)).
- 9 For the meaning of 'electric line' see PARA 1041 note 5 ante.
- 10 le an application under the Electricity Act 1989 s 37: see PARA 1252 ante.
- 11 le an application under ibid s 10(1) (as amended), Sch 4 para 6: see PARA 1292 ante. For the meaning of 'necessary wayleave' see PARA 1292 note 7 ante.
- 12 le a reference under ibid Sch 4 para 9: see PARA 1295 ante.
- 13 See note 5 supra.
- 14 le the proceedings which are required to be taken by the Electricity Act 1989 Sch 4 para 6: see PARA 1292 ante.
- 15 le the proceedings which are required to be taken by ibid Sch 4 para 9: see PARA 1295 ante.
- 16 See note 6 supra.
- 17 Electricity Act 1989 s 61(3), (4).
- 18 See note 11 supra.
- 19 See note 12 supra.
- 20 See note 15 supra.
- 21 See note 14 supra.
- 22 Electricity Act 1989 s 61(5).

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1299. Powers of the Secretary of State in relation to public inquiries.

The Secretary of State¹ may cause an inquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under Part I of the Electricity Act 1989² other than a matter in respect of which any enforcement functions³ of the Gas and Electricity Markets Authority ('GEMA')⁴ are or may be exercisable or a matter relating to a function which is exercisable by the Scottish Ministers⁵.

Where an inquiry is to be caused to be held by the Secretary of State under Part I of that Act or under the provisions of the Energy Act 2004 relating to applications for safety zone notices⁶ in connection with any matter and there is some other matter required or authorised⁷ to be the subject of another inquiry and it appears to the relevant minister or ministers⁸ that those matters are so far cognate that they should be considered together, the relevant minister or ministers may direct⁹ that the two inquiries be held concurrently or combined as one inquiry¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante.

3 Ie any functions under ibid s 25 (as amended): see PARA 1207 ante.

4 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

5 Electricity Act 1989 s 62(1) (amended by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 6(1), Sch 5 para 8(1), (2); and by virtue of the Utilities Act 2000 s 3(2)). The provisions of the Local Government Act 1972 s 250(2)-(5) (as amended) (which relate to the giving of evidence at, and defraying the cost of, local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) are to apply in relation to any inquiry so held as they apply in relation to a local inquiry which a minister causes to be held under the Local Government Act 1972 s 250(1): Electricity Act 1989 s 62(2). Inquiries so held are designated for the purposes of the Tribunals and Inquiries Act 1992 s 10 (as amended) (reasons to be given for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646): see the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule paras 32, 81 (amended by SI 1990/526); and the Interpretation Act 1978 s 17(2). As to the procedure at such inquiries see further the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007, SI 2007/841; and PARA 1265 et seq ante; and as to additional inspectors at such inquiries see PARA 1264 ante.

6 Ie under the Energy Act 2004 s 95(9), Sch 16: see PARA 1315 post.

7 Ie whether by the Electricity Act 1989 Pt I (as amended) or by some other enactment: s 62(3)(b).

8 For these purposes, 'the relevant minister or ministers' means the Secretary of State, or, where causing another inquiry ('the other inquiry') to be held is a function of some other Minister of the Crown, the Secretary of State and that other minister acting jointly: ibid s 62(4).

9 As to directions generally see ibid s 107; and PARA 1306 post.

10 Ibid 62(3) (amended by the Energy Act 2004 s 102(1), (3); and by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 6(1), Sch 5 para 8(1), (4)).

UPDATE

1299 Powers of the Secretary of State in relation to public inquiries

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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(ix) Submarine Pipelines

1300. Disapplication of statutory controls in certain cases.

The statutory provisions relating to:

- 3376 (1) the control of construction and use of pipelines in territorial and continental shelf waters¹;
- 3377 (2) compulsory increases in capacity of pipelines²; and
- 3378 (3) the acquisition by persons of rights to use pipelines belonging to others³,

do not apply to any pipeline for the conveyance of:

- 3379 (a) water to or from an electricity generating station⁴; or
- 3380 (b) dissolved chlorine to any pipeline conveying water to an electricity generating station⁵.

1 Ie the Petroleum Act 1998 s 14(1): see PARA 1743 post.

2 Ie ibid s 16: see PARA 1749 post.

3 Ie ibid s 17 (as amended): see PARA 1750 post.

4 For the meaning of 'generating station' see PARA 1041 note 6 ante.

5 Submarine Pipelines (Electricity Generating Stations) Regulations 1981, SI 1981/750, reg 2. No authorisation for such pipelines is thus required. As to authorisations for pipelines generally see PARA 1744 et seq post.

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(8) CIVIL LIABILITY OF LICENCE HOLDERS ETC; OFFENCES

1301. Liability for nuisance.

The common law rules¹ with regard to the liability for nuisance of bodies exercising a statutory power or performing a statutory duty apply to licence holders² under the Electricity Act 1989³. This is subject to any specific provisions with regard to nuisance contained in any local enactments⁴.

¹ See *Department of Transport v North West Water Authority* [1984] AC 336, [1983] 1 All ER 892 per Webster J (revsd without affecting heads (1)-(4) infra [1984] AC 351, [1983] 3 All ER 273, HL), in which the following propositions were approved: (1) in the absence of negligence, a body is not liable for a nuisance which is attributable to the exercise by it of a duty imposed upon it by statute (see *Hammond v Vestry of St Pancras* (1874) LR 9 CP 316); (2) it is not liable in those circumstances even if by statute it is expressly made liable, or not exempted from liability, for nuisance (see *Stretton's Derby Brewery Co Ltd v Derby Corpn* [1894] 1 Ch 431, and *Smeaton v Ilford Corpn* [1954] Ch 450, [1954] 1 All ER 923); (3) in the absence of negligence, a body is not liable for a nuisance which is attributable to the exercise by it of a power conferred by statute if, by statute, it is not expressly either made liable, or not exempted from liability, for nuisance (see *Midwood & Co v Manchester Corpn* [1905] 2 KB 597, CA; *Longhurst v Metropolitan Water Board* [1948] 2 All ER 834, HL; and *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA); and (4) a body is liable for a nuisance by it attributable to the exercise of a power conferred by statute, even without negligence, if by statute it is expressly either made liable, or not exempted from liability, for nuisance (see *Charing Cross West End and City Electric Supply Co v London Hydraulic Power Co* [1914] 3 KB 772, CA).

As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, see *Midwood and Co v Manchester Corpn* supra (fusing of electric main causing bitumen in which it was laid to volatilise into an inflammable gas which exploded; undertaker liable in nuisance, apart from any evidence of negligence); *Charing Cross West End and City Electric Supply Co v London Hydraulic Power Co* supra (liability under the rule applied where damage was caused by escapes from the defendants' pipes to electric cables laid in the highway); *Goodbody v Poplar Borough Council* (1914) 84 LJB 1230, DC (local authority authorised to supply electricity not liable for results of explosion in an underground brick-built chamber containing fuses into which there leaked gas from the adjoining gas main; undertakers not responsible for the gas leak and the fusing not negligent; cf *Solomons v Stepney Borough Council* (1905) 69 JP 360, DC). See now *Cambridge Water Co plc v Eastern Counties Leather* [1994] 2 AC 264, [1994] 1 All ER 53, HL (foreseeability of damage of the relevant type should be regarded as a prerequisite of liability in damage under the rule in *Rylands v Fletcher* supra); *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589; and see NUISANCE vol 78 (2010) PARA 148; TORT vol 97 (2010) PARA 592 et seq.

As to liability for noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street see PARA 1287 note 10 ante; and as to the liability of undertakers to pay compensation to a street authority or other person in respect of loss or damage caused as a result of the exercise by them of street works or certain other events see the New Roads and Street Works Act 1991 s 82; and see generally HIGHWAYS, STREETS AND BRIDGES.

² For the meanings of 'licence' and 'licence holder' see PARA 1041 note 12 ante.

³ The statutory provisions made in relation to the liability of area boards in nuisance by the Electric Lighting (Clauses) Act 1899 Schedule ss 2, 81 (amended by the Electricity Act 1947 s 57(2), Sch 4 Pt III) are repealed without the enactment of any equivalent provisions in relation to the successor companies under the Electricity Act 1989.

⁴ See *ibid* s 112(3), Sch 17 para 34.

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1302. Other civil liabilities.

Where a licence holder¹ has placed on land something known to be dangerous such as high voltage overhead electric lines², he owes a common law duty to take reasonable care to avoid acts or omissions which he can reasonably foresee which would be likely to injure persons so closely and directly affected by his acts or omissions that the supplier ought to have had them in contemplation³. Civil liability may also arise in connection with other defaults⁴.

1 For the meanings of 'licence' and licence holder see PARA 1041 note 12 ante. The provisions of the Electric Lighting (Clauses) Act 1899 Schedule s 77 relating to an electricity board's liability for accidents, damages and injuries are repealed without any equivalent provisions being made in respect of the successor companies by the Electricity Act 1989.

2 For the meaning of 'electric line' see PARA 1041 note 5 ante.

3 The duty of taking proper care extends to blind persons who are entitled to protection from injury caused by the execution of works on a pavement: *Haley v London Electricity Board* [1965] AC 778, [1964] 3 All ER 185, HL. See also *Buckland v Guildford Gas Light and Coke Co* [1949] 1 KB 410, [1948] 2 All ER 1086 (where it was held that where undertakers had placed overhead lines across land they owed a duty of care to a child who was neither the owner nor occupier of the land but had strayed on to it from a nearby footpath); *Pye v Isaacs and South Western Electricity Board* (10 June 1958, unreported) (heard at Devon Summer Assizes before Hilbery J) (defendants liable for injuries received by orchard worker who brought an aluminium ladder into contact with overhead lines); *Adams v Southern Electricity Board* (1993) Times, 21 October, CA (electricity board owed a duty of care to ensure that plaintiff was effectively prevented from climbing up a pole-mounted high voltage electrical installation). See, however, *R v Secretary of State for Trade and Industry, ex p Duddridge* [1995] 3 CMLR 231, [1995] Env LR 151; affd [1996] 2 CMLR 361, (1995) Times, 26 October, CA (Secretary of State under no duty under EC law to issue regulations to restrict the electromagnetic fields from electricity supply cables; although the Secretary of State's experts accepted that there was the possibility of a connection between exposure to ionising radiation present in the fields and the risk of developing leukaemia, further research was necessary). As to electromagnetic disturbance see the Electromagnetic Compatibility Regulations 2006, SI 2006/3418; and TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 553.

4 For provisions as to civil liability where there is a breach of electricity supply and safety regulations see PARA 1152 ante; as to liabilities for failure by electricity distributors to restore supplies within a specified period see PARA 1112 et seq ante; and as to breach of duty for failure to comply with enforcement orders see PARA 1207 ante. As to breach of statutory duty generally see TORT vol 97 (2010) PARA 495 et seq.

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1303. Offences by bodies corporate.

Where a body corporate is guilty of an offence¹ under the Electricity Act 1989 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly². Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate³.

1 As to the criminal liability of bodies corporate see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

2 Electricity Act 1989 s 108(1).

3 Ibid s 108(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(8) CIVIL LIABILITY OF LICENCE HOLDERS ETC; OFFENCES/1304. Extraterritorial operation of the Electricity Act 1989.

1304. Extraterritorial operation of the Electricity Act 1989.

Where by virtue of the Electricity Act 1989 an act or omission taking place outside Great Britain¹ constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain². Provision made by or under that Act in relation to places outside Great Britain:

3381 (1) so far as it applies to individuals, applies to them whether or not they are British citizens; and

3382 (2) so far as it applies to bodies corporate³, applies to them whether or not they are incorporated under the law of a part of the United Kingdom⁴.

1 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

2 Electricity Act 1989 s 108A(1) (s 108A added by the Electricity Act 1989 s 102(1), (5)).

3 As to offences by bodies corporate see PARA 1303 ante.

4 Electricity Act 1989 s 108A(2) (as added: see note 2 supra). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

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1305. Making of false statements etc.

If any person, in giving any information¹ or making any application under or for the purposes of any provision of Part I of the Electricity Act 1989² or of any regulations made thereunder³, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine⁴. No proceedings may, however, be instituted in England and Wales in respect of such an offence except by or with the consent of the Secretary of State⁵ or the Director of Public Prosecutions⁶.

Any person who seeks to obtain entry to any premises⁷ by falsely pretending to be:

- 3383 (1) an employee of, or other person acting on behalf of, an electricity distributor⁸ or electricity supplier⁹;
- 3384 (2) an electrical inspector¹⁰, or
- 3385 (3) a meter examiner¹¹,

is liable on summary conviction to a fine not exceeding level 4 on the standard scale¹².

1 For the meaning of 'information' para 1044 note 10 ante.

2 In any provision of the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante, PARA 1306 et seq post.

3 In any regulations made under ibid Pt I (as amended). As to the making of regulations generally see ss 60, 106 (as amended); and PARA 1306 post.

4 Ibid s 59(1). As to the statutory maximum see PARA 689 note 2 ante; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Electricity Act 1989 s 59(3). As to consents required for prosecutions generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1071-1072.

7 For the meaning of 'premises' see PARA 1041 note 5 ante.

8 For the meaning of 'electricity distributor' see PARA 1065 note 9 ante.

9 For the meaning of 'electricity supplier' see PARA 1065 note 7 ante.

10 As to the appointment of electrical inspectors see the Electricity Act 1989 s 30 (as amended); and PARA 1178 ante.

11 As to the appointment of meter examiners see ibid s 31, Sch 7 para 4 (as amended); and PARA 1182 ante.

12 Ibid s 59(2) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 37). As to the standard scale see PARA 613 note 11 ante.

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(9) ADMINISTRATIVE AND FINANCIAL PROVISIONS

1306. Regulations, orders and directions.

Regulations made under any provision of Part I of the Electricity Act 1989¹ may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions², including provision:

- 3386 (1) as to the mode of proof of any matter³;
- 3387 (2) as to parties and their representation⁴;
- 3388 (3) for the right to appear before and be heard by the Secretary of State⁵, the Gas and Electricity Markets Authority ('GEMA')⁶ and other authorities⁷; and
- 3389 (4) as to the award of costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards⁸.

Any regulations so made which prescribe a period within which things are to be done may provide for extending the period so prescribed⁹.

Regulations so made may also provide for anything falling to be determined under them to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed by the regulations¹⁰. They may make different provision for different cases, including different provision in relation to different persons, circumstances or localities¹¹ and may make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Authority, considers appropriate¹².

Any power under the Electricity Act 1989 to make regulations and any power of the Secretary of State to make orders¹³ is in each case exercisable by statutory instrument¹⁴ and any such instrument containing (a) regulations made by the Secretary of State; or (b) subject to certain exceptions¹⁵, an order, is subject to annulment in pursuance of a resolution of either House of Parliament¹⁶.

Any power conferred by that Act in relation to giving a direction includes power to vary or revoke it, unless the context otherwise requires¹⁷. A direction so given must be in writing¹⁸ and it is the duty of any person to whom such a direction is given to give effect to that direction¹⁹.

1 le under the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 et seq ante.

2 Ibid s 60(1).

3 Ibid s 60(1)(a).

4 Ibid s 60(1)(b).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.

7 Electricity Act 1989 s 60(1)(c) (s 60(1)(c), (3)(c) amended by virtue of the Utilities Act 2000 s 3(2)). 'Other authorities' may include electrical inspectors appointed under the Electricity Act 1989 s 30 (as amended): see PARA 1178 ante.

8 Ibid s 60(1)(d).

9 Ibid s 60(2).

10 Ibid s 60(3)(a).

11 Ibid s 60(3)(b).

12 Ibid s 60(3)(c) (as amended: see note 7 supra).

13 Ie other than the powers conferred by ibid s 10(1) (as amended), Sch 4 para 9(6) (see PARA 1295 ante): s 106(1).

14 Ibid s 106(1).

15 Ie other than an order appointing a day or nominating a company or an order under ibid s 11A (as added and amended) (modification of standard conditions of licences: see PARA 1075 ante), s 27A (as added) (penalties: see PARA 1212 ante), s 32 (as substituted and amended) (renewables obligation: see PARA 1261 ante), s 41A (as added and amended) (promotion of reductions in carbon emissions: see PARA 1137 ante), s 43A (as added) (adjustment of charges to help disadvantaged groups of customers: see PARA 1143 ante) or s 56A (as added) (alteration of activities requiring licence: see PARA 1087 ante) or an order under s 97, Sch 12 para 4 (now repealed): s 106(2) (amended by the Utilities Act 2000 s 108, Sch 6 Pt II paras 24, 39).

16 Electricity Act 1989 s 106(2) (as amended: see note 15 supra).

17 Ibid s 107(2).

18 Ibid s 107(3).

19 Ibid s 107(1).

UPDATE

1306 Regulations, orders and directions

TEXT AND NOTES 13-16--Electricity Act 1989 s 106(1) amended, s 106(2) further amended, s 106(1A) added: Energy Act 2008 s 96(2), Sch 5 paras 5, 6.

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1307. Service of documents.

Any document required or authorised¹ to be served on any person may be served (1) by delivering it to him or leaving it at his proper address² or by sending it by post³ to that address; or (2) in the case of a body corporate, by serving it in accordance with head (1) above on the secretary of that body; or (3) in the case of a partnership, by serving it in accordance with head (1) above on a partner or a person having the control or management of the partnership business⁴.

If the name or address of any owner or occupier⁵ of land cannot, after reasonable inquiry, be ascertained, the document may be served by addressing it to him by the description of 'owner' or 'occupier' of the land and describing the land and leaving it either in the hands of a person who is or appears to be resident or employed on the land or affixed conspicuously to some building or other object on or near the land⁶. These provisions do not, however, apply to any document in relation to the service of which provision is made by rules of court⁷.

Any notice required to be given or sent for the purposes of Part I of the Electricity Act 1989⁸ must be in writing⁹.

1 Ie by virtue of the Electricity Act 1989: s 109(1).

2 For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (service of documents by post: see note 3 *infra*), the proper address of any person is his last known address except that (1) in the case of service on a body corporate or its secretary, it is the address of the registered or principal office of the body; and (2) in the case of service on a partnership, a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership: Electricity Act 1989 s 109(2). The principal office of a company registered, or a partnership carrying on business, outside the United Kingdom is its principal office within the United Kingdom: s 109(2). Where a person has specified another address within the United Kingdom as the one at which he or someone on his behalf will accept such documents, then that address is treated as his proper address for these purposes: s 109(3). 'Secretary', in relation to a local authority within the meaning of the Local Government Act 1972, means the proper officer within the meaning of that Act (see LOCAL GOVERNMENT vol 69 (2009) PARA 431): Electricity Act 1989 s 109(6). For the meaning of 'United Kingdom' see PARA 602 note 7 *ante*.

3 Unless the contrary intention appears, service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: see the Interpretation Act 1978 s 7.

4 Electricity Act 1989 s 109(1).

5 As to the meaning of 'occupier' see PARA 1094 note 6 *ante*.

6 Electricity Act 1989 s 109(4).

7 Ibid s 109(5). As to service for the purposes of the Civil Procedure Rules ('CPR') see CIVIL PROCEDURE vol 11 (2009) PARA 138 *et seq*.

8 Ie the Electricity Act 1989 Pt I (ss 3A-64) (as amended): see PARA 1041 *et seq ante*.

9 See *ibid* s 64(1); and PARA 1047 note 11 *ante*.

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1308. Financial provisions.

Any administrative expenses incurred by the Secretary of State¹ or the Treasury in consequence of the provisions of the Electricity Act 1989, and any increase attributable to that Act in the sums payable out of money provided by Parliament under any other Act, are to be paid out of money provided by Parliament².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Electricity Act 1989 s 110. As to 'money provided by Parliament' see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 703 et seq; and as to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/4. PARTICULAR PROVISIONS RELATING TO ELECTRICITY/(9) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1309. Directions restricting the use of certain information.

1309. Directions restricting the use of certain information.

The Secretary of State¹ may give to the holder of a transmission licence² ('the authorised person') such directions³ as appear to the Secretary of State to be requisite or expedient for the purpose of securing that, in any case where, in the course of any dealings⁴ with an outside person⁵ who is, or is an associate⁶ of, a person authorised by a licence⁷ or an exemption⁸ to generate⁹, supply¹⁰ or participate in the transmission of electricity¹¹, or to participate in the operation of electricity interconnectors¹², the authorised person or any associate of his is furnished with or otherwise acquires any information¹³ which relates to the affairs of that outside person or any associate of his, neither the person by whom the information is acquired nor any other person obtains any unfair commercial advantage from his possession of the information¹⁴.

As soon as practicable after giving any such directions, the Secretary of State must publish a copy of the directions in such manner as he considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention¹⁵ of them¹⁶.

The obligation to comply with any such directions is a duty owed to any person who may be affected by a contravention of them¹⁷. Where a duty is owed to any person by virtue of these provisions, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person¹⁸. In any proceedings brought against any person¹⁹, it is, however, a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the direction²⁰.

Without prejudice to any right which any person may have by virtue of these provisions to bring civil proceedings in respect of any contravention or apprehended contravention of any such directions, compliance with any such directions is also enforceable by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief²¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'transmission licence' see PARA 1065 ante at head (2) in the text.

3 As to directions generally see the Electricity Act 1989 s 107; and PARA 1306 ante.

4 For these purposes, 'dealings' includes dealings entered into otherwise than for purposes connected with the transmission of electricity: *ibid* s 58(8).

5 For these purposes, 'outside person', in relation to any person, means any person who is not an associate of his: *ibid* s 58(8). For the meaning of 'associate' see note 6 infra.

6 For these purposes, a person is an associate of another if he and that other are connected with each other within the meaning of the Income and Corporation Taxes Act 1988 s 839 (as amended) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1258): Electricity Act 1989 s 58(8).

7 For the meaning of 'licence' see PARA 1041 note 12 ante.

8 For the meaning of 'exemption' see PARA 1046 note 7 ante.

9 For the meaning of 'generate' see PARA 1041 note 7 ante.

10 For the meaning of 'supply' see PARA 1041 note 10 ante.

- 11 For the meaning of references to participating in the transmission of electricity see PARA 1050 note 7 ante; and for the meaning of 'transmission' see PARA 1041 note 6 ante.
- 12 For the meaning of references to participating in the operation of an electricity interconnector see PARA 1050 note 7 ante; and for the meaning of 'electricity interconnector' see PARA 1041 note 11 ante.
- 13 For the meaning of 'information' see PARA 1044 note 10 ante.
- 14 Electricity Act 1989 s 58(1), (2) (amended by the Energy Act 2004 ss 143(1), 147(1), (6), Sch 19 paras 3, 14).
- 15 For the meaning of 'contravention' see PARA 1070 note 20 ante.
- 16 Electricity Act 1989 s 58(3).
- 17 Ibid s 58(4).
- 18 Ibid s 58(5).
- 19 Ie in pursuance of ibid s 58(5).
- 20 Ibid s 58(6).
- 21 Ibid s 58(7).

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5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY

(1) OFFSHORE PRODUCTION OF ENERGY

(i) Renewable Energy Zones

1310. Exploitation of areas outside the territorial sea for energy production.

The rights to which these provisions apply, namely the rights under Part V of the United Nations Convention on the Law of the Sea 1982¹ and any modifications of that Convention agreed after 22 July 2004² that have entered into force in relation to the United Kingdom³ that are exercisable by the United Kingdom in areas outside the territorial sea⁴:

- 3390 (1) with respect to the exploitation of those areas for the production of energy from water⁵ or winds;
- 3391 (2) with respect to the exploration⁶ of such areas in that connection; or
- 3392 (3) for other purposes connected with such exploitation⁷, including, in particular, the transmission⁸, distribution⁹ and supply¹⁰ of electricity generated in the course of such exploitation¹¹,

have effect as rights belonging to Her Majesty by virtue of these provisions¹². Her Majesty may by Order in Council designate an area as an area within which those rights are exercisable (a 'renewable energy zone')¹³. Such Orders in Council are subject to the negative resolution procedure¹⁴.

The rights to which the above provisions apply are exercisable in those areas of the sea specified in the Schedule to the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996¹⁵.

Certain persons distributing electricity generated by a generating station situated in a renewable energy zone are exempt from the statutory prohibition¹⁶ on unlicensed distribution¹⁷.

¹ ie the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941): see the Energy Act 2004 s 84(7).

² ie after the passing of the Energy Act 2004: see s 84(7).

³ For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

⁴ As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

⁵ References in the Energy Act 2004 Pt 2 Ch 2 (ss 84-104) (see the text and notes 1-4 supra, 6-14 infra; and PARA 1311 et seq post) to the production of energy from water include, in particular, references to its production from currents and tides: s 104(2).

⁶ For these purposes, 'exploration' includes the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the exploitation of an area is, in a particular case, practicable or commercially viable, or both: ibid s 84(7).

7 Ibid s 84(1), (2), (7).

8 For the meaning of 'transmission' see PARA 1041 note 6 ante (definition applied by ibid s 104(1)).

9 For the meaning of 'distribution' see PARA 1041 note 5 ante (definition applied by ibid s 104(1)).

10 For the meaning of 'supply' see PARA 1041 note 10 ante (definition applied by ibid s 104(1)).

11 Ibid s 84(3).

12 Ibid s 84(1).

13 Ibid s 84(4). As to the exercise of this power see the text and note 15 infra. In exercising or performing the powers and duties conferred or imposed on him by or under the Petroleum Act 1998 (see PARA 1625 et seq post), the Secretary of State may have regard to activities, or proposed activities, in a renewable energy zone for or in connection with the generation of electricity: see s 47A (as added); and PARA 1629 post.

14 Energy Act 2004 s 84(6). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

15 See the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668, art 1. For the specified areas of sea see the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, SI 1996/2128, reg 2, Schedule (amended by SI 1997/506).

The Secretary of State may by order designate the whole or a part of a renewable energy zone as an area in relation to which the Scottish Ministers are to have functions: Energy Act 2004 s 84(5). As to the exercise of this power see the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005, SI 2005/3153. As to the Secretary of State see PARA 601 note 1 ante.

16 Ie the prohibition contained in the Electricity Act 1989 s 4(1)(bb) (as added): see PARA 1050 ante at head (3) in the text.

17 See the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, SI 2001/3270, art 3(1)(b), Sch 3 Class D (as added); and PARA 1060 ante.

UPDATE

1310 Exploitation of areas outside the territorial sea for energy production

TEXT AND NOTE 13--As from a day to be appointed Energy Act 2004 s 84(4) substituted; the area within which the rights to which s 84 applies are exercisable (the 'renewable energy zone') (1) is any area for the time being designated under the Marine and Coastal Access Act 2009 s 41(3) (exclusive economic zone), but (2) if Her Majesty by Order in Council declares that the renewable energy zone extends to such other area as may be specified in the Order, is the area resulting from the Order: Marine and Coastal Access Act 2009 Sch 4 para 4. See further WATER AND WATERWAYS vol 100 (2009) para 30B.

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1311. Application of criminal law to renewable energy installations etc.

Her Majesty may by Order in Council¹ provide:

- 3393 (1) that acts and omissions which take place on, under or above:
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 466. (a) a renewable energy installation² situated in waters to which these provisions apply³; or
 467. (b) waters to which these provisions apply that are within a safety zone⁴,
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 3394 and which would, if they took place in a part of the United Kingdom⁵, constitute an offence under the law in force in that part, are to be treated for the purposes of that law as taking place in that part⁶;
 3395 (2) that a constable is to have:
 317
 468. (a) on, under and above a renewable energy installation situated in waters to which these provisions apply; and
 469. (b) on, under and above any waters to which these provisions apply that are within a safety zone,
 318
 3396 all the powers and privileges that he has in the area of the force of which he is a member⁷.

Proceedings for anything that is an offence by virtue only of an Order in Council under the above provisions may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom⁸.

Subject to certain exceptions⁹, no proceedings for an offence alleged to have been committed on, under or above:

- 3397 (i) a renewable energy installation situated in waters to which the above provisions apply¹⁰; or
 3398 (ii) waters to which the above provisions apply that, at the time of the alleged offence, were within a safety zone,

may be instituted in England and Wales, except by or with the consent of the Director of Public Prosecutions¹¹. Such consent is not, however, required where the proceedings in question are proceedings for which the consent of the Attorney General is otherwise required¹².

1 An Order in Council under the Energy Act 2004 s 85 (see the text and notes 2-8 infra) or s 87 (see PARA 1312 post) that makes provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament is subject to annulment in pursuance of a resolution of the Scottish Parliament (but may by virtue of s 88(2) be subject also to the negative resolution procedure): s 88(1), (3). An Order in Council under s 85 or s 87 that makes provision that would not be within the legislative competence of the Scottish Parliament is subject to the negative resolution procedure: s 88(2). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

2 For the purposes of *ibid* Pt 2 Ch 2 (ss 84-104) (see PARA 1310 ante; the text and notes 3-12 *infra*; and PARA 1312 *et seq post*), 'renewable energy installation' means: (1) an offshore installation used for purposes connected with the production of energy from water or winds; (2) an installation in the course of construction at a place where it is to be used as an offshore installation within head (1) *supra*; (3) an installation that has ceased to be an installation within head (1) *supra* while remaining an offshore installation (whether or not at the same place); (4) an installation that is being decommissioned at a place where it has been an installation within head (1) or head (3) *supra*; (5) an installation in transit to or from a place where it is to be, or has been, used for purposes that would make it, or made it, an installation within head (1) *supra*; (6) an installation in transit to or from a place where it is to be, or was, an installation within head (3) *supra*: s 104(1), (3). In heads (1)-(6) *supra*, 'offshore installation' means an installation which is situated in waters where (a) it permanently rests on, or is permanently attached to, the bed of the waters; and (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes: s 104(4). The purposes referred to in s 104(3)(a) (see head (1) *supra*) include, in particular, (i) the transmission, distribution and supply of electricity generated using water or winds; and (ii) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both: s 104(5). 'Installation' includes artificial island, structure and device: s 104(1). As to the production of energy from water see PARA 1310 note 5 ante; and for the meanings of 'transmission', 'distribution' and 'supply' of electricity see PARA 1041 notes 5-6, 10 ante (definitions applied by s 104(1)).

3 The waters to which *ibid* s 85 (see the text and notes 1-2 *supra*, 4-8 *infra*) applies are: (1) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and (2) waters in a renewable energy zone: s 85(5). For the meaning of 'Great Britain' see PARA 602 note 7 ante; for the meaning of 'renewable energy zone' see PARA 1310 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

4 'Safety zone' means an area which is a safety zone for the purposes of *ibid* Pt 2 Ch 2 by virtue of s 95 (see PARA 1314 *post*): s 104(1).

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 Energy Act 2004 s 85(1), (2). At the date at which this title states the law no such order had been made.

7 *Ibid* s 85(3). Section 85(3) is in addition to any other enactment or any rule of law or subordinate legislation conferring a power or privilege on constables; and s 85 is to be disregarded in determining the extent of those other powers and privileges: s 85(4). 'Subordinate legislation' includes an instrument made under an Act of the Scottish Parliament: s 85(7).

8 *Ibid* s 85(6).

9 *Ibid* s 86 (see the text and notes 10-12 *infra*) does not apply to an offence created by or under (1) the Health and Safety at Work etc Act 1974; (2) the Customs and Excise Acts 1979, or any enactment that has to be construed as one with those Acts or any of them; (3) the Civil Aviation Act 1982 or any enactment that has to be construed as one with that Act; (4) the Petroleum Act 1987 s 23 (as amended) (see PARA 1680 *post*); (5) the Pilotage Act 1987; (6) the Electricity Act 1989 s 4 (as amended) (see PARA 1050 ante), s 29 (as amended) (see PARA 1152 ante), s 35 (as amended) (see PARA 1248 ante), s 36 (as amended) (see PARA 1249 ante), s 37 (see PARA 1252 ante) or s 59 (as amended) (see PARA 1305 ante) or Sch 7 para 3 (as amended) (see PARA 1180 ante); (7) the Value Added Tax Act 1994 or any enactment that has to be construed as one with that Act; (8) the Merchant Shipping Act 1995; (9) the Energy Act 2004 s 97 (see PARA 1317 *post*) or Pt 2 Ch 3 (ss 105-114) (see PARA 1320 *et seq post*): s 86(2).

10 *Ibid* s 86 applies: see note 3 *supra*.

11 *Ibid* s 86(1), (3)(a). No such proceedings in Northern Ireland may be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland: s 86(3)(b).

12 *Ibid* s 86(4). Nor is such consent required where the proceedings in question are proceedings for which the consent of the Advocate General for Northern Ireland (or, until the coming into force of the Justice (Northern Ireland) Act 2002 s 27(1) (not in force), the consent of the Attorney General for Northern Ireland) is otherwise required: s 86(4), (5).

The Territorial Waters Jurisdiction Act 1878 s 3 (consents to prosecution of offences committed on the open sea by persons who are not British citizens: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to proceedings for an offence to which the Energy Act 2004 s 86 applies: s 86(7).

UPDATE

1311 Application of criminal law to renewable energy installations etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 1-8--The Criminal Jurisdiction (Application to Offshore Renewable Energy Installations etc) Order 2009, SI 2009/1739, has been made under the Energy Act 2004 s 85.

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1312. Application of civil law to renewable energy installations etc.

Her Majesty may by Order in Council¹ provide that questions arising out of:

- 3399 (1) acts or omissions taking place on, under or above a renewable energy installation² situated in waters to which these provisions apply³; or
- 3400 (2) acts or omissions taking place on, under or above such waters in relation to a related line⁴,

are to be determined in accordance with the law in force in such part of the United Kingdom⁵ as may be specified in the order⁶. An Order in Council under these provisions may also make provision:

- 3401 (a) for conferring jurisdiction in proceedings with respect to questions of the kind mentioned in heads (1) and (2) above on courts⁷ in one or more parts of the United Kingdom⁸; jurisdiction conferred on a court by such an order is in addition to any jurisdiction otherwise exercisable by that or any other court and the above provisions are to be disregarded in determining the extent of any jurisdiction so exercisable⁹;
 - 3402 (b) for treating:
- 319
- 470. (i) an installation with respect to which provision is made as set out above and which is outside the territorial sea but in waters to which the above provisions apply¹⁰; and
 - 471. (ii) waters within 500 metres of the installation,
- 320
- 3403 as if for the purposes of certain communications legislation¹¹ they were situated in such part of the United Kingdom as is specified in the order¹².

1 As to Orders in Council under the Energy Act 2004 s 87 see s 88, cited in PARA 1311 note 1 ante.

2 For the meaning of 'renewable energy installation' see PARA 1311 note 2 ante.

3 The waters to which the Energy Act 2004 s 87 (see the text and notes 1-2 supra, 4-9 infra) applies are (1) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and (2) waters in a renewable energy zone: s 87(4). For the meaning of 'Great Britain' see PARA 602 note 7 ante; for the meaning of 'renewable energy zone' see PARA 1310 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

4 'Related line' means an electric line, or a part of an electric line, which (1) falls within ibid s 87(7); but (2) is not an electricity interconnector (within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see PARA 1041 note 11 ante): Energy Act 2004 s 87(6). An electric line, or a part of an electric line, falls within s 87(7) if it (a) is used for the conveyance of electricity to or from a renewable energy installation; (b) is in the course of construction at a place where it is to be so used; or (c) has ceased to be so used (whether or not it is being decommissioned) and since ceasing to be so used has not been used for any other purpose: s 87(7). For the meaning of 'electric line' see PARA 1041 note 5 ante (definition applied by s 104(1)). 'Construct', in relation to an installation or an electric line or in relation to a generating station so far as it is to comprise renewable energy installations, includes (i) placing it in or upon the bed of any waters; (ii) attaching it to the bed of any

waters; (iii) assembling it; (iv) commissioning it; and (v) installing it; and 'construction' is to be construed accordingly: s 104(1).

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 Energy Act 2004 s 87(1).

7 For these purposes, 'court' includes any tribunal or regulatory authority: ibid s 87(6).

8 Ibid s 87(2).

9 Ibid s 87(3).

10 Ie waters to which ibid s 87 applies: see note 3 supra.

11 Ie for the purposes of the provisions to which the Communications Act 2003 s 410 (as amended) applies: see TELECOMMUNICATIONS vol 97 (2010) PARA 51.

12 Ibid s 410(3) (amended by the Energy Act 2004 s 87(5)).

UPDATE

1312 Application of civil law to renewable energy installations etc

TEXT AND NOTES 1-9--In exercise of the power so conferred, Her Majesty has made the Civil Jurisdiction (Application to Offshore Renewable Energy Installations etc) Order 2009, SI 2009/1743.

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(ii) Licensing etc of Offshore Activities

1313. Licensing of offshore activities under the Electricity Act 1989 and consents under that Act; in general.

A person who:

- 3404 (1) generates¹ electricity for the purpose of giving a supply² to any premises³ or enabling a supply to be so given;
- 3405 (2) participates in the transmission⁴ of electricity⁵ for that purpose;
- 3406 (3) distributes⁶ electricity for that purpose; or
- 3407 (4) participates in the operation of an electricity interconnector⁷,

is guilty of an offence unless he is authorised to do so by a licence⁸. Electricity licences have already been discussed⁹.

The Secretary of State¹⁰ is prospectively given statutory powers:

- 3408 (a) to modify the conditions of transmission or distribution licences for purposes connected with offshore transmission or offshore distribution¹¹;
- 3409 (b) where a transmission licence is in force that authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system¹² by means of which electricity is transmitted within Great Britain¹³, or within an area of Great Britain (the 'co-ordination licence'), to make such modifications of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following:
 - 321 472. (i) an area of the territorial sea adjacent to Great Britain¹⁴; and
 - 473. (ii) an area designated¹⁵ under the Continental Shelf Act 1964¹⁶.
- 322

The Gas and Electricity Markets Authority ('GEMA')¹⁷ is prospectively given statutory powers to make provision by regulations for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted¹⁸.

Certain offshore generating stations may not be constructed or extended without the consent of the Secretary of State¹⁹.

All the above matters are discussed in more detail in an earlier part of this title²⁰.

1 For the meaning of 'generate' see PARA 1041 note 7 ante.

2 For the meaning of 'supply' see PARA 1041 note 10 ante.

- 3 For the meaning of 'premises' for these purposes see PARA 1050 note 3 ante.
- 4 For the meaning of 'transmission' see PARA 1041 note 6 ante.
- 5 For the meaning of references to participating in the transmission of electricity see PARA 1050 note 5 ante.
- 6 For the meaning of 'distribute' see PARA 1041 note 5 ante.
- 7 For the meaning of references to participating in the operation of an electricity interconnector see PARA 1050 note 7 ante.
- 8 See the Electricity Act 1989 s 4(1)(a)-(bb), (d) (as amended); and PARA 1050 ante. For the meaning of 'licence' see PARA 1041 note 12 ante.
- 9 See PARA 1050 et seq ante.
- 10 As to the Secretary of State see PARA 601 note 1 ante.
- 11 See the Energy Act 2004 s 90 (not in force); and PARA 1078 ante.
- 12 For the meaning of 'transmission system' see PARA 1041 note 6 ante.
- 13 For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 14 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.
- 15 le designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172.
- 16 See the Energy Act 2004 s 91 (not in force); and PARA 1079 ante.
- 17 As to the establishment and general functions of the Gas and Electricity Markets Authority see PARA 708 et seq ante; and as to the use of the abbreviation 'GEMA' in this context see PARA 708 note 5 ante.
- 18 See the Electricity Act 1989 s 6C (as added) (not in force); and PARA 1067 ante.
- 19 See ibid s 36 (as amended); and PARA 1249 ante. For modifications of the procedure for granting consent in such cases see s 36(8), Sch 8 para 7A (as added); and PARA 1260 et seq ante.
- 20 See notes 11-19 supra.

UPDATE

1313 Licensing of offshore activities under the Electricity Act 1989 and consents under that Act; in general

NOTES 11, 16, 18--Provisions now in force: SI 2009/1269.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY/(1) OFFSHORE PRODUCTION OF ENERGY/(iii) Safety Zones for Installations/1314. Safety zones around renewable energy installations.

(iii) Safety Zones for Installations

1314. Safety zones around renewable energy installations.

Where:

- 3410 (1) there is a proposal to construct¹ a renewable energy installation² in waters subject to regulation under these provisions, namely waters in or adjacent to Great Britain³ which are between the mean low water mark and the seaward limits of the territorial sea⁴, and waters within a renewable energy zone⁵, or to extend⁶ or to decommission⁷ a renewable energy installation situated in such waters⁸;
- 3411 (2) there is a proposal to operate a renewable energy installation on completion of its construction in such waters, or of any extension of it in such waters⁹; or
- 3412 (3) a renewable energy installation is being constructed, extended, operated or decommissioned in such waters¹⁰,

then if the Secretary of State¹¹ considers it appropriate to do so for the purpose of securing the safety of:

- 3413 (a) the renewable energy installation or its construction, extension or decommissioning;
- 3414 (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended;
- 3415 (c) individuals in or on the installation or other installations in that vicinity; or
- 3416 (d) vessels¹² in that vicinity or individuals on such vessels,

he may issue a notice¹³ declaring that such areas as are specified or described in the notice are to be safety zones for the statutory¹⁴ purposes¹⁵. The Secretary of State's power to issue such a notice is exercisable by him either on an application¹⁶ made to him for the purpose by any person or, where no such application is made, on his own initiative¹⁷. Before issuing such a notice which relates, wholly or partly, to an area of Scottish waters¹⁸, or to an area of waters in a Scottish part of a renewable energy zone¹⁹, the Secretary of State must consult the Scottish Ministers²⁰.

An area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under the above provisions²¹.

Where a notice is so issued, or a determination is made for the purposes of such a notice²², the Secretary of State must either:

- 3417 (i) himself publish the notice or determination in such manner as he considers appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or

3418 (ii) secure that it is published in that manner either by the applicant for the notice or, in the case of a determination made by a person other than the Secretary of State, by the applicant for the notice or by the person who made the determination²³.

1 For the meaning of 'construct' see PARA 1312 note 4 ante.

2 For the meaning of 'renewable energy installation' see PARA 1311 note 2 ante.

3 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

4 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

5 For the meaning of 'renewable energy zone' see PARA 1310 ante.

6 'Extend' and 'extension' in relation to an installation have the same meanings as in relation to a generating station: Energy Act 2004 s 104(1). For that meaning see the Electricity Act 1989 s 36(9); and PARA 1249 note 3 ante (definition applied by s 104(1)).

7 'Decommission', in relation to an installation or an electric line, includes (1) removing it from the bed of any waters; (2) demolishing it; and (3) dismantling it: *ibid* s 104(1). As to decommissioning see further PARA 1320 et seq post.

8 *Ibid* s 95(1)(a), (10).

9 *Ibid* s 95(1)(b).

10 *Ibid* s 95(1)(c).

11 As to the Secretary of State see PARA 601 note 1 ante.

12 'Vessel' includes (1) a hovercraft; (2) any submersible apparatus; and (3) an installation in transit; and 'submersible apparatus' has the meaning given by the Merchant Shipping Act 1995 s 88(4) (ie any apparatus (including any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment) used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters): Energy Act 2004 s 104(1).

13 A notice under *ibid* s 95 (see the text and notes 1-12 supra, 14-23 infra): (1) must identify the renewable energy installation, or proposed renewable energy installation, by reference to which it is issued; (2) must specify the date on which it is to come into force, or the means by which that date is to be determined; (3) may contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice; (4) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions; (5) may contain provision granting permission for vessels to enter or remain in a safety zone or for persons to carry on prohibited activities, or for the grant of such permissions; (6) may confer discretions, with respect to the making of determinations for the purposes of such a notice, on such persons as may be specified or described in the notice; (7) may modify or revoke a previous notice; and (8) may make different provision in relation to different cases: s 95(6).

14 *Ie* for the purposes of *ibid* Pt 2 Ch 2 (ss 84-104): see PARAS 1310 et seq ante; the text and notes 1-13 supra, 15-23 infra; and PARA 1315 et seq post.

15 *Ibid* s 95(2).

16 As to such applications see PARA 1315 post. A charge of £2,000 is payable to the Secretary of State in respect of any application: Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 8.

17 Energy Act 2004 s 95(3).

18 'Scottish waters' means (1) the internal waters of the United Kingdom that are in or are adjacent to Scotland; or (2) so much of the territorial sea of the United Kingdom as is adjacent to Scotland: *ibid* s 104(1).

19 'Scottish part', in relation to a renewable energy zone, means so much of that zone as is designated under *ibid* 84(5) (see PARA 1310 ante): s 104(1).

20 Ibid s 95(4).

21 Ibid s 95(5).

22 References to a determination for the purposes of a notice include references to a determination made for those purposes in accordance with the notice, or with regulations under ibid s 96 (see PARA 1316 post) (a) to impose a prohibition; (b) to grant a permission; or (c) to impose conditions in relation to a permission: s 95(8).

23 Ibid s 95(7).

UPDATE

1314 Safety zones around renewable energy installations

TEXT AND NOTES--Certain of the functions of the Secretary of State under the Energy Act 2004 s 95 are transferred to the Marine Management Organisation and s 95 is accordingly amended: see Marine and Coastal Access Act 2009 s 13. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY/(1) OFFSHORE PRODUCTION OF ENERGY/(iii) Safety Zones for Installations/1315. Procedure for the declaration of safety zones.

1315. Procedure for the declaration of safety zones.

An application for a safety zone notice¹ must describe, by way of a map, the place where the relevant renewable energy installation² is to be, or is being, constructed³, extended⁴, operated or decommissioned⁵, and the waters in relation to which any declaration applied for will establish a safety zone⁶. The application must also describe the other provisions the application asks to be included in the notice applied for and must include such other information as may be prescribed by regulations⁷ made by the Secretary of State⁸. An application is not allowed to be made orally⁹.

The Secretary of State may by regulations make provision for securing:

- 3419 (1) that, in the prescribed¹⁰ circumstances, notice of an application is published in the prescribed manner¹¹;
- 3420 (2) that, in the prescribed circumstances and in any other case where the Secretary of State so directs, notice of an application is served on the persons who are prescribed or are specified in the direction¹²;
- 3421 (3) that every notice published or served in pursuance of the regulations states the period within which objections to the application may be made, and the manner in which any objections are to be made;
- 3422 (4) that the period so stated is not less than the prescribed period after the publication or service of the notice;
- 3423 (5) that, where such a notice requires objections to be sent to a person other than the Secretary of State, the recipient of the objections is required to send copies of them to the Secretary of State¹³.

The regulations may provide that the Secretary of State may give such directions dispensing with the requirements of the regulations as he considers appropriate¹⁴.

Where objections, or copies of objections, to an application have been sent to the Secretary of State in compliance with the regulations, the Secretary of State must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application, and must, if he thinks it appropriate to do so, cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application¹⁵.

Where the Secretary of State is either proposing to issue a safety zone notice without an application having been made, or is proposing, in response to an application but without the holding of a public inquiry, to issue a safety zone notice in terms that are materially different from those applied for, he must:

- 3424 (a) publish notice of the proposal in such manner as he considers appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; and
- 3425 (b) serve notice of the proposal on such persons as he considers appropriate¹⁶.

The notice that is so published or served must describe, by way of a map, the place where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned, and the waters in relation to which any declaration proposed will establish a safety zone; and it must also describe the other provisions that the Secretary of State proposes to include in the safety zone notice¹⁷. That notice must also state the period within which objections to the proposal may be made and the manner in which any objections are to be made¹⁸. The period for making objections must not be shorter than the minimum period which would be applicable¹⁹ if the notice were being published in respect of an application for a safety zone notice²⁰. Where objections or copies of objections to the proposal have been sent to the Secretary of State, he must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the proposal, and must, if he thinks it appropriate to do so, cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the proposal²¹.

The following provisions apply where a public inquiry is to be held²². In the case of an inquiry to be held in respect of an application, the Secretary of State must inform the applicant that it is to be held and the applicant must, in two successive weeks, publish a notice in one or more local newspapers circulating in one or more areas determined in accordance with regulations made by the Secretary of State²³. In the case of an inquiry in respect of a proposal of the Secretary of State, he must publish a notice in such manner as he considers appropriate for bringing the inquiry to the attention of persons likely to be affected by the proposal²⁴. A notice that is published by the applicant or the Secretary of State²⁵ must contain a statement of the fact that the application or proposal has been made and a description of the application or proposal²⁶. It must also set out a place where a copy of the application or proposal, and of the map referred to in it, can be inspected²⁷, and the place, date and time of the public inquiry²⁸. If it appears to the Secretary of State, in the case of an inquiry in respect of such an application, that further notification of the inquiry should be given, in addition to the published notice, in order to secure that the matters set out in the published notice are sufficiently made known to persons who are likely to be affected by the application:

- 3426 (i) the Secretary of State may direct the applicant to take such further steps for that purpose, whether by the service of notices, advertisement or otherwise, as may be specified in the direction; and
- 3427 (ii) that person must comply with the direction²⁹;

and if it appears to the Secretary of State, in the case of an inquiry in respect of a proposal of his, that further notification of the inquiry should be given, in addition to the published notice, in order to secure that the matters set out in the published notice are sufficiently made known to persons who are likely to be affected by the proposal, he must take such further steps for that purpose, whether by the service of notices, advertisement or otherwise, as he considers appropriate³⁰.

The following provisions apply³¹ in the case of:

- 3428 (A) a public inquiry in England and Wales under the provisions set out above;
or
- 3429 (B) a public inquiry in England and Wales which is a combination³² into one inquiry of either two or more inquiries under the provisions set out above, or of one or more such inquiries and one or more other inquiries³³.

At any time after appointing a person to hold the inquiry ('the lead inspector'), the Secretary of State may direct him³⁴ to consider such matters relating to the conduct of the inquiry as are specified in the direction and to make recommendations to the Secretary of State about those

matters³⁵. After considering the recommendations of the lead inspector, the Secretary of State may appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate and may direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector³⁶. An additional inspector must comply with every direction as to procedural matters given to him by the lead inspector and must report to the lead inspector on every matter allocated to him³⁷. It is to be for the lead inspector to report to the Secretary of State on the consideration of both the matters which he considered himself and the matters the consideration of which was allocated to additional inspectors³⁸.

1 For these purposes, references to a safety zone notice are references to a notice under the Energy Act 2004 s 95 (see PARA 1314 ante); s 95(9), Sch 16 para 1.

2 For these purposes, 'relevant renewable energy installation', in relation to an application for a safety zone notice or a proposal by the Secretary of State to issue such a notice, means the renewable energy installation by reference to which the notice applied for or proposed would fall to be issued: *ibid* Sch 16 para 2. For the meaning of 'renewable energy installation' see PARA 1311 note 2 ante. As to the Secretary of State see PARA 601 note 1 ante.

3 For the meaning of 'constructed' see PARA 1312 note 4 ante.

4 For the meaning of 'extended' see PARA 1314 note 6 ante.

5 For the meaning of 'decommissioned' see PARA 1314 note 7 ante.

6 Energy Act 2004 Sch 16 para 3(1).

7 Regulations under *ibid* Sch 16 are subject to the negative resolution procedure: Sch 16 para 9. As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

8 *Ibid* Sch 16 para 3(2). An application for the declaration under s 95(2) (see PARA 1314 ante) of a safety zone must include the following information (in addition to that required by Sch 16 para 3(1), (2)(a)) (Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 3), ie:

99 (1) in relation to any proposed or existing relevant renewable energy installation:

81. (a) a description of the installation and its proposed or existing location and dimensions (including an explanation of how much of it is (or is expected to be) visible above the water line and how much below it), supported by drawings;

81

82. (b) a description of how the installation operates (or is to operate);

82

83. (c) a description of the location (or proposed location) of any electric line used (or proposed to be used) for the conveyance of electricity to or from the installation and any connection to such an electric line;

83

84. (d) a description of the location (or proposed location) of any offshore sub-station housing connection equipment;

84

85. (e) where the zone is sought in respect of more than one relevant renewable energy installation, the proposed or existing distances between such installations; and

85

86. (f) details of any navigational marking that has been specified for use with an installation of the description in question by a general lighthouse authority;

86

100 (2) in relation to any proposed or existing relevant renewable energy installation powered by waves or tides:

87. (a) a description of components located (or to be located) above and below the water line;

87

88. (b) details of any moving parts (or proposed parts) and of how far and in which direction such parts may move through waters surrounding the installation;
88
89. (c) a description of the extent and location (or proposed extent and location) of anchors, moorings and cables used (or to be used) in relation to the installation;
89
90. (d) details of the anticipated range of wave heights in the proposed safety zone, which may be given by reference to any generally accepted scale or code for expressing that information; and
90
91. (e) a description of typical spring and neap tidal data, and of typical tidal stream speeds and bearings, relating to waters in the proposed safety zone;
91
- 101 (3) in relation to the proposed safety zone;
92. (a) whether the zone relates to the construction, extension, operation or decommissioning of the relevant renewable energy installation;
92
93. (b) whether the applicant seeks the declaration of a standard safety zone, or if not, what dimensions are sought for that zone;
93
94. (c) a description of those works or operations in respect of which the zone is being applied for and their estimated date and duration;
94
95. (d) whether the applicant proposes that the area of the zone will vary and any factors or determinations by reference to which the applicant proposes that such variation may take place;
95
96. (e) whether the zone relates to major maintenance works in respect of a relevant renewable energy installation which has become operational;
96
97. (f) a statement setting out what steps, if any, the applicant proposes to take to monitor vessels and activities within the zone; and
97
98. (g) except where the Secretary of State has notified the applicant that it is not required, an up to date shipping traffic survey for the waters comprising the zone; and
98
- 102 (4) an assessment of the extent to which navigation might be possible or should be restricted, and whether restrictions would cause navigational problems, within or near waters where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned, as the case may be.

For these purposes, 'standard safety zone' means: (i) in the case of the proposed or ongoing construction, extension or decommissioning of a wind turbine, or of major maintenance works in respect of such an installation, a safety zone with a radius of 500 metres measured from the outer edge at sea level of the proposed or existing wind turbine tower; or (ii) in the case of the proposed or ongoing operation of a wind turbine, a safety zone with a radius of 50 metres measured from the outer edge at sea level of the proposed or existing wind turbine tower; and 'major maintenance works' means works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such an installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel: reg 2. For the meaning of 'general lighthouse authority' see the Merchant Shipping Act 1995 s 193(1); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068 (definition applied by the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 2).

9 Energy Act 2004 Sch 16 para 3(3).

10 'Prescribed' means prescribed by regulations under *ibid* Sch 16 para 4: Sch 16 para 4(4). See note 11 *infra*.

11 A notice required by or under *ibid* Sch 16 may be combined with a notice required by or under the Electricity Act 1989 Sch 8 (as amended) (procedure on application for a consent in respect of a generating station: see PARA 1260 *et seq ante*) in any case involving the same installation or proposed installation: Energy Act 2004 Sch 16 para 8.

The applicant must publish notice of an application (1) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the safety zone; (2) in Lloyd's List and in one or more national newspapers; (3) if there are in circulation one or more appropriate fishing trade journals which are published at intervals not exceeding one month, in at least one such trade journal; (4) in the London Gazette, unless the safety zone is proposed or located wholly within waters mentioned in head (5) or head (6) infra; (5) in the case of an application relating to a safety zone proposed or located wholly or partly in an area of Scottish waters or an area of waters in the Scottish part of the renewable energy zone, the Edinburgh Gazette; and (6) in the case of an application relating to a safety zone proposed or located wholly or partly in that part of the renewable energy zone that lies in the part of the sea which is treated as adjacent to Northern Ireland, the Belfast Gazette: see the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 4(1). At the same time as publishing the notice under reg 4(1)(a) (see head (1) supra, the applicant must send a copy of the notice to (a) the harbour masters of ports whose users are in the opinion of the applicant likely to be affected by the application; (b) the sector office of the Maritime and Coastguard Agency which is responsible for operations in the waters in which the safety zone is proposed or located; and (c) the local office of the Marine and Fisheries Agency which is responsible for operations in the waters in which the safety zone is proposed or located, requesting that the notice be displayed for a period of not less than 14 days at an address accessible during normal office hours to members of the public likely to be affected by the application: reg 4(2). 'Renewable energy zone' means the area designated by the Renewable Energy Zone (Designation of Area) Order 2004, SI 2004/2668 (see PARA 1310 ante): Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 2.

12 The applicant must, within 21 days of the earliest date of publication of the notice under *ibid* reg 4(1) (see note 11 supra), serve notice of an application upon (1) the Maritime and Coastguard Agency; (2) the Scottish Ministers, in the case of a safety zone proposed or located wholly or partly in an area of Scottish waters or an area of waters in the Scottish part of the renewable energy zone; (3) the National Assembly for Wales, in the case of a safety zone proposed or located wholly or partly in the internal or territorial waters adjacent to Wales; and (4) the owner (and operator, if a different person) of the relevant renewable energy installation where that person is not the applicant: *ibid* reg 5.

13 Energy Act 2004 Sch 16 para 4(1). Any notice published or served pursuant to the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, regs 4, 5 (see notes 11-12 supra) must state the time (which must not be less than 28 days from the date or latest date of publication of the notice, or less than 28 days from the service of the notice) within which, and the manner in which, any objections to the application for a safety zone notice are to be made: reg 6(1). Where a notice requires an objection to be sent to a person other than the Secretary of State, the recipient of that objection must within 14 days send a copy of it to the Secretary of State: reg 6(2).

14 Energy Act 2004 Sch 16 para 4(2).

15 *Ibid* Sch 16 para 4(3).

16 *Ibid* Sch 16 para 5(1), (2).

17 *Ibid* Sch 16 para 5(3).

18 *Ibid* Sch 16 para 5(4).

19 *Ie* in accordance with regulations under *ibid* Sch 16 para 4.

20 *Ibid* Sch 16 para 5(5).

21 *Ibid* Sch 16 para 5(6).

22 *Ibid* Sch 16 para 6(1).

23 *Ibid* Sch 16 para 6(2). Where a public inquiry is to be held in respect of an application and the applicant publishes notice of this pursuant to Sch 16 para 6(2)(b), the notice must be publicised within the same area within which the local newspapers used to publicise the notice of application under the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 4(1) circulate (see note 11 supra), and the place where a copy of the application for a safety zone, and of the map referred to in it, can be inspected must be at an address accessible during normal office hours to members of the public likely to be affected by the application: reg 7.

24 Energy Act 2004 Sch 16 para 6(3). For these purposes, a public inquiry under Sch 16 para 5(6), in a case where that provision applies by virtue of Sch 16 para 5(1)(b), is a public inquiry in respect of a proposal of the Secretary of State and is not a public inquiry in respect of an application: Sch 16 para 6(10).

25 le under ibid Sch 16 para 6(2) or (3): see the text and notes 23-24 supra.

26 Ibid Sch 16 para 6(4).

27 Ibid Sch 16 para 6(5)(a). The place set out in accordance with Sch 16 para 6(5)(a) in the case of an inquiry in respect of an application for a safety zone notice must be the place determined in accordance with regulations made by the Secretary of State: Sch 16 para 6(6).

28 Ibid Sch 16 para 6(5)(b).

29 Ibid Sch 16 para 6(7).

30 Ibid Sch 16 para 6(8). The Local Government Act 1972 s 250(2)-(5) (as amended) (which relates to evidence at inquiries and the costs of inquiries) applies in relation to a public inquiry held under the Energy Act 2004 Sch 16 as it applies in relation to a local inquiry which a minister causes to be held under the Local Government Act 1972 s 250(1): Energy Act 2004 Sch 16 para 6(9)(a).

31 le as from 6 April 2007: see the Energy Act 2004 (Commencement No 8) Order 2007, art 2.

32 le under the Electricity Act 1989 s 62 (as amended): see PARA 1299 ante.

33 Energy Act 2004 Sch 16 para 7(1).

34 The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector: ibid Sch 16 para 7(6). Accordingly (1) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and (2) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment: Sch 16 para 7(7). A direction by any person under Sch 16 para 7 may be varied or revoked by a subsequent direction by that person: Sch 16 para 7(8).

35 Ibid Sch 16 para 7(2).

36 Ibid Sch 16 para 7(3).

37 Ibid Sch 16 para 7(4).

38 Ibid Sch 16 para 7(5).

UPDATE

1315 Procedure for the declaration of safety zones

TEXT AND NOTES--See Marine and Coastal Access Act 2009 s 13.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY/(1) OFFSHORE PRODUCTION OF ENERGY/(iii) Safety Zones for Installations/1316. Prohibited activities in safety zones.

1316. Prohibited activities in safety zones.

A vessel¹ is not to enter or remain in a safety zone² except where permission for it to do so is granted:

- 3430 (1) by or in accordance with provision contained in a safety zone notice³; or
- 3431 (2) by or in accordance with provision contained in regulations⁴ made by the Secretary of State⁵.

A person must not carry on an activity wholly or partly in a safety zone if his doing so is prohibited by or in accordance with provision contained in a safety zone notice⁶; but this does not apply to the extent that carrying on the activity is permitted:

- 3432 (a) by or in accordance with provision contained in such a notice; or
- 3433 (b) by or in accordance with provision contained in regulations made by the Secretary of State⁷.

The provision that may be made with respect to permissions for the purposes of the above provisions⁸ includes:

- 3434 (i) provision for the permissions to apply in relation only to such times and such periods as may be specified or described in that provision; and
- 3435 (ii) provision for the permissions to apply only to such vessels, such persons and such purposes as may be specified or described in that provision⁹;

and the provision that may be made with respect to a permission for those purposes includes provision imposing conditions in relation to a permission¹⁰. The conditions may include:

- 3436 (A) conditions imposing obligations in relation to a vessel, or individuals on it, that must be satisfied while the vessel is in the safety zone; and
- 3437 (B) conditions imposing obligations as to the manner in which any activity to which the permission relates is to be carried on¹¹.

1 For the meaning of 'vessel' see PARA 1314 note 12 ante.

2 For the meaning of 'safety zone' see PARA 1311 note 4 ante; and as to such zones see PARA 1314 ante.

3 I.e. a notice under the Energy Act 2004 s 95: see PARA 1314 ante.

4 Regulations under *ibid* s 96 (see the text and notes 1-3 *supra*, 5-11 *infra*) may confer discretions, with respect to the granting or imposition in accordance with the regulations of permissions or conditions, on such persons as may be specified or described in the regulations: s 96(7). Such regulations are subject to the negative resolution procedure: s 96(8). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

5 *Ibid* s 96(1). As to the Secretary of State see PARA 601 note 1 ante.

The prohibitions under s 96(1) on a vessel entering and remaining in a safety zone do not apply if it is a vessel (1) belonging to, or acting under the authority of, a government department, the Environment Agency or the Scottish Environment Protection Agency, and engaged in the provision of services for, the transport of persons or goods to or from, or the inspection of any existing or proposed renewable energy installation in that safety zone; (2) belonging to a United Kingdom police force or the armed forces of the Crown, where that force is, or those forces are, acting in the course of its or their powers and duties; (3) belonging to or acting on behalf of a general lighthouse authority, where it is operating within the area specified in the Merchant Shipping Act 1995 s 193(1) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068) as the area of that authority; (4) belonging to, or acting on behalf of a harbour authority, where that body is acting in the course of its powers and duties; (5) belonging to, or acting on behalf of, the Crown Estate, where that body is acting in the exercise of its rights established in a lease or licence relating to a renewable energy installation in that safety zone; (6) belonging to, or acting on behalf of, the holder of a licence granted under the Electricity Act 1989 s 6(1)(b) (as substituted) (see PARA 1065 ante) where that person is carrying out activities which it is authorised by the licence to carry on and which relate to offshore transmission (within the meaning of s 6C(6) (as added) (see PARA 1067 note 4 ante)); (7) acting in connection with the saving or attempted saving of life or property, or in connection with training exercises relating to the saving of life or property; (8) entering or remaining in a safety zone owing to stress of weather or when in distress; or (9) entering or remaining in a safety zone in connection with an activity mentioned in the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 9(2) (see note 6 infra): reg 9(1). For the meaning of 'harbour authority' see the Harbours Act 1964 s 57(1); and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619 (definition applied by the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 2).

6 Energy Act 2004 s 96(2). The prohibitions under s 96(2) on a person carrying out activities wholly or partly in a safety zone do not apply: (1) in connection with the construction, service, maintenance or decommissioning by an owner or operator of any existing or proposed renewable energy installation in that safety zone; (2) in connection with the laying, inspection, testing, repair, alteration, renewal or removal of any submarine cable in a safety zone which relates to any existing or proposed renewable energy installation in that zone; (3) in connection with monitoring activities required to be undertaken by or on behalf of an owner or operator in order to comply with the terms of a statutory consent or licence relating to an existing or proposed renewable energy installation in that safety zone, including but not limited to (a) bird monitoring; (b) benthic investigations; and (c) sampling of fish densities; or (4) in connection with activities undertaken in accordance with the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007, SI 2007/1948, reg 9(1) (see note 5 supra): reg 9(2).

7 Energy Act 2004 s 96(3); and see notes 5-6 supra.

8 le for the purposes of *ibid* s 96.

9 *Ibid* s 96(4).

10 *Ibid* s 96(5).

11 *Ibid* s 96(6).

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1317. Offences relating to safety zones.

Where a vessel¹:

3438 (1) enters or remains in a safety zone² in contravention of the prohibition on doing so without permission³;

3439 (2) enters or remains in a safety zone with a permission granted for the statutory purposes⁴, and there is a contravention of a condition of that permission in relation to the vessel or individuals on the vessel,

the vessel's owner and her master⁵ are each guilty of an offence⁶.

A person is guilty of an offence:

3440 (a) if he carries on an activity wholly or partly in a safety zone in contravention⁷ of a prohibition on doing so⁸;

3441 (b) where he carries on an activity wholly or partly in a safety zone with a permission granted for the statutory purposes⁹ and there is a contravention of a condition of that permission in relation to the carrying on of that activity¹⁰.

A person guilty of an offence under the above provisions is liable on summary conviction to a fine not exceeding the statutory maximum¹¹ and on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or to both¹².

In proceedings against a person as the owner of a vessel for an offence under head (1) or head (2) above, however, it is a defence for him to show that the existence of the safety zone was not known to the master of the vessel in question at the time of the offence and would not have become known to the master had he made reasonable inquiries before that time¹³. In any other proceedings against a person for an offence under the above provisions, it is a defence for that person to show that the existence of the safety zone was not known to him at the time of the offence and would not have become known to him had he made reasonable inquiries before that time¹⁴. It is also a defence in proceedings against a person for such an offence for that person to show that he took all reasonable steps to prevent the contravention in question¹⁵.

Where the commission of an offence under the above provisions is due:

3442 (i) in the case of an offence under head (1) or head (2) above, to an act or omission of a person other than the owner or master of the vessel in question; or

3443 (ii) in the case of an offence under head (a) or head (b) above, to an act or omission of a person other than the person carrying on the activity in question,

that person is also guilty of that offence and is liable to be proceeded against and dealt with accordingly¹⁶. Where any such offence is committed:

3444 (A) by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a

director¹⁷, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and dealt with accordingly¹⁸;

3445 (B) by a Scottish firm, and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm, he, as well as the firm, is guilty of that offence and is liable to be proceeded against and dealt with accordingly¹⁹;

3446 (C) outside the United Kingdom²⁰, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom²¹.

1 For the meaning of 'vessel' see PARA 1314 note 12 ante.

2 For the meaning of 'safety zone' see PARA 1311 note 4 ante; and as to such zones see PARA 1314 ante.

3 In contravention of the Energy Act 2004 s 96(1): see PARA 1316 ante. For the meaning of 'contravention' see PARA 761 note 7 ante.

4 In a permission granted for the purposes of ibid s 96: see PARA 1316 ante.

5 'Master' includes (1) in relation to a hovercraft, the captain; (2) in relation to any submersible apparatus, the person in charge of the apparatus; and (3) in relation to an installation in transit, the person in charge of the transit operation: ibid s 104(1). For the meaning of 'submersible apparatus' see PARA 1314 note 12 ante; and for the meaning of 'installation' see PARA 1311 note 2 ante.

6 Ibid s 97(1), (2).

7 In contravention of ibid 96(2): see PARA 1316 ante.

8 See ibid s 97(3).

9 See note 4 supra.

10 Energy Act 2004 s 97(4).

11 As to the statutory maximum see PARA 689 note 2 ante.

12 Energy Act 2004 s 97(5).

13 Ibid s 97(6).

14 Ibid s 97(7).

15 Ibid s 97(8).

16 Ibid s 98(1).

17 For these purposes, 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: ibid s 98(6).

18 Ibid s 98(2).

19 Ibid s 98(3).

20 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

21 Energy Act 2004 s 98(4). The Territorial Waters Jurisdiction Act 1878 s 3 (consents to prosecution of offences committed on the open sea by persons who are not British citizens: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to proceedings for an offence under the Energy Act 2004 s 97: s 98(5). Provision made by or under Pt 2 Ch 2 (ss 84-104) (see PARA 1310 et seq ante, PARA 1318 post) in relation to places outside the United Kingdom (1) so far as it applies to individuals, applies to them whether or not they are British citizens; and (2) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom: s 104(6).

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(iv) Navigation and Civil Aviation

1318. Navigation.

The construction, extension and operation of a generating station requires the consent of the Secretary of State¹. Where the generating station comprises, or is to comprise, in whole or in part, renewable energy installations situated at places in relevant waters², the Secretary of State may, at the same time as granting the required consent, make a declaration extinguishing, suspending or restricting rights of navigation so far as they pass through some or all of those places³.

The Secretary of State may not grant a consent in relation to any particular offshore generating activities⁴ if he considers that they are likely to interfere with the use of recognised sea lanes essential to international navigation⁵; and in determining whether to give a consent for any such activities and what conditions to include in such a consent he must have regard to the extent and nature of any other likely obstruction of, or danger to, navigation which they may cause⁶.

These matters have already been discussed in more detail in an earlier part of this title⁷.

1 See the Electricity Act 1989 s 36 (as amended); and PARA 1249 ante. As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'relevant waters' for these purpose see PARA 1250 note 6 ante.

3 See the Electricity Act 1989 s 36A (as added); and PARA 1250 ante. See also the Energy Act 2004 s 100; and PARA 1250 ante.

4 For the meaning of 'offshore generating activities' see PARA 1251 note 3 ante.

5 For the meaning of 'the use of recognised sea lanes essential to international navigation' see PARA 1251 note 4 ante.

6 See the Electricity Act 1989 s 36B (as added); and PARA 1251 ante.

7 See PARAS 1250-1251 ante.

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1319. Civil aviation.

So far as relates to a provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of a renewable energy installation¹, the power to make extra-territorial provisions under the Civil Aviation Act 1982²:

3447 (1) applies to all aircraft, and not only to aircraft registered in the United Kingdom³; and

3448 (2) applies to the doing of anything in relation to an aircraft by any person, irrespective of nationality, or, in the case of a body corporate, of the law under which it was incorporated⁴.

Without prejudice to the above provision, an air navigation order may make provision in relation to renewable energy installations located within a renewable energy zone⁵ as if those installations were located in a part of the United Kingdom⁶; and such provision may apply to any person irrespective of nationality or, in the case of a body corporate, of the law under which it was incorporated⁷.

1 For these purposes, 'renewable energy installation' has the same meaning as in the Energy Act 2004 Pt 2 Ch 2 (ss 84-104) (see PARA 1310 et seq ante): Civil Aviation Act 1982 Sch 13 Pt III paras 6(9), 7(3) (Sch 13 Pt III paras 6(7)-(9), 7 added by the Energy Act 2004 s 101(4), (5)). For the meaning of 'renewable energy installation' for those purposes see PARA 1311 note 2 ante. The neighbourhood of an installation includes anywhere within 500 metres of that installation: see the Civil Aviation Act 1982 Sch 13 Pt III para 6(8) (as so added).

2 *Ibid* Sch 13 Pt III para 6 (as amended): see AIR LAW vol 2 (2008) PARA 30.

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Civil Aviation Act 1982 Sch 13 Pt III para 6(7) (as added: see note 1 supra).

5 For these purposes, 'renewable energy zone' has the same meaning as in the Energy Act 2004 Pt 2 Ch 2: Civil Aviation Act 1982 Sch 13 Pt III para 7(3) (as added: see note 1 supra). For the meaning of 'renewable energy zone' for those purposes see PARA 1310 ante.

6 *Ibid* Sch 13 Pt III para 7(1) (as added: see note 1 supra).

7 *Ibid* Sch 13 Pt III para 7(2) (as added: see note 1 supra).

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(2) DECOMMISSIONING OF OFFSHORE INSTALLATIONS

(i) Duty to inform the Secretary of State

1320. Duty to inform Secretary of State.

A person who becomes responsible for a relevant object¹ must notify the Secretary of State² that he has become so responsible³. For these purposes, a person becomes responsible for a relevant object if:

- 3449 (1) he makes a proposal to construct⁴ the object in regulated waters⁵;
- 3450 (2) he makes a proposal for the extension⁶ or decommissioning⁷ in such waters of the object;
- 3451 (3) he makes a proposal to operate or use the object on completion of its construction in such waters;
- 3452 (4) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
- 3453 (5) he becomes a party to a proposal mentioned in heads (1) to (4) above;
- 3454 (6) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
- 3455 (7) he begins to participate in any of the following activities⁸ carried on in such waters, namely the construction, extension, operation or use or decommissioning of the object⁹.

A person is not, however, required to notify the Secretary of State that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents¹⁰ required for enabling effect to be given to the proposal has been given or applied for¹¹.

A person who notifies the Secretary of State under these provisions that he has made a proposal, or has become a party to a proposal:

- 3456 (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and
- 3457 (b) must notify him subsequently whenever such a consent or application is given or made¹².

A notification under the above provisions must be given within such period after the obligation to give the notification arises as may be prescribed by regulations¹³ made by the Secretary of State¹⁴.

A person who contravenes¹⁵ the above requirements is guilty of an offence¹⁶.

1 For the purposes of the Energy Act 2004 Pt 2 Ch 3 (ss 105-114) (see the text and notes 2-16 infra; and PARA 1321 et seq post) 'relevant object' means the whole or any part of (1) a renewable energy installation; or

(2) an electric line that is or has been a related line: ss 105(10), 114(2). 'Related line' means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of the Electricity Act 1989 Pt I (ss 4A-64) (as amended) (see PARA 1041 note 11 ante); Energy Act 2004 s 105(11). For the meaning of 'renewable energy installation' see PARA 1311 note 2 ante (definition applied by s 114(1)); and for the meaning of 'electric line' see PARA 1041 note 5 ante (definition applied by ss 104(1), 114(1)).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Energy Act 2004 s 112(1).

4 For the meaning of 'construct' see PARA 1312 note 4 ante (definition applied by ibid s 114(1)).

5 The waters regulated under ibid Pt 2 Ch 3. 'Waters regulated under Pt 2 Ch 3' means (1) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and (2) waters in a renewable energy zone: ss 105(10), 114(2). For the meaning of 'Great Britain' see PARA 602 note 7 ante; for the meaning of 'renewable energy zone' see PARA 1310 ante (definition applied by s 114(1)); and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

6 'Extend' and 'extension', in relation to an electric line, have the same meanings as they have in Pt 2 Chs 2, 3 in relation to a renewable energy installation (see PARA 1314 note 6 ante): ss 114(1), (2).

7 For the meaning of 'decommission' see PARA 1314 note 7 ante (definition applied by ibid s 114(1)). As to decommissioning programmes see PARA 1321 et seq post.

8 A reference in ibid s 112 to participation in activities does not include a reference (1) to participation on behalf of another person; or (2) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities: s 112(8).

9 Ibid s 112(2).

10 For these purposes, 'statutory consent' means a consent, licence or approval required by or under any enactment: ibid ss 105(11), 112(9). For the meaning of 'enactment' see PARA 750 note 9 ante.

11 Ibid s 112(3).

12 Ibid s 112(4).

13 Regulations under ibid s 112 are subject to the negative resolution procedure: s 112(7). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

14 Ibid s 112(5). At the date at which this title states the law no such regulations had been made.

15 For the meaning of 'contravention' and cognate expressions see PARA 761 note 7 ante.

16 Ibid s 112(6). As to the penalties for such an offence see PARA 1328 post.

UPDATE

1320 Duty to inform Secretary of State

TEXT AND NOTES--The Secretary of State may by notice require specified persons to provide the Secretary of State with such relevant information or documents as the Secretary of State may require in connection with the exercise of functions under the Energy Act 2004 Pt 2 Ch 3 (ss 105-114): see Energy Act 2004 s 112A (added by Energy Act 2008 s 71).

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(ii) Decommissioning Programmes

1321. Requirement to prepare decommissioning programmes.

The following provisions apply where:

- 3458 (1) there is a proposal by a person to construct¹ a relevant object² in regulated waters³, or to extend⁴ a relevant object in such waters;
- 3459 (2) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
- 3460 (3) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission⁵ such an object⁶.

The Secretary of State⁷ may by notice require that person to submit to him a programme for decommissioning the relevant object (a 'decommissioning programme')⁸. He may, however, require a person to submit a decommissioning programme in respect of proposals made by that person only if the Secretary of State is satisfied that at least one of the statutory consents⁹ required for enabling that person to give effect to those proposals has been given, or has been applied for and is likely to be given¹⁰. Where there is more than one person to whom such a notice may be given it may be given to any one or more of them¹¹ and, where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly¹². Before giving such a notice in relation to a relevant object which is to be or is, wholly or partly, either in an area of Scottish waters¹³, or in an area of waters in a Scottish part of a renewable energy zone¹⁴, the Secretary of State must consult the Scottish Ministers¹⁵.

A notice under these provisions must either specify the date by which the decommissioning programme is to be submitted¹⁶ or require it to be submitted on or before such date as the Secretary of State may direct¹⁷. It may require the recipient¹⁸ of the notice to carry out the consultations specified in the notice before submitting the programme required of him¹⁹.

A decommissioning programme:

- 3461 (a) must set out measures to be taken for decommissioning the relevant object;
- 3462 (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
- 3463 (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
- 3464 (d) if it proposes that the relevant object will be wholly or partly removed from a place in regulated waters, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
- 3465 (e) if it proposes that the relevant object will be left in position at a place in regulated waters or will not be wholly removed from a place in such waters, must

include provision about whatever continuing monitoring and maintenance of the object will be necessary²⁰.

A notice under the above provisions may require the recipient of the notice to submit any of the following with the decommissioning programme:

- 3466 (i) such information and documents relating to the place where the relevant object is or is to be situated as may be specified in the notice;
- 3467 (ii) such specifications relating to the relevant object as may be specified in the notice;
- 3468 (iii) such information and documents relating to the financial affairs of the recipient as may be specified in the notice; and
- 3469 (iv) details of the security²¹, if any, that the recipient proposes to provide²² in relation to the carrying out of the decommissioning programme and for his compliance with any conditions of its approval²³.

1 For the meaning of 'construct' see PARA 1312 note 4 ante (definition applied by the Energy Act 2004 s 114(1)).

2 For the meaning of 'relevant object' see PARA 1320 note 1 ante.

3 The waters regulated under the Energy Act 2004 Pt 2 Ch 3 (ss 105-114) (see PARA 1320 ante; the text and notes 4-23 infra; and PARA 1322 et seq post). For the meaning of 'waters regulated under Pt 2 Ch 3' see PARA 1320 note 5 ante.

4 For the meaning of 'extend' see PARA 1320 note 6 ante.

5 For the meaning of 'decommission' see PARA 1314 note 7 ante (definition applied by the Energy Act 2004 s 114(1)).

6 Ibid s 105(1).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 Energy Act 2004 s 105(2).

9 For the meaning of 'statutory consent' see PARA 1320 note 10 ante.

10 Energy Act 2004 s 105(3). For this purpose it is, however, immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied: s 105(3).

11 Ibid s 105(4)(a).

12 Ibid s 105(4)(b).

13 For the meaning of 'Scottish waters' see PARA 1314 note 18 ante (definition applied by ibid s 114(1)).

14 For the meaning of 'Scottish part', in relation to a renewable energy zone, see PARA 1314 note 19 ante (definition applied by ibid s 114(1)); and for the meaning of 'renewable energy zone' see PARA 1310 ante (definition as so applied).

15 Ibid s 105(5).

16 Ibid s 105(6)(a).

17 Ibid s 105(6)(b).

18 'Recipient', in relation to a notice under ibid s 105, means the person or any one or more of the persons to whom that notice was given: s 114(2).

19 Ibid s 105(7).

20 Ibid s 105(8).

21 'Security' includes (1) a charge over a bank account or any other asset; (2) a deposit of money; (3) a performance bond or guarantee; (4) a letter of credit; and (5) a letter of comfort: ibid s 114(2).

22 For these purposes, references to providing a security include references (1) to securing its maintenance or renewal; and (2) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given: ibid s 114(3).

23 Ibid s 105(9).

UPDATE

1321 Requirement to prepare decommissioning programmes

TEXT AND NOTES--See also Energy Act 2004 s 105A (added by Energy Act 2008 s 69(4)) (section 105 notices: supplemental).

TEXT AND NOTES 8, 10--Energy Act 2004 s 105(2), (3) amended: Energy Act 2008 s 69(2), (3).

NOTE 21--Definition of 'security' in Energy Act 2004 s 114(2) amended to include an insurance policy: Energy Act 2008 s 70(2).

TEXT AND NOTE 23--Energy Act 2004 s 105(9) repealed: Energy Act 2008 Sch 5 para 17, Sch 6.

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1322. Approval of decommissioning programmes.

The Secretary of State¹ may either approve or reject a decommissioning programme submitted² to him³. Before approving or rejecting a decommissioning programme relating to a relevant object⁴ which is to be or is, wholly or partly, either in an area of Scottish waters⁵, or in an area of waters in a Scottish part of a renewable energy zone⁶, the Secretary of State must consult the Scottish Ministers⁷.

If the Secretary of State approves a programme, he may do so:

- 3470 (1) with or without modifications⁸; and
- 3471 (2) either subject to conditions or unconditionally⁹;

and his power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme¹⁰:

- 3472 (a) provides such security¹¹ in relation to the carrying out of the programme, and for his compliance with the conditions, if any, of its approval, as may be specified by the Secretary of State; and
- 3473 (b) provides that security at such time, and in accordance with such requirements, as may be specified by the Secretary of State¹².

That power to approve a programme subject to conditions also includes power, where more than one person submitted it, to impose different conditions in relation to different persons¹³.

Before approving a programme with modifications or subject to conditions, the Secretary of State must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions¹⁴.

If he rejects a programme, the Secretary of State:

- 3474 (i) must inform the person who submitted it of his reasons for doing so; and
- 3475 (ii) may exercise his power¹⁵ to require the submission of a new one¹⁶.

The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. a programme submitted under the Energy Act 2004 s 105: see PARA 1321 ante.

3 Ibid s 106(1).

4 For the meaning of 'relevant object' see PARA 1320 note 1 ante.

5 For the meaning of 'Scottish waters' see PARA 1314 note 18 ante (definition applied by the Energy Act 2004 s 114(1)).

6 For the meaning of 'Scottish part', in relation to a renewable energy zone, see PARA 1314 note 19 ante (definition applied by *ibid* s 114(1)); and for the meaning of 'renewable energy zone' see PARA 1310 ante (definition as so applied).

7 *Ibid* s 106(2).

8 For the meaning of 'modification' see PARA 733 note 8 ante.

9 Energy Act 2004 s 106(3).

10 References in *ibid* Pt 2 Ch 3 to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them: s 114(4).

11 For the meaning of 'security' see PARA 1321 note 21 ante; and for the meaning of references to providing a security see PARA 1321 note 22 ante.

12 Energy Act 2004 s 106(4).

13 *Ibid* s 106(6).

14 *Ibid* s 106(5).

15 *Ie* under *ibid* s 105: see PARA 1321 ante.

16 *Ibid* s 106(7).

17 *Ibid* s 106(8).

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1323. Failure to submit, or rejection of, decommissioning programmes.

Where either a notice given requiring the preparation of a decommissioning programme¹ is not complied with, or the Secretary of State² rejects a programme submitted to him, the Secretary of State may himself prepare a decommissioning programme in relation to the relevant object³ in question⁴. Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, wholly or partly, either in an area of Scottish waters⁵, or in an area of waters in a Scottish part of a renewable energy zone⁶, the Secretary of State must consult the Scottish Ministers⁷.

Where the Secretary of State prepares a decommissioning programme under these provisions:

- 3476 (1) he must give notice informing the recipient⁸ of the previous notice given⁹ that he has done so; and
- 3477 (2) the relevant statutory provisions¹⁰ have effect subsequently as if the Secretary of State's programme were a programme submitted to him by the person informed and had been approved by the Secretary of State subject to the conditions specified by the Secretary of State¹¹.

Where the Secretary of State so informs a person that he has prepared his own decommissioning programme, he may by notice to that person require him¹²:

- 3478 (a) to provide such security¹³ in relation to the carrying out of the programme, and for his compliance with its conditions, if any, as may be specified by the Secretary of State; and
- 3479 (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;

and such a requirement has effect as if it were a condition of the deemed approval of the programme¹⁴.

The Secretary of State may by notice require the recipient of a notice requiring the preparation of a decommissioning programme¹⁵ to provide him with such information and documents¹⁶ as he may require for the purpose of exercising his powers under the above provisions¹⁷. Information and documents so required to be provided must be provided within such period as may be specified in the notice¹⁸; and a person who fails, without reasonable excuse, to comply with such a notice is guilty of an offence¹⁹.

Where, having given a notice requiring the preparation of a decommissioning programme²⁰, the Secretary of State prepares his own decommissioning programme, he may recover expenditure incurred by him in, or in connection with, the exercise of his powers under the above provisions from the recipient of the notice²¹. A person liable to pay a sum to the Secretary of State by virtue of that power to recover expenditure must also pay interest²² on that sum for the period which begins with the day on which the Secretary of State notified him of the sum payable and ends with the date of payment²³.

- 1 le a notice under the Energy Act 2004 s 105: see PARA 1321 ante.
- 2 As to the Secretary of State see PARA 601 note 1 ante.
- 3 For the meaning of 'relevant object' see PARA 1320 note 1 ante.
- 4 Energy Act 2004 s 107(1).
- 5 For the meaning of 'Scottish waters' see PARA 1314 note 18 ante (definition applied by *ibid* s 114(1)).
- 6 For the meaning of 'Scottish part', in relation to a renewable energy zone, see PARA 1314 note 19 ante (definition applied by *ibid* s 114(1)); and for the meaning of 'renewable energy zone' see PARA 1310 ante (definition as so applied).
- 7 *Ibid* s 107(2).
- 8 For the meaning of 'recipient' see PARA 1321 note 18 ante.
- 9 le the notice under the Energy Act 2004 s 105.
- 10 le *ibid* Pt 2 Ch 3 (ss 105-114): see PARAS 1320-1322 ante; the text and notes 1-9 *supra*, 11-23 *infra*; and PARA 1324 *et seq post*.
- 11 *Ibid* s 107(3).
- 12 The power of the Secretary of State to impose requirements under *ibid* s 107 includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons: s 107(8).
- 13 For the meaning of 'security' see PARA 1321 note 21 ante; and for the meaning of references to providing a security see PARA 1321 note 22 ante.
- 14 Energy Act 2004 s 107(4).
- 15 le the recipient of a notice under *ibid* s 105.
- 16 For the meaning of 'document' see PARA 733 note 4 ante.
- 17 *Ibid* s 107(5). See also note 12 *supra*.
- 18 *Ibid* s 107(6).
- 19 *Ibid* s 107(7). As to the penalty for such an offence see PARA 1328 *post*.
- 20 See note 1 *supra*.
- 21 Energy Act 2004 s 107(9).
- 22 The rate of interest must be a rate determined by the Secretary of State to be comparable with commercial rates: *ibid* s 107(11).
- 23 *Ibid* s 107(10).

UPDATE

1323 Failure to submit, or rejection of, decommissioning programmes

TEXT AND NOTES 17-19--Energy Act 2004 s 107(5)-(7) repealed: Energy Act 2008 Sch 5 para 18, Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY/(2) DECOMMISSIONING OF OFFSHORE INSTALLATIONS/(ii) Decommissioning Programmes/1324. Reviews and revisions of decommissioning programmes.

1324. Reviews and revisions of decommissioning programmes.

The Secretary of State¹ must, from time to time, conduct such reviews of a decommissioning programme² approved by him as he considers appropriate³.

A proposal:

- 3480 (1) to modify⁴ a decommissioning programme approved by the Secretary of State, or to modify a condition to which such a programme is subject, may be made by the Secretary of State, or by the person who submitted the programme or, if there is more than one of them, by all of them acting jointly⁵;
- 3481 (2) to relieve a person of his duty in relation to carrying out a decommissioning programme⁶ approved by the Secretary of State, or, as respects such a programme, to impose that duty upon a person not previously subject to it, whether in addition to or in substitution for another person, may be made by the Secretary of State or by the person for the time being subject to that duty or, if there is more than one person subject to that duty, by any one or more of them⁷.

A proposal under head (1) or head (2) above may be made only by way of notice given:

- 3482 (a) if the proposal is the Secretary of State's, to every person whose duty in relation to carrying out the programme⁸ would be affected or relieved under the proposal or who would become subject to such a duty; and
- 3483 (b) in any other case, to the Secretary of State⁹.

An opportunity of making representations to the Secretary of State about a proposal of his under these provisions must be given by him to every person to whom notice of the proposal is required to have been given¹⁰.

It is to be for the Secretary of State, after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under the above provisions¹¹. Before making such a determination with respect to a proposal in relation to a decommissioning programme relating to a relevant object¹² which is to be or is, wholly or partly, either in an area of Scottish waters¹³, or in an area of waters in a Scottish part of a renewable energy zone¹⁴, the Secretary of State must consult the Scottish Ministers¹⁵. Where the Secretary of State makes such a determination, he must give notice of his determination, and of his reasons for it, to:

- 3484 (i) every person who, before the determination, had a duty in relation to the carrying out of the programme¹⁶; and
- 3485 (ii) every person who will become subject to such a duty as a result of the determination¹⁷.

Where the Secretary of State so gives notice in respect of a proposal, the relevant statutory provisions¹⁸ have effect after the giving of that notice:

3486 (A) in the case of a proposal under head (1) above, as if the programme in question had been approved subject to the modifications specified in the determination; and

3487 (B) in the case of a proposal under head (2) above, as if that programme had been submitted to the Secretary of State by the person or persons so specified¹⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'decommissioning programme' see PARA 1321 ante (definition applied by the Energy Act 2004 s 114(2)).

3 Ibid s 108(1).

4 For the meaning of 'modify' see PARA 733 note 8 ante.

5 Energy Act 2004 s 108(2).

6 Ie his duty under ibid s 109(1) in relation to a decommissioning programme: see PARA 1325 post.

7 Ibid s 108(3).

8 See note 6 supra.

9 Energy Act 2004 s 108(4).

10 Ibid s 108(5).

11 Ibid s 108(6).

12 For the meaning of 'relevant object' see PARA 1320 note 1 ante.

13 For the meaning of 'Scottish waters' see PARA 1314 note 18 ante (definition applied by the Energy Act 2004 s 114(1)).

14 For the meaning of 'Scottish part', in relation to a renewable energy zone, see PARA 1314 note 19 ante (definition applied by ibid s 114(1)); and for the meaning of 'renewable energy zone' see PARA 1310 ante (definition as so applied).

15 Ibid s 108(7).

16 Ie a duty under ibid s 109(1) in relation to the programme.

17 Ibid s 108(8). Where the Secretary of State gives notice under s 108(8) to a person that he is to become subject to a duty under s 109(1) in relation to a programme, the Secretary of State may by notice to that person require him: (1) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the Secretary of State; and (2) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State; and a requirement under this provision has effect as if it were a condition of the approval of the programme: s 108(10). For the meaning of 'security' see PARA 1321 note 21 ante; and for the meaning of references to providing a security see PARA 1321 note 22 ante.

18 Ie ibid Pt 2 Ch 3 (ss 105-114): see PARA 1320 et seq ante; the text and notes 1-17 supra, 19 infra; and PARA 1325 et seq post.

19 Ibid s 108(9).

UPDATE

1324 Reviews and revisions of decommissioning programmes

TEXT AND NOTE 7--See also Energy Act 2004 s 108(3A) (added by Energy Act 2008 s 69(5)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/5. OFFSHORE PRODUCTION OF RENEWABLE ENERGY/(2) DECOMMISSIONING OF OFFSHORE INSTALLATIONS/(iii) Implementation of Decommissioning Programmes/1325. Carrying out of decommissioning programmes.

(iii) Implementation of Decommissioning Programmes

1325. Carrying out of decommissioning programmes.

Where a decommissioning programme¹ is approved by the Secretary of State², it is the duty of the person who submitted the programme³ to secure:

- 3488 (1) that it is carried out in every respect; and
- 3489 (2) that all the conditions to which the approval is subject are complied with⁴.

Where a relevant object⁵ is subject to a decommissioning programme approved by the Secretary of State, it is an offence for a person to take any measures for decommissioning⁶ that object unless he does so either in accordance with the programme, or with the agreement of the Secretary of State⁷.

¹ For the meaning of 'decommissioning programme' see PARA 1321 ante (definition applied by the Energy Act 2004 s 114(2)).

² As to the Secretary of State see PARA 601 note 1 ante; and as to his approval of decommissioning programmes see PARA 1322 ante.

³ For the meaning of references to the person who submitted the programme see PARA 1322 note 10 ante.

⁴ Energy Act 2004 s 109(1).

⁵ For the meaning of 'relevant object' see PARA 1320 note 1 ante.

⁶ For the meaning of 'decommission' see PARA 1314 note 7 ante (definition applied by the Energy Act 2004 s 114(1)).

⁷ Ibid s 109(2).

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1326. Default in carrying out decommissioning programmes.

Where either:

- 3490 (1) a decommissioning programme¹ approved by the Secretary of State² is not carried out in a particular respect; or
- 3491 (2) a condition to which the approval is subject is contravened³,

the Secretary of State may, by notice, require a person subject to the statutory duty in relation to carrying out the programme⁴ to take such remedial action as may be specified in the notice⁵.

Remedial action required by a notice under these provisions must be taken within such period as may be specified in the notice⁶; and a person who fails to comply with a notice so given to him is guilty of an offence⁷. In proceedings against a person for such an offence it is, however, a defence for him to show that he exercised due diligence to avoid the contravention in question⁸.

If a notice under these provisions is not complied with, the Secretary of State may:

- 3492 (a) himself secure the carrying out of the remedial action required by the notice; and
- 3493 (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given⁹.

A person liable to pay a sum to the Secretary of State by virtue of heads (a) and (b) above must also pay interest¹⁰ on that sum for the period which begins with the day on which the Secretary of State notified him of the sum payable and ends with the date of payment¹¹.

¹ For the meaning of 'decommissioning programme' see PARA 1321 ante (definition applied by the Energy Act 2004 s 114(2)).

² As to the Secretary of State see PARA 601 note 1 ante; and as to his approval of decommissioning programmes see PARA 1322 ante.

³ For the meaning of 'contravention' and cognate expressions see PARA 761 note 7 ante.

⁴ I.e. the duty under the Energy Act 2004 s 109(1): see PARA 1325 ante.

⁵ Ibid s 110(1).

⁶ Ibid s 110(2).

⁷ Ibid s 110(3). As to the penalty for such an offence see PARA 1328 post.

⁸ Ibid s 110(4).

⁹ Ibid s 110(5).

¹⁰ The rate of interest must be a rate determined by the Secretary of State to be comparable with commercial rates: ibid s 110(7).

11 Ibid s 110(6).

UPDATE

1326 Default in carrying out decommissioning programmes

TEXT AND NOTES--Where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person ('the security provider') by way of a trust or other arrangements, the manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements: Energy Act 2004 s 110A(1), (3) (ss 110A, 110B added by Energy Act 2008 s 70(1)). In the Energy Act 2004 s 110A a reference to 'the protected assets' is a reference to the security and any property or rights in which it consists: s 110A(2). For the purposes of s 110A(3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would (1) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or (2) prevent or restrict their enforcement for the purposes of being so applied: Energy Act 2004 s 110A(4). In s 110A(4) 'enactment' includes an instrument made under an enactment: s 110A(5). Supplemental provision is made: see Energy Act 2004 s 110B.

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(iv) Decommissioning Regulations

1327. Regulations about decommissioning.

The Secretary of State¹ may make regulations² relating to the decommissioning³ of relevant objects⁴ in regulated⁵ waters⁶. The provision that may be contained in such regulations includes, in particular:

- 3494 (1) provision prescribing standards in respect of decommissioning;
- 3495 (2) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
- 3496 (3) provision about the security⁷ that a person may be required to provide⁸;
- 3497 (4) provision for the prevention of pollution;
- 3498 (5) provision for inspections, including provision as to the payment of the costs of inspections⁹.

Regulations so made may include provision making it an offence to contravene¹⁰ provisions of the regulations¹¹. Where those regulations create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for such regulations:

- 3499 (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum¹²; or
- 3500 (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years¹³.

Before making regulations under these provisions:

- 3501 (i) the Secretary of State must consult organisations appearing to him to be representative of persons who will be affected by the regulations, and any other persons he considers appropriate¹⁴;
- 3502 (ii) containing provision that relates to the decommissioning of relevant objects which are to be or are, wholly or partly, either in Scottish waters¹⁵, or in waters in a Scottish part of a renewable energy zone¹⁶, the Secretary of State must consult the Scottish Ministers¹⁷.

¹ As to the Secretary of State see PARA 601 note 1 ante.

² Such regulations are subject to the negative resolution procedure: Energy Act 2004 s 111(7). As to the negative resolution procedure see ss 192(2), 196(1); and PARA 602 note 2 ante.

³ For the meaning of 'decommission' see PARA 1314 note 7 ante (definition applied by ibid s 114(1)).

⁴ For the meaning of 'relevant object' see PARA 1320 note 1 ante.

⁵ ie in waters regulated under the Energy Act 2004 Pt 2 Ch 3 (ss 105-114): see PARA 1320 et seq ante; the text and notes 1-4 supra, 6-17 infra; and PARA 1328 post.

- 6 Ibid s 111(1). At the date at which this title states the law no such regulations had been made.
- 7 For the meaning of 'security' see PARA 1321 note 21 ante.
- 8 le under the Energy Act 2004 Pt 2 Ch 3. For the meaning of references to providing a security see PARA 1321 note 22 ante.
- 9 Ibid s 111(2).
- 10 For the meaning of 'contravention' and cognate expressions see PARA 761 note 7 ante.
- 11 Energy Act 2004 s 111(3).
- 12 As to the statutory maximum see PARA 689 note 2 ante.
- 13 Energy Act 2004 s 111(4).
- 14 Ibid s 111(5).
- 15 For the meaning of 'Scottish waters' see PARA 1314 note 18 ante (definition applied by ibid s 114(1)).
- 16 For the meaning of 'Scottish part', in relation to a renewable energy zone, see PARA 1314 note 19 ante (definition applied by ibid s 114(1)); and for the meaning of 'renewable energy zone' see PARA 1310 ante (definition as so applied).
- 17 Ibid s 111(6).

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(v) Offences

1328. Offences relating to decommissioning programmes.

A person guilty of an offence under a statutory provision relating to decommissioning programmes¹ is liable on summary conviction to a fine not exceeding the statutory maximum², or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both³. No proceedings for a decommissioning offence⁴ may, however, be instituted in England and Wales or Northern Ireland except:

- 3503 (1) by the Secretary of State⁵;
- 3504 (2) by a person authorised in that behalf by the Secretary of State; or
- 3505 (3) by or with the consent of the Director of Public Prosecutions or, as the case may be, the Director of Public Prosecutions for Northern Ireland⁶.

Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director⁷, manager, secretary or other similar officer of the body corporate, or of a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and dealt with accordingly⁸.

Where a decommissioning offence is committed outside the United Kingdom⁹, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom¹⁰.

1 Ie under the Energy Act 2004 Pt 2 Ch 3 (ss 105-114): see PARA 1320 et seq ante. As to such offences see PARAS 1320, 1323, 1326 ante.

2 As to the statutory maximum see PARA 689 note 2 ante.

3 Energy Act 2004 s 113(1).

4 'Decommissioning offence' means an offence under (1) a provision of ibid Pt 2 Ch 3; or (3) regulations made under s 111 (see PARA 1327 ante): s 113(7). At the date at which this title states the law no such regulations had been made.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Energy Act 2004 s 113(2).

7 For these purposes, 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: ibid s 113(7).

8 Ibid s 113(3). Similarly, where such an offence is committed by a Scottish firm, and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm, he (as well as the firm) is guilty of that offence and is liable to be proceeded against and dealt with accordingly: s 113(4).

9 Provision made by or under ibid Pt 2 Ch 3 in relation to places outside the United Kingdom: (1) so far as it applies to individuals, applies to them whether or not they are British citizens; and (2) so far as it applies to

bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom: s 114(5). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

10 Ibid s 113(5). The Territorial Waters Jurisdiction Act 1878 s 3 (consents to prosecution of offences committed on the open sea by persons who are not British citizens: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to proceedings for a decommissioning offence: Energy Act 2004 s 113(6).

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6. RENEWABLE TRANSPORT FUEL OBLIGATIONS

1329. Imposition of renewable transport fuel obligations.

The Secretary of State¹ may by order (an 'RTF order')² impose on each transport fuel supplier³ of a specified⁴ description the obligation mentioned below (a 'renewable transport fuel obligation')⁵. That obligation is an obligation, for each specified period, for the supplier to produce to the administrator⁶, by the specified date, evidence which:

- 3506 (1) is of the specified kind and in the specified form; and
- 3507 (2) shows that during the specified period the specified amount of renewable transport fuel was supplied at or for delivery to places in the United Kingdom⁷.

Before making an RTF order the Secretary of State must consult such persons appearing to him to represent persons whose interests will be affected by the order, and such other persons, as he considers appropriate⁸.

The Renewable Transport Fuel Obligations Order 2007⁹, which is made in the exercise of these powers, imposes a renewable transport fuel obligation on every transport fuel supplier who in a specified period¹⁰:

- 3508 (a) owns relevant hydrocarbon oil¹¹ at the time when the requirement to pay the duty of excise with which the oil is chargeable takes effect; and
- 3509 (b) supplies that oil at or for delivery to places in the United Kingdom¹²;

but that obligation does not apply to a transport fuel supplier who, in a specified period, supplies less than 450,000 litres in total of the oil (a 'non-obligated supplier')¹³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The power to make an RTF order is subject to the affirmative resolution procedure: Energy Act 2004 s 124(5). As to the affirmative resolution procedure see ss 192(3), 196(1); and PARA 754 note 17 ante.

3 'Transport fuel supplier' means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom; and 'transport fuel' means (1) renewable transport fuel; (2) fossil fuel; or (3) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel: *ibid* s 132(1). 'Supply' means, in relation to fuel, the supply of that fuel to any person with a view to its being used (whether by that person or persons to whom it is subsequently supplied) wholly or primarily for transport purposes (s 132(1)); and for these purposes, fuel is used for transport purposes if either it is used as fuel for one or more of the following, namely, vehicles, vessels, aircraft, trains or any other mode of transport; or it is used for producing fuel that is intended to be so used (s 132(3)). For the meaning of 'United Kingdom' see PARA 602 note 7 ante. For the meaning of 'renewable transport fuel' see note 5 *infra*.

4 'Specified' means specified in, or determined in accordance with, an RTF order: *ibid* s 132(1).

5 *Ibid* ss 124(1), (3), 132(1). 'Renewable transport fuel' means: (1) biofuel; (2) blended biofuel; (3) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced either wholly by energy from a renewable source or wholly by a process powered wholly by such energy; or (4) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel: s 132(1). 'Biofuel' means liquid or gaseous fuel that is produced wholly from biomass; 'blended biofuel' means liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel (s 132(1)); 'biomass' means the biodegradable portion of a specified product, waste or residue; and 'renewable source' means, in relation to energy, any of the following sources of energy: (a) wind; (b) solar heat; (c) water (including waves and tides); (d) geothermal sources; or (e) biomass (s 132(4)). For these purposes, a process powered by electricity that was generated by energy from a particular source is to be treated as being powered by energy from that source: s 132(2). For the meaning of 'fossil fuel' see PARA 1219 note 13 *ante* (definition applied by s 132(4)).

6 'Administrator' means the person appointed by virtue of *ibid* s 125 (see PARA 1330 *post*) as the administrator for the purposes of provision made by or under Pt 2 Ch 5 (ss 124-132) (see the text and notes 1-5 *supra*, 7-8 *infra*; and PARA 1330 *et seq post*): s 132(1).

7 *Ibid* s 124(2). For these purposes, the 'specified date' means 5 October, or the next working day after 5 October, if 5 October is not a working day, following the end of the obligation period in question; and the evidence which is required is one or more RTF certificates issued by the administrator in accordance with the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072 (see PARA 1332 *post*): art 4(3)(b), (c). As to the calculation of the specified amount of renewable transport fuel see art 4(4). For the meaning of 'obligation period' see note 10 *infra*.

8 Energy Act 2004 s 124(4).

9 *Ie* the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, which came into force on 26 October 2007: see art 1.

10 For the purposes of the Energy Act 2004 s 124(2) and the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, a 'specified period' means a period beginning on 15 April in a year and ending on 14 April in the following year ('obligation period'): art 4(3)(a).

11 'Relevant hydrocarbon oil' means hydrocarbon oil which is (1) fossil fuel; (2) chargeable to the duty of excise on hydrocarbon oil under the Hydrocarbon Oil Duties Act 1979 s 6; and (3) for use as fuel in road vehicles (whether or not it may also be used in other vehicles): Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, arts 2(1), 3(10). 'Fossil fuel' means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products; and 'petroleum products' means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (meaning a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point): art 3(3), (8).

12 *Ibid* art 4(1).

13 *Ibid* art 4(2).

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1329 Imposition of renewable transport fuel obligations

NOTE 5--Definition of 'fossil fuel' in Energy Act 2004 s 132(4) amended: Energy Act 2008 Sch 5 para 19.

NOTE 6--'Administrator' means the person for the time being appointed as the Administrator by order under the Energy Act 2004 ss 124-132: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(1)).

NOTES 7, 11--SI 2007/3072 arts 3(10), 4(4) amended: SI 2009/843.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1330. The administrator.

1330. The administrator.

An RTF order¹ may, for the purposes of provision made by or under the relevant statutory provisions², appoint a person as the administrator³. Such an order may:

- 3510 (1) establish a body corporate to be appointed as the administrator;
- 3511 (2) make provision for the appointment of members of that body;
- 3512 (3) make provision in relation to the staffing of that body;
- 3513 (4) make provision in relation to the expenditure of that body;
- 3514 (5) make provision regulating the procedure of that body;
- 3515 (6) make any other provision that the Secretary of State⁴ considers appropriate for purposes connected with the establishment and maintenance of that body⁵;

and the provision that may be made by virtue of heads (1) to (6) above in relation to a body corporate includes, in particular, provision conferring discretions on the Secretary of State, the body itself, or members or staff of the body⁶.

Only the following persons may be appointed as the administrator:

- 3516 (a) a body or other person established or appointed by or under any enactment⁷ to carry out other functions;
- 3517 (b) a body established by virtue of heads (1) to (6) above⁸;

and where provision is made by an RTF order for the appointment of a body or other person within head (a) above, such an order may make such modifications⁹ of any enactment relating to that body or person as the Secretary of State considers appropriate for the purpose of facilitating the carrying out of the functions of the administrator¹⁰.

An RTF order appointing a person as the administrator may:

- 3518 (i) confer or impose powers and duties on the administrator for purposes connected with the implementation of provision made by or under the relevant statutory provisions¹¹;
- 3519 (ii) confer discretions on the administrator in relation to the making of determinations under such an order and otherwise in relation to his powers and duties; and
- 3520 (iii) impose duties on transport fuel suppliers¹² for purposes connected with the administrator's powers and duties¹³.

The powers that may be conferred on the administrator by virtue of heads (i) to (iii) above include, in particular:

- 3521 (A) power to require a transport fuel supplier to provide him with such information as he may require for purposes connected with the carrying out of the administrator's functions;

- 3522 (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
- 3523 (c) power to impose charges of specified¹⁴ amounts on transport fuel suppliers¹⁵.

The Secretary of State may make grants to the administrator on such terms as the Secretary of State may determine¹⁶.

The Office of the Renewable Fuels Agency is established as a body corporate with effect from 26 October 2007, and is appointed as the administrator pursuant to the above provisions¹⁷. The administrator must establish and maintain RTF accounts for transport fuel suppliers¹⁸ and must make an annual report to the Secretary of State which is then to be laid before Parliament¹⁹.

1 For the meaning of 'RTF order' see PARA 1329 ante.

2 le by or under the Energy Act 2004 Pt 2 Ch 5 (ss 124-132): see PARA 1329 ante; the text and notes 3-16 infra; and PARA 1331 et seq post.

3 Ibid s 125(1).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Energy Act 2004 s 125(8).

6 Ibid s 125(9).

7 For the meaning of 'enactment' see PARA 750 note 9 ante.

8 Energy Act 2004 s 125(6).

9 For the meaning of 'modifications' see PARA 733 note 8 ante.

10 Energy Act 2004 s 125(7).

11 See note 2 supra.

12 For the meaning of 'transport fuel supplier' see PARA 1329 note 3 ante.

13 Energy Act 2004 s 125(2). The duties that may be imposed by virtue of s 125(2)(c) (see head (iii) in the text) include, in particular, duties framed by reference to determinations made by the administrator: s 125(5).

14 For the meaning of 'specified' see PARA 1329 note 4 ante.

15 Energy Act 2004 s 125(3). Sums received by the administrator by virtue of provision within s 125(3)(c) (see head (c) in the text) must be used by him for the purpose of meeting costs incurred by him in carrying out his functions as the administrator: s 125(4).

16 Ibid s 125(10).

17 See the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 6(1). As to the constitution of the Office, its staff and proceedings see art 6(2), Schedule paras 1-8. For financial provisions see Schedule paras 9-15. The Office must give the Secretary of State information, advice and assistance about any matter in respect of which it has any functions if (1) the Office considers it appropriate to do so; or (2) the Secretary of State asks the Office to do so in connection with the carrying out of any the Secretary of State's functions: Schedule para 16. As to the avoidance of any conflicts of interest see Schedule paras 17, 18; and as to the status of the Office see Schedule para 19. For supplementary provisions see Schedule paras 20, 21.

18 See ibid arts 7-11.

19 See ibid art 14. As to the administrator's powers and duties to require information see arts 12, 13; and as to the administrator's other powers and duties see art 15.

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1330 The administrator

TEXT AND NOTES 1-16--Replaced. See now the Energy Act 2004 ss 125-125C (ss 125-125C substituted for s 125 by the Climate Change Act 2008 Sch 7 para 2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1331. Determinations of amounts of transport fuel.

1331. Determinations of amounts of transport fuel.

An RTF order¹ may make provision about how amounts of transport fuel² are to be counted or determined for the purposes of provision made by or under the relevant³ statutory provisions⁴. The provision that may be so made includes, in particular:

- 3524 (1) provision for amounts of renewable transport fuel⁵ to count towards discharging a renewable transport fuel obligation⁶ for a period only if the fuel is of a specified⁷ description;
- 3525 (2) provision for amounts of renewable transport fuel of a specified description to count towards discharging such an obligation only up to a specified amount;
- 3526 (3) provision for such an obligation not to be treated as discharged unless a specified minimum amount of renewable transport fuel of a specified description has been counted towards its discharge;
- 3527 (4) provision for only such proportion of any renewable transport fuel of a specified description as is attributable to a specified substance, source of energy, method, process or other matter to count towards discharging such an obligation;
- 3528 (5) provision as to how that proportion is to be determined;
- 3529 (6) provision for an amount of renewable transport fuel of a specified description to count towards discharging such an obligation only if, or to the extent that, specified conditions are satisfied in relation to its supply⁸, the person by or to whom it was supplied or the place at or for delivery to which it was supplied;
- 3530 (7) provision for evidence produced by a supplier in relation to any fuel not to count for the purposes of his renewable transport fuel obligation for a period if evidence in relation to the same fuel has previously been produced, whether by him or by another supplier;
- 3531 (8) provision for evidence produced by a supplier in relation to any fuel not to count for those purposes if, after the supply to which the evidence relates, the fuel is supplied by any person at or for delivery to a place outside the United Kingdom⁹ or a specified part of the United Kingdom;
- 3532 (9) provision about the measurement of amounts of different descriptions of transport fuel;
- 3533 (10) provision for units of transport fuel of a specified description to count for more or less than the same units of transport fuel of other descriptions;
- 3534 (11) provision about how measurements in different units of different descriptions of transport fuel are to be aggregated;
- 3535 (12) provision for the application of presumptions where specified matters are shown¹⁰.

The provision that may be so made also includes, in particular, provision which:

- 3536 (a) is made having regard to one or more of the effects mentioned below, whether in the United Kingdom or elsewhere, namely the effects of the production, supply or use of fuel of a particular description on:

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- 474. (i) carbon emissions;

- 475. (ii) agriculture;
 - 476. (iii) other economic activities;
 - 477. (iv) sustainable development; or
 - 478. (v) the environment generally; or
- 324
- 3537 (b) requires regard to be had to one or more such effects¹¹.

The Renewable Transport Fuel Obligations Order 2007¹², which is made in the exercise of these powers, makes provision for the determinations of amounts of transport fuel for these purposes¹³.

- 1 For the meaning of 'RTF order' see PARA 1329 ante.
- 2 For the meaning of 'transport fuel' see PARA 1329 note 3 ante.
- 3 Ie under the Energy Act 2004 Pt 2 Ch 5 (ss 124-132): see PARAS 1329-1330 ante; the text and notes 4-11 infra; and PARA 1332 et seq post.
- 4 Ibid s 126(1).
- 5 For the meaning of 'renewable transport fuel' see PARA 1329 note 3 ante.
- 6 For the meaning of 'renewable transport fuel obligation' see PARA 1329 ante.
- 7 For the meaning of 'specified' see PARA 1329 note 4 ante.
- 8 For the meaning of 'supply' see PARA 1329 note 3 ante.
- 9 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 10 Energy Act 2004 s 126(2).
- 11 Ibid s 126(3).
- 12 Ie the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, which came into force on 26 October 2007: see art 1.
- 13 See ibid art 5.

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1331 Determinations of amounts of transport fuel

TEXT AND NOTES--If an RTF order makes provision for the counting or determination of amounts of transport fuel for the purposes of provision made by or under the Energy Act 2004 ss 124-132 by reference to any document, it may provide for references to the document to have effect as references to it as revised or re-issued from time to time: s 126(5) (s 126(5)-(8) added by the Climate Change Act 2008 Sch 7 para 3). The Secretary of State may give written directions to the Administrator about the exercise of any of the Administrator's functions in connection with the counting or determination of amounts of transport fuel for the purposes of provision made by or

under the Energy Act 2004 ss 124-132: s 126(6). The power to give directions under s 126(6) includes power to vary or revoke the directions: s 126(7). The Administrator must comply with any directions given under s 126(6): s 126(8).

NOTE 13--SI 2007/3072 art 5 amended: SI 2009/843.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1332. Renewable transport fuel certificates.

1332. Renewable transport fuel certificates.

An RTF order¹ may make provision for the administrator² to issue certificates to transport fuel suppliers³ ('RTF certificates')⁴. An RTF certificate is to certify:

- 3538 (1) that the supplier to whom it is issued has supplied⁵ the amount of renewable transport fuel⁶ stated in the certificate;
- 3539 (2) that that amount of such fuel was supplied by him during the period stated in the certificate;
- 3540 (3) that that amount of such fuel was supplied by him during that period at or for delivery to a place in the United Kingdom⁷ or in the part of the United Kingdom stated in the certificate; and
- 3541 (4) the other specified⁸ facts⁹.

Such a certificate may be issued to a supplier only if:

- 3542 (a) he applies for it in the specified manner;
- 3543 (b) his application includes evidence of the specified kind and in the specified form; and
- 3544 (c) the other specified conditions are satisfied¹⁰.

An RTF order may authorise transfers of RTF certificates, whether for a consideration or otherwise, between persons of specified descriptions¹¹. Such an order may also provide that such a transfer is not to be effective unless:

- 3545 (i) the specified details of it have been notified to the administrator in the specified manner and within the specified time; and
- 3546 (ii) the other specified requirements have been complied with¹².

If a supplier produces an RTF certificate to the administrator, it is to count for the statutory purposes¹³ as sufficient evidence of the facts certified¹⁴. An RTF order may provide that, in specified circumstances, evidence so produced¹⁵ may count to the specified extent towards the discharge of a renewable transport fuel obligation¹⁶ for a period even if it is produced after the time by which evidence had to be produced for the purposes of that obligation¹⁷. Such an order may also provide that, in specified circumstances, evidence so produced¹⁸ may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period that is later than the period stated¹⁹ in the certificate in question²⁰.

1 For the meaning of 'RTF order' see PARA 1329 ante.

2 For the meaning of 'administrator' see PARA 1329 note 6 ante; and as to the appointment of the administrator see PARA 1330 ante.

3 For the meaning of 'transport fuel supplier' see PARA 1329 note 3 ante.

4 Energy Act 2004 s 127(1).

- 5 For the meaning of 'supply' see PARA 1329 note 3 ante.
- 6 For the meaning of 'renewable transport fuel' see PARA 1329 note 3 ante.
- 7 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 8 For the meaning of 'specified' see PARA 1329 note 4 ante.
- 9 Energy Act 2004 s 127(2).
- 10 Ibid s 127(3). As to applications for RTF certificates see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 16; as to their issue see art 17; and as to their revocation see art 20.
- 11 Energy Act 2004 s 127(4). As to transfers of RTF certificates see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 18.
- 12 Energy Act 2004 s 127(5).
- 13 Ie for the purposes of ibid s 124(2): see PARA 1329 ante.
- 14 Ibid s 127(6): see the text and notes 13-14 supra.
- 15 Ie produced by virtue of ibid s 127(6).
- 16 For the meaning of 'renewable transport fuel obligation' see PARA 1329 ante.
- 17 Energy Act 2004 s 127(7).
- 18 See note 15 supra.
- 19 Ie in accordance with the Energy Act 2004 s 127(2)(b): see head (2) in the text.
- 20 Ibid s 127(8); and see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 19.

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1333. Discharge of obligation by payment.

1333. Discharge of obligation by payment.

An RTF order¹ may provide that a person who does not wholly discharge his renewable transport fuel obligation² for a period by the production of evidence must pay the administrator³ the specified⁴ sum within the specified period⁵. The provision that may be so made includes, in particular, provision:

- 3547 (1) for the specified sum to increase, in cases where that sum is not paid within a specified period, at the specified rate until it is paid or until the occurrence of a specified event;
- 3548 (2) for specified amounts to be adjusted from time to time for inflation in the specified manner⁶;
- 3549 (3) for the repayment of sums in cases where provision made with regard to the discharge of a renewable transport fuel obligation for a period by virtue of the relevant statutory provision relating to evidence⁷ applies in relation to a person;
- 3550 (4) prohibiting the administrator from taking steps to recover the specified sum or a part of that sum if specified conditions are satisfied⁸.

An RTF order may provide that, in a case in which the amount of payments⁹ which the administrator has received by the specified time in respect of renewable transport fuel obligations for any period falls short of the amount due in respect of that period, the persons who:

- 3551 (a) were subject to renewable transport fuel obligations for that period; and
- 3552 (b) are of a specified description,

must, within the specified period and in the specified circumstances, each make a payment, or further payment, to the administrator of an amount calculated in the specified manner¹⁰. The provision that may be so made includes, in particular, provision for the making of adjustments and repayments after a requirement to make payments has already arisen¹¹.

An RTF order may require the administrator to use, to the specified extent, the sums received by him by virtue of the above provisions for the purpose of meeting costs incurred by him in carrying out his functions as the administrator¹². To the extent that the administrator does not so use the sums so received, they must be paid by him to transport fuel suppliers¹³, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation¹⁴.

1 For the meaning of 'RTF order' see PARA 1329 ante.

2 For the meaning of 'renewable transport fuel obligation' see PARA 1329 ante.

3 For the meaning of 'administrator' see PARA 1329 note 6 ante; and as to the appointment of the administrator see PARA 1330 ante.

4 For the meaning of 'specified' see PARA 1329 note 4 ante.

5 Energy Act 2004 s 128(1). As to payments see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 21.

6 Provision within the Energy Act 2004 s 128(2)(b) (see head (2) in the text) may refer, in particular, to a specified index or to other data, including any index or data as modified from time to time after the coming into force of the order: s 128(3).

7 Ie by virtue of ibid s 127(7): see PARA 1332 ante.

8 Ibid s 128(2).

9 Ie payments by virtue of ibid s 128(1): see the text and notes 1-4 supra.

10 Ibid s 128(4).

11 Ibid s 128(5).

12 Ibid s 128(6). For the prescribed system of allocation of such sums see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 22(2)-(4).

13 For the meaning of 'transport fuel supplier' see PARA 1329 note 3 ante.

14 Energy Act 2004 s 128(7); and see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 22(1), (5), (6).

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1333 Discharge of obligation by payment

TEXT AND NOTES 12-14--Replaced. Energy Act 2004 s 128(6), (7) now s 128(6)-(10) (substituted by Climate Change Act 2008 Sch 7 para 4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1334. Imposition of civil penalties.

1334. Imposition of civil penalties.

An RTF order¹ may:

- 3553 (1) designate a provision made by or under the relevant statutory provisions² for these purposes; and
- 3554 (2) provide that a person is to be liable to a civil penalty if he contravenes³ that provision and if any other specified⁴ conditions are satisfied⁵.

Where the administrator⁶ is satisfied that a person (the 'defaulter') is so liable, he may give a notice to the defaulter in the specified manner (a 'civil penalty notice') imposing on the defaulter a penalty of such amount as the administrator considers appropriate⁷. That penalty must not exceed the lesser of:

- 3555 (a) the specified amount; and
- 3556 (b) the amount equal to ten per cent of the turnover, as determined in the specified manner, of the specified business of the defaulter⁸.

The civil penalty notice must:

- 3557 (i) set out the administrator's reasons for deciding that the defaulter is liable to a penalty;
- 3558 (ii) state the amount of the penalty that is being imposed;
- 3559 (iii) set out a date before which the penalty must be paid to the administrator⁹;
- 3560 (iv) describe how payment may be made;
- 3561 (v) explain the steps that the defaulter may take if he objects to the penalty; and
- 3562 (vi) set out and explain the powers of the administrator to enforce the penalty¹⁰.

A penalty imposed by virtue of these provisions must be paid to the administrator:

- 3563 (A) by the date set out in the civil penalty notice by which it is imposed; and
- 3564 (B) in a manner described in that notice¹¹.

Sums received by the administrator by virtue of these provisions must be paid to the Secretary of State¹², who must pay them into the Consolidated Fund¹³.

1 For the meaning of 'RTF order' see PARA 1329 ante.

2 I.e. made by or under the Energy Act 2004 Pt 2 Ch 5 (ss 124-132): see PARA 1329 et seq ante; the text and notes 3-13 infra; and PARAS 1335-1336 post.

3 For the meaning of 'contravention' and cognate expressions see PARA 761 note 7 ante.

4 For the meaning of 'specified' see PARA 1329 note 4 ante.

5 Energy Act 2004 s 129(1); and see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 23.

6 For the meaning of 'administrator' see PARA 1329 note 6 ante; and as to the appointment of the administrator see PARA 1330 ante.

7 Energy Act 2004 ss 129(2), 132(1). As to objections to, and appeals against, civil penalty notices see PARAS 1335-1336 post.

8 Ibid s 129(3).

9 The date for the payment of the penalty must not be less than 14 days after the giving of the civil penalty notice: ibid s 129(5).

10 Ibid s 129(4).

11 Ibid s 129(6).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 Energy Act 2004 s 129(7). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1334 Imposition of civil penalties

TEXT AND NOTES 12, 13--Sums received by the Administrator by virtue of the Energy Act 2004 s 129 (1) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund; and (2) otherwise, must be paid to the Secretary of State, who must pay them into the Consolidated Fund: Energy Act 2004 s 129(7) (substituted by the Climate Change Act 2008 Sch 7 para 5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1335. Objections to civil penalties.

1335. Objections to civil penalties.

A person to whom a civil penalty notice¹ is given may give notice to the administrator² that he objects to the penalty on one or both of the following grounds:

- 3565 (1) that he is not liable to pay it;
- 3566 (2) that the amount of the penalty is too high³.

The notice of objection:

- 3567 (a) must set out the grounds of the objection and the objector's reasons for objecting on those grounds; and
- 3568 (b) must be given to the administrator in the specified⁴ manner and within the specified period after the giving of the civil penalty notice⁵.

The administrator must consider a notice of objection given in accordance with the above provisions and may then:

- 3569 (i) cancel the penalty;
- 3570 (ii) reduce it;
- 3571 (iii) increase it; or
- 3572 (iv) confirm it⁶.

The administrator must not enforce a penalty in respect of which he has received a notice of objection before he has notified the objector of the outcome of his consideration of the objection⁷. That notification of the outcome of his consideration must be given, in the specified manner:

- 3573 (A) before the end of the specified period; or
- 3574 (B) within such longer period as he may agree with the objector⁸.

Where, on consideration of an objection, the administrator increases the penalty, he must give the objector a new civil penalty notice; and, where he reduces it, the above-mentioned notification⁹ must set out the reduced amount¹⁰.

1 For the meaning of 'civil penalty notice' see PARA 1334 ante.

2 For the meaning of 'administrator' see PARA 1329 note 6 ante; and as to the appointment of the administrator see PARA 1330 ante.

3 Energy Act 2004 s 130(1).

4 For the meaning of 'specified' see PARA 1329 note 4 ante.

5 Energy Act 2004 s 130(2); and see the Renewable Transport Fuel Obligations Order 2007, SI 2007/3072, art 24.

6 Energy Act 2004 s 130(3).

7 Ibid s 130(4).

8 Ibid s 130(5).

9 Ie the notification mentioned in ibid s 130(5): see the text to note 8 supra.

10 Ibid s 130(6).

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/6. RENEWABLE TRANSPORT FUEL OBLIGATIONS/1336. Appeals against civil penalties.

1336. Appeals against civil penalties.

A person to whom a civil penalty notice¹ is given may appeal to the court² on one or both of the following grounds:

- 3575 (1) that he is not liable to pay the penalty;
- 3576 (2) that the amount of the penalty is too high³.

An appeal under these provisions must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court⁴ and may be brought in relation to a penalty irrespective of whether a notice of objection⁵ has been given in respect of that penalty or whether there has been an increase or reduction⁶ on consideration of the objection⁷. Such an appeal is to be by way of a rehearing of the administrator's⁸ decision to impose the penalty⁹.

On such an appeal, the court may:

- 3577 (a) allow the appeal and cancel the penalty;
- 3578 (b) allow the appeal and reduce the penalty; or
- 3579 (c) dismiss the appeal¹⁰.

The matters to which the court may have regard when determining such an appeal include all matters that the court considers relevant, including:

- 3580 (i) matters of which the administrator was unaware when he made his decision; and
- 3581 (ii) matters which the court would otherwise be prevented from having regard to by virtue of rules of court¹¹.

1 For the meaning of 'civil penalty notice' see PARA 1334 ante.

2 For these purposes, 'the court' means, in England and Wales or Northern Ireland, the High Court: Energy Act 2004 s 131(7)(a).

3 Ibid s 131(1).

4 Ibid s 131(2). The appellant's notice must be filed at the court within 28 days after the date of the decision to impose a civil penalty: see *Practice Direction--Appeals* PD 52 para 17.3.

5 Ie a notice of objection under the Energy Act 2004 s 130: see PARA 1335 ante.

6 Ie under ibid s 130.

7 Ibid s 131(6).

8 For the meaning of 'administrator' see PARA 1329 note 6 ante; as to the appointment of the administrator see PARA 1330 ante; and as to his power to impose civil penalties see PARA 1334 ante.

9 Energy Act 2004 s 131(4).

10 Ibid s 131(3).

11 Ibid s 131(5).

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

1336 Appeals against civil penalties

NOTES--See Climate Change Act 2008 ss 131A-131C; and PARA 1336A.

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1336A. Disclosure of information.

Information held by or on behalf of the Commissioners for Her Majesty's Revenue and Customs in connection with their functions under or by virtue of the Hydrocarbon Oil Duties Act 1979 may be disclosed to the Administrator, or an authorised person, for the purposes of or in connection with the Administrator's functions: Energy Act 2004 s 131A(1), (2) (ss 131A-131C added by the Climate Change Act 2008 Sch 7 para 6). In the Energy Act 2004 ss 124-132 'authorised person' means a person who provides services to, or exercises functions on behalf of, the Administrator, and is authorised by the Administrator to receive information to which s 131A applies: s 131A(3). The Administrator may authorise such a person to receive information to which s 131A applies either generally or for a specific purpose: s 131A(4).

Section 131B applies to information disclosed under s 131A, other than information which is also provided to the Administrator or an authorised person otherwise than under s 131A: s 131B(1). Information to which s 131B applies may not be disclosed by the Administrator, by an authorised person, or by any other person who obtains it in the course of providing services to, or exercising functions on behalf of, the Administrator, except as permitted by s 131B(3), (4): s 131B(2). Section 131B(2) does not apply to a disclosure made by the Administrator to an authorised person, by an authorised person to the Administrator, or by an authorised person to another authorised person, for the purposes of, or in connection with, the discharge of the Administrator's functions: s 131B(3). Section 131B(2) does not apply to a disclosure if it is (1) authorised by an enactment; (2) made in pursuance of an order of a court; (3) made for the purposes of a criminal investigation or criminal proceedings, whether or not within the United Kingdom relating to a matter in respect of which the Administrator has functions; (4) made for the purposes of civil proceedings, whether or not within the United Kingdom, relating to a matter in respect of which the Administrator has functions; (5) made with the consent of the Commissioners for Her Majesty's Revenue and Customs; or (6) made with the consent of each person to whom the information relates: s 131B(4).

A person commits an offence if he discloses information about a person in contravention of s 131B(2) and the person's identity is specified in the disclosure or can be deduced from it: s 131C(1). Information about a person means revenue and customs information relating to a person within the meaning of the Commissioners for Revenue and Customs Act 2005 s 19(2): Energy Act 2004 s 131C(2). It is a defence for a person charged with an offence under s 131C to prove that he reasonably believed that the disclosure was lawful, or that the information had already and lawfully been made available to the public: s 131C(3). A person guilty of an offence under s 131C is liable on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both: s 131C(4). In the application of s 131C in England and Wales, in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1), the reference to twelve months above is to be read as a reference to six months: see Energy Act 2004 s 131C(6). A prosecution for an offence under s 131C may be brought in England and Wales only with the consent of the Director of Public Prosecutions: see s 131C(5).

UPDATE

1329-1336 Renewable Transport Fuel Obligations

In the Energy Act 2004 ss 124-132, 'enactment' includes an enactment contained in subordinate legislation and an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales: s 132(1) (amended by Climate Change Act 2008 Sch 7 para 7(3)).

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7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES

(1) INTERNATIONAL PROVISIONS AND BODIES

(i) The European Atomic Energy Community ('Euratom')

1337. The Euratom Treaty.

The European Communities Act 1972 made the legislative changes which were necessary to enable the United Kingdom to comply with the obligations entailed by membership of the European Economic Community, the European Coal and Steel Community, and the European Atomic Energy Community ('Euratom')¹. Euratom was established by the Treaty establishing the European Atomic Energy Community² ('the Euratom Treaty') signed at Rome on 25 March 1957, to which the United Kingdom was not a party. The Treaty of Accession, whereby the United Kingdom, the Kingdom of Denmark, and the Republic of Ireland became members of Euratom and parties to the Euratom Treaty as amended or supplemented³, entered into force on 1 January 1973⁴. The conditions of admission and the adjustments to the Euratom Treaty necessitated thereby are set out in the Act of Accession, and the provisions of that Act concerning Euratom form an integral part of the Euratom Treaty⁵.

1 The European Communities Act 1972 also provides that certain other treaties entered into by Euratom before 22 January 1972 are given legal effect in the United Kingdom: s 1(2) (as amended), s 2(1), Sch 1 para 7. For this purpose 'treaty' includes any international agreement and any Protocol or annex to a treaty or international agreement: s 1(4). The relevant treaties are (1) Agreement of 29 May-19 June 1958 between Euratom and the United States of America (OJ 1959 p 309) with amendment (OJ 1962 p 2038); (2) Agreement of 8 November 1958 between Euratom and the United States of America concerning peaceful uses of atomic energy (OJ 1959 p 312); (3) Agreement of 6 October 1959 between Euratom and Canada for co-operation in the peaceful uses of atomic energy (OJ 1959 p 1165) as amended (see OJ L65, 8.3.78, p 16); (4) Technical agreement of 6 October 1959 between Euratom and Atomic Energy of Canada Ltd concerning peaceful uses of atomic energy (OJ 1959 p 1177) (and see OJ L27, 4.2.82, p 25); (5) Additional Agreement of 11 June 1960 between Euratom and the United States of America concerning peaceful uses of atomic energy (OJ 1961 p 668) as amended (see OJ 1962 p 2045; OJ 1964 p 2586; OJ L139, 22.5.74, p 24); and published as so amended in Cmnd 5392; (6) Agreement of 26 January 1961 concerning co-operation between Euratom and the International Labour Organisation (OJ 1961 p 473); (7) Agreement of 9 June 1961 between Euratom and Brazil concerning the peaceful uses of atomic energy (OJ L79, 31.3.69, p 7); (8) Exchange of Letters of 9-14 December 1961 between the President of the Euratom Commission and the Director General of the Food and Agriculture Organisation of the United Nations (OJ 1962 p 1356); (9) Agreement of 4 September 1962 between Euratom and the Argentine Republic concerning the peaceful uses of nuclear energy (OJ 1963 p 2966); (10) Agreement of 27 May 1964 on the exchange of information between Euratom and the United States Atomic Energy Commission (OJ 1966 p 2481); and (11) Exchange of Letters of 18 November 1965 between the Commission and the International Bureau of Weights and Measures (OJ 1966 p 614); see Cmnd 4862-I, Appendix. Except as regards the agreement published in Cmnd 5392 (see head (5) supra), English texts of these treaties are contained in European Communities, Treaties and Related Instruments (HMSO 1972) vol IX.

The European Communities (Definition of Treaties) (No 5) (Joint European Torus) Order 1978, SI 1978/1032, made under the European Communities Act 1972 s 1(3), declares the Exchange of Letters dated 3 May 1978 between the United Kingdom and Euratom regarding privileges to be granted to the Joint European Torus Joint Undertaking to be a Community Treaty as defined by the European Communities Act 1972 s 1(2) (as amended). The principal effect of this Order is to bring into play, in relation to the Exchange of Letters, the provisions of the European Communities Act 1972 s 2 (as amended).

- 2 The English text of the Euratom Treaty is reproduced in its original form in Cmnd 5179-II.
- 3 The Euratom Treaty has been amended by the Merger Treaty, the Budget Treaty, the Act of Accession and certain secondary legislation. Those amendments were included in the consolidated text published in 1973 by the European Communities. The Euratom Treaty was further amended by the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) ('the Maastricht Treaty') Title IV art I. All references in this title to the Euratom Treaty are to the unofficial consolidated version published by the European Communities in 1996, which includes the amendments made by the Maastricht Treaty. As to the provisions of the Euratom Treaty see PARAS 1338-1339 post.
- 4 See the Treaty of Accession (1972) (TS 16 (1979); Cmnd 7461) arts 1(1), 2. The English text of the original treaty is reproduced in Cmnd 5179-I.
- 5 Treaty of Accession art 1(2). The Act of Accession was annexed to the Treaty of Accession.

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1338. The task and duties of Euratom.

It is the task of the European Atomic Energy Community ('Euratom')¹ to contribute to the raising of the standard of living in the member states and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries².

In order to perform its task Euratom is under a duty:

- 3582 (1) to promote research³ and ensure the dissemination of technical information⁴;
- 3583 (2) to establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied⁵;
- 3584 (3) to facilitate investment and ensure, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community⁶;
- 3585 (4) to ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels⁷;
- 3586 (5) to make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended⁸;
- 3587 (6) to exercise the right of ownership conferred upon it with respect to special fissile materials⁹;
- 3588 (7) to ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialised materials and equipment, by the free movement of capital for investment in the field of nuclear energy and by freedom of employment for specialists within the Community¹⁰; and
- 3589 (8) to establish with other countries and international organisations such relations as will foster progress in the peaceful uses of nuclear energy¹¹.

The use of nuclear energy for military purposes is outside the scope of all the provisions of the Euratom Treaty¹².

1 I.e. the European Atomic Energy Community: Euratom Treaty art 1. As to citation of the Euratom Treaty see PARA 1337 note 3 ante.

2 Ibid art 1.

3 Ibid art 2(a). See further arts 4-11.

4 Ibid art 2(a). See further arts 12-23.

5 Ibid art 2(b). See further arts 30-39; and see eg Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. Member states must ensure that all new classes or types of practice resulting in exposure to ionising radiation are justified in advance of being first adopted or first approved by their economic, social or other benefits in relation to the health detriment they may cause: art 6(1). Existing classes or types of practice may be reviewed as to justification whenever new and important evidence about their efficacy or consequences is acquired: art 6(2). As to the principles to be applied by the Secretary of State when determining whether the economic benefits of a new process outweigh the health detriment see *R (on the*

application of Friends of the Earth Ltd) v Secretary of State for Environment, Food and Rural Affairs [2001] EWCA Civ 1847, [2002] 1 CMLR 608, [2001] All ER (D) 82 (Dec); and see *R (on the application of Marchiori) v Environment Agency* [2001] EWCA Civ 03, [2002] All ER (D) 220 (Jan) (decided under Euratom Council Directive 80/836 (OJ L246, 17.9.80, p 1 (repealed and replaced by Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1)) (the merits or demerits of government defence policy are not justiciable; the Environment Agency is entitled to regard the manufacture of Trident nuclear warheads as a benefit for the purposes of the justification principle).

See also Euratom Council Directive 89/618 (OJ L357, 7.12.89, p 31) on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency.

6 Euratom Treaty art 2(c). As to investment see arts 40-44; and as to joint undertakings see arts 45-51. Certain investment projects must be communicated to the European Commission: see art 41; and Euratom Council Regulation 2587/1999 (OJ L315, 9.12.99, p 1); EC Commission Regulation 1209/2000 (OJ L138, 9.6.2000, p 12).

7 Euratom Treaty art 2(d). As to supplies see arts 52-76.

8 Ibid art 2(e). As to security see arts 24-29; as to safeguards see arts 77-85; and as to the application of Euratom safeguards see Euratom Commission Regulation 302/2005 (OJ L54, 28.2.2005, p 1).

9 Euratom Treaty art 2(f). See further arts 86-91.

10 Ibid art 2(g). See further arts 92-100.

11 Ibid art 2(h). See further arts 101-106. The Community has concluded a number of international agreements to this end: see eg the Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy (OJ L32, 6.2.2007, p 65).

12 See Case C-65/04 *EC Commission v United Kingdom* (2006) Times, 29 March, [2006] All ER (D) 152 (Mar), ECJ, applying Case C-61/03 *EC Commission v United Kingdom* [2005] 2 CMLR 49, [2005] All ER (D) 106 (Apr), ECJ.

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1339. The institutions and Supply Agency of Euratom.

The tasks entrusted to Euratom are now carried out by the institutions of the Community, namely the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors¹. The Council and the Commission are assisted by an Economic and Social Committee acting in an advisory capacity². There is a Court of First Instance attached to the Court of Justice with jurisdiction to hear and determine certain classes of action or proceeding, subject to a right of appeal to the Court of Justice on points of law only³. The Court of First Instance is not, however, competent to hear and determine questions concerning the interpretation of the Euratom Treaty, the validity and interpretation of acts of the institutions of Euratom or the interpretation of the statutes of bodies established by an act of the Council which are referred to the Court of Justice for a preliminary ruling⁴.

A Supply Agency has been established under the Euratom Treaty in order to ensure the supply of ores⁵, source materials and special fissile materials⁶ by means of a common supply policy on the principle of equal access to sources of supply⁷. The agency has a right of option on ores, source materials and special fissile materials produced in member states and an exclusive right to conclude contracts relating to the supply of such materials coming from inside or outside Euratom⁸. The transfer of small quantities of ores, source materials and special fissile materials is exempted from the relevant rules in the Treaty⁹.

1 See the Euratom Treaty art 3(1). As to citation of the Euratom Treaty see PARA 1337 note 3 ante.

2 See *ibid* art 3(2).

3 See *ibid* art 140A.

4 See *ibid* art 140A(1). As to the jurisdiction of the Court of Justice see arts 136-160; and see eg Case C-29/99 *EC Commission v EU Council* [2002] ECR I-11221, [2002] All ER (D) 119 (Dec), ECJ.

5 'Ores' means any ore containing, in such average concentration as may be specified by the Council acting by a qualified majority on a European Commission proposal, substances from which the source materials defined below may be obtained by the appropriate chemical and physical processing: *ibid* art 197(4). The average concentrations specified are: for uranium-bearing ores, any average concentration of 0.1% or more uranium; for thorium-bearing ores except monazites, any average concentration of 3% or more thorium; for monazites, any average concentration of 10% or more thorium or 0.1% or more uranium: Euratom Council Regulation 9 (OJ L12, 22.2.60, p 482; Special Edn 1959-62 p 43) art 2. Average concentrations are the ratio between the weight of the uranium or thorium contained, in any form whatsoever, in a given quantity of ore and the weight of that same quantity of ore: art 1.

'Source materials' means uranium containing the mixture of isotopes occurring in nature; uranium whose content in uranium-235 is less than the normal; thorium; any of the above in the form of metal, alloy, chemical compound or concentrate; any other substance containing one or more of the above in such a concentration as may be specified by the Council acting in a qualified majority on a Commission proposal: Euratom Treaty art 197(3). At the date at which this title states the law, no concentration had been so specified.

6 'Special fissile materials' means plutonium-239; uranium-233; uranium enriched in uranium-235 or uranium-233; and any other substance containing one or more of the above isotopes and such other fissile materials as may be specified by the Council acting by a qualified majority on a Commission proposal, but does not include source materials: *ibid* art 197(1). At the date at which this title states the law, no other fissile materials had been so specified. 'Uranium enriched in uranium-235 or uranium-233' means uranium containing

uranium-235 or uranium-233 or both in an amount such that the abundance ratio of the sum of these isotopes to isotope 238 is greater than the ratio of isotope 235 to isotope 238 occurring in nature: art 197(2).

7 See *ibid* art 52. The Supply Agency is under the supervision of the Commission (art 53) and has legal personality and financial autonomy (art 54). See also the Statutes of the Euratom Supply Agency (OJ 27, 6.12.58, p 534) (as amended).

8 See the Euratom Treaty art 52(2). Member states must communicate or cause to be communicated to the Agency all the information necessary to enable it to exercise its right of option and its exclusive right to conclude supply contracts: *ibid* art 55. They are responsible for ensuring that the Agency may operate freely in their territories; and may establish one or more bodies having authority to represent, in relations with the Agency, producers and users in the non-European territories under their jurisdiction: art 56. See further arts 57-76.

9 See Euratom Commission Regulation 66/2006 (OJ L11, 17.1.2006, p 6) exempting the transfer of small quantities of ores, source materials and special fissile materials from the rules of the chapter on supplies.

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(ii) Other International Provisions and Bodies

A. INTERNATIONAL PROVISIONS

1340. Nature of international provisions.

Much of the domestic law relating to atomic energy and radioactive substances is derived directly or indirectly from the provisions of international treaties¹ and conventions², and regulations³ and recommendations⁴ made by international bodies⁵. These treaties and conventions are the outcome of agreements between sovereign states providing for the mutual and uniform regulation of the use of atomic energy and the use and transport of radioactive substances, but they are in the nature of multilateral treaties between states and form part of English municipal law⁶ only in so far as they are incorporated into that law by domestic legislation⁷. Regulations made under the Euratom Treaty are, however, of general application, are binding in their entirety and are directly applicable in all member states⁸.

1 As to such treaties see PARAS 1341-1342 post.

2 As to such conventions see PARAS 1343-1352 post.

3 As to such regulations see PARA 1354 post.

4 As to such recommendations see PARAS 1354, 1356 post.

5 As to such international bodies see PARAS 1354-1356 post.

6 Cf *Republic of Italy v Hambros Bank Ltd and Gregory (Custodian of Enemy Property)* [1950] Ch 314, [1950] 1 All ER 430. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802.

7 As to indirect incorporation see eg the Nuclear Installations Acts 1965 and 1969 (see PARAS 1357 note 9, 1487 et seq post) giving effect to the conventions mentioned in PARAS 1345-1347 post. As to international conventions see generally INTERNATIONAL RELATIONS LAW.

8 Euratom Treaty art 161.

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1341. Treaties relating to nuclear weapons.

States party to the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water¹ undertake to prohibit, to prevent and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under such a state's jurisdiction or control in the atmosphere; beyond its limits, including outer space; under water, including territorial waters or high seas; or in any other environment, if the explosion causes radioactive debris to be present outside the territorial limits of the state under whose jurisdiction or control the explosion is conducted². The United Kingdom is also a party to the Comprehensive Nuclear Test Ban Treaty which bans all nuclear explosions in all environments, for military or civilian purposes³. That treaty, however, is not yet in force⁴.

States party to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies⁵ undertake, inter alia, not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, or install such weapons on celestial bodies, or station such weapons in outer space in any other manner, and agree that the moon and other celestial bodies must be used by all states party to the treaty exclusively for peaceful purposes⁶.

States party to the Treaty on the Non-Proliferation of Nuclear Weapons⁷ undertake not to transfer to any recipient, or receive from any transferor, nuclear weapons or other nuclear explosive devices⁸. There are provisions with regard to the acceptance and implementation of safeguards with a view to ensuring that the obligations assumed by states under the treaty are fulfilled⁹, including an undertaking by each state not to provide source or special fissionable material¹⁰, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon state for peaceful purposes, unless the source or special fissionable material is subject to such safeguards¹¹. An Agreement ('the Safeguards Agreement')¹² has been entered into between the United Kingdom, the European Atomic Energy Community ('Euratom') and the International Atomic Energy Agency ('the IAEA') providing for the implementation of safeguards in the United Kingdom in connection with the Treaty. The Safeguards Agreement has been given effect in English law by the Nuclear Safeguards and Electricity (Finance) Act 1978¹³; and the Additional Protocol to the Safeguards Agreement¹⁴ has been given effect in English law by the Nuclear Safeguards Act 2000¹⁵.

States party to the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof¹⁶ undertake not to emplant or emplace on the sea bed and the ocean floor and in the subsoil thereof beyond the outer limit of a defined sea bed zone any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons¹⁷. There are provisions with respect to verifying through observation the activities of states party to the treaty¹⁸.

1 le the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (Moscow, 5 August 1963; TS 3 (1964); Cmnd 2245). The treaty is drawn up in English and Russian, each text being equally authentic. It was ratified by the United Kingdom on 10 October 1963 and entered into force on that

date. The treaty has not been incorporated into English municipal law, either directly or indirectly; but see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 See the Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water art 1(1).

3 The Comprehensive Nuclear Test Ban Treaty was opened for signature in New York on 24 September 1996, signed by the United Kingdom government on that date and ratified by the United Kingdom on 6 April 1998.

4 The Comprehensive Nuclear Test Ban Treaty will enter into force 180 days after it is ratified by all of the 44 countries listed in Annex 2, including China, Israel and the United States of America.

5 See the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (London, Moscow and Washington, 27 January 1967; TS 10 (1968); Cmnd 3519). The treaty is drawn up in Chinese, English, French, Russian and Spanish. It was ratified by the United Kingdom on 10 October 1967 and entered into force on that date. The treaty has not been incorporated into English municipal law, either directly or indirectly; but see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802.

6 See the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies art IV.

7 See the Treaty on the Non-Proliferation of Nuclear Weapons (London, Moscow and Washington, 1 July 1968; TS 88 (1970); Cmnd 4474). The treaty is drawn up in Chinese, English, French, Russian and Spanish, each text being equally authentic. It was ratified by the United Kingdom on 27 and 29 November 1969, and entered into force on 5 March 1970. The treaty has not been incorporated into English municipal law, either directly or indirectly; but see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802.

8 See *ibid* arts I, II.

9 See *ibid* art III. As to the application of safeguards by the International Atomic Energy Agency see PARA 1354 the text and note 4 post; and as to Euratom safeguards see PARA 1338 ante. See also note 13 *infra*.

10 The expression 'source or special fissionable material' is not defined in the treaty. Cf the meanings of 'source materials' and 'special fissile materials' in the Euratom Treaty: see PARA 1339 ante.

11 See the Treaty on the Non-Proliferation of Nuclear Weapons (Cmnd 4474) art III(2).

12 See the Agreement for the application of Safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (with Protocol) ('the Safeguards Agreement') (Vienna, 6 September 1976; Misc 2 (1977); Cmnd 6730). The text of the agreement was presented to Parliament on 3 March 1977.

13 See the Nuclear Safeguards and Electricity (Finance) Act 1978 s 1. The Act confers, on any person designated as an inspector by the International Atomic Energy Agency under the Safeguards Agreement art 85 or under the Additional Protocol art 11, powers of entry to civil nuclear installations for the purpose of making inspections permitted by the Safeguards Agreement arts 71-84, or verifying design information, as mentioned in art 50: Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(1) (amended by the Nuclear Safeguards Act 2000 s 11(3)(a)). As to the exercise of those powers of entry and inspection see the Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(2). Any person who intentionally obstructs any inspector exercising a power conferred on him by s 2(1) (as amended), or without reasonable excuse refuses or fails to provide any information or to permit any inspection reasonably required by any such inspector, or without reasonable excuse refuses or fails to carry out in a facility any operation which he is requested to carry out by an inspector, is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(4), (4A) (respectively amended and added by the Nuclear Safeguards Act 2000 s 11(3)(b)). If any person in giving information reasonably required by any inspector exercising a power conferred by the Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(1) (as amended) makes a statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or to both: s 2(5). The Secretary of State may make regulations, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, to give effect to certain provisions of the Safeguards Agreement: Nuclear Safeguards and Electricity (Finance) Act 1978 s 3(1), (3). Such regulations may provide that any person contravening or failing to comply with any provision of the regulations is to be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or not exceeding a lesser amount: s 3(2) (amended by virtue of the Criminal Justice Act 1982 s 46). At the date at which this title states the law, no such regulations had been made. As to offences by bodies corporate see the Nuclear Safeguards and Electricity (Finance) Act 1978 s 4. As to the Additional Protocol see note 14 *infra*; and

for the domestic legislation giving effect to it see PARAS 1578-1581 post. As to the standard scale see PARA 613 note 11 ante; as to the statutory maximum see PARA 689 note 2 ante; and as to the Secretary of State see PARA 601 note 1 ante. For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

14 le the Additional Protocol signed at Vienna on 22 September 1998 (Cm 6664) additional to the Safeguards Agreement. That Protocol required the United Kingdom to provide the International Atomic Energy Agency with a declaration containing certain information (see art 2) and to allow access by the Agency (1) to certain facilities, locations and decommissioned facilities in order to resolve any questions about that information (see arts 4-6); and (2) to specified locations in order to carry out wide-area environmental sampling (see art 9). On request by the United Kingdom, the United Kingdom and the Agency are to make arrangements for managed access in order to prevent the dissemination or proliferation of sensitive information: see art 7.

15 See PARAS 1578-1581 post. The provisions of the 1978 Act have been extended to the Channel Islands and the Isle of Man: see the Nuclear Safeguards (Jersey) Order 2004, SI 2004/1288; the Nuclear Safeguards (Isle of Man) Order 2004, SI 2004/1289; the Nuclear Safeguards (Guernsey) Order 2004, SI 2004/1290.

16 le the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof (London, Moscow and Washington, 11 February 1971; TS 13 (1973); Cmnd 5266). The treaty is drawn up in Chinese, English, French, Russian and Spanish, each text being equally authentic. It was ratified by the United Kingdom on 18 May 1972 and entered into force on that date. The treaty has not been incorporated in English municipal law, either directly or indirectly; but see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802.

17 See *ibid* art I(1).

18 See *ibid* art III.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(1) INTERNATIONAL PROVISIONS AND BODIES/(ii) Other International Provisions and Bodies/A. INTERNATIONAL PROVISIONS/1342. The Antarctic Treaty.

1342. The Antarctic Treaty.

Under the Antarctic Treaty¹ any nuclear explosions in Antarctica and the disposal there of radioactive waste material are prohibited². In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which certain of the contracting parties to the treaty³ are parties, the rules established under such agreements apply in Antarctica⁴.

On 4 October 1991 the parties to the Antarctic Treaty adopted the Protocol on Environmental Protection⁵. The Protocol enunciates a number of general principles and rules regarding the protection of the environment in the Antarctic Treaty Area. These principles are given specific substance in several annexes dealing with different aspects of environmental protection, one of which is waste disposal and waste management (including radioactive waste)⁶.

1 Ie the Antarctic Treaty (Washington, 1 December 1959; TS 97 (1961); Cmnd 1535). The treaty is drawn up in English, French, Russian and Spanish. It was ratified by the United Kingdom on 31 May 1960 and entered into force on 23 June 1961. See also the Antarctic Act 1994; and ANIMALS vol 2 (2008) PARAS 990-993.

2 See the Antarctic Treaty art V(1).

3 Ie all of the contracting parties whose representatives are entitled to participate in the meetings provided for under *ibid* art IX: art V(2).

4 *Ibid* art V(2).

5 Ie the Protocol on Environmental Protection to the Antarctic Treaty (Madrid, 4 October 1991; Misc 6 (1992); Cm 1960).

6 See the Protocol on Environmental Protection to the Antarctic Treaty (Cm 1960), Annex III on Waste Disposal and Waste Management, which contains two provisions on radioactive waste. Under Annex III art 2 parties are required to remove from the Treaty area all radioactive waste generated after the coming into force of the Annex, while under art 8 they are required to prepare and annually review management plans for all kinds of waste, including radioactive waste.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(1) INTERNATIONAL PROVISIONS AND BODIES/(ii) Other International Provisions and Bodies/A. INTERNATIONAL PROVISIONS/1343. OECD Convention on the Establishment of a Security Control in the Field of Nuclear Energy.

1343. OECD Convention on the Establishment of a Security Control in the Field of Nuclear Energy.

In accordance with their aim that any joint activities in the field of nuclear energy by member countries of the Organisation for European Economic Co-operation (now the Organisation for Economic Co-operation and Development (OECD)) should be directed towards peaceful purposes, the council of the organisation approved a Convention on the Establishment of a Security Control in the Field of Nuclear Energy, which was signed in Paris on 20 December 1957 by 17 countries, including the United Kingdom¹. The object of the security control is to ensure that joint undertakings established on the initiative or with the assistance of the Organisation for Economic Co-operation and Development Nuclear Energy Agency ('NEA')² and materials, equipment and services made available by the NEA or under its supervision do not further any military purpose³. Because, however, the system of security control under the Convention duplicated the work of the equivalent systems of the International Atomic Energy Agency ('the IAEA')⁴ and Euratom⁵ which were applied on a wider geographic scale the OECD decided, on 14 October 1976, to authorise the Director of Control appointed under the Convention to suspend the application of the control regulations until further notice⁶.

1 See the Convention on the Establishment of a Security Control in the Field of Nuclear Energy (Paris, 20 December 1957; TS 8 (1960); Cmnd 971). The Convention was ratified by the United Kingdom on 9 May 1958 and came into force on 22 July 1959. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 As to the NEA see PARA 1355 post.

3 Convention on the Establishment of a Security Control in the Field of Nuclear Energy (Cmnd 971) art 1(a).

4 As to the IAEA see PARA 1354 post.

5 As to the system of control introduced by the IAEA in conjunction with Euratom see PARA 1341 ante.

6 The Director of Control was also instructed to keep the situation under review and to initiate reconsideration of the matter in the event of a significant change in the circumstances which led to the suspension of the control.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(1) INTERNATIONAL PROVISIONS AND BODIES/(ii) Other International Provisions and Bodies/A. INTERNATIONAL PROVISIONS/1344. The Radiation Protection Convention 1960.

1344. The Radiation Protection Convention 1960.

At Geneva on 22 June 1960 the General Conference of the International Labour Organisation¹ adopted a Convention concerning the Protection of Workers against Ionising Radiations². The Convention was ratified by the United Kingdom on 9 March 1962 and entered into force for the United Kingdom on 9 March 1963³. It applies to all activities involving exposure of workers to ionising radiations in the course of their work⁴, and each state which ratifies the Convention undertakes to give effect to it by means of laws or regulations, codes of practice or other appropriate means⁵.

The Convention provides that every effort must be made to restrict the exposure of workers to ionising radiations to the lowest practicable level and that any unnecessary exposure must be avoided by all parties concerned⁶, and requires the fixing of maximum permissible radiation doses for various categories of workers which must be kept under constant review in the light of current knowledge⁷. Appropriate warnings must be used to indicate the presence of hazards from ionising radiations⁸; workers directly engaged in radiation work must be instructed in the precautions to be taken for their protection⁹; appropriate monitoring of workers and places of work must be carried out¹⁰; every worker directly engaged in radiation work must undergo certain medical examinations¹¹; and no worker may be employed in work in which he could be subject to exposure to ionising radiations contrary to qualified medical advice¹².

1 As to the International Labour Organisation see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 311.

2 I.e. the International Labour Convention No 115 concerning the Protection of Workers against Ionising Radiations (Geneva, 22 June 1960; TS 41 (1963); Cmnd 2058) (which may be cited as 'the Radiation Protection Convention 1960').

3 At the date at which this title states the law, the Radiation Protection Convention 1960 had been ratified by 41 countries. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Ibid art 2(1). The Convention does not, however, apply to radioactive substances, whether sealed or unsealed, nor to apparatus generating ionising radiations, which substances or apparatus, owing to the limited doses of ionising radiations which can be received from them, are exempted from its provisions by means of national laws or regulations, codes of practice or other appropriate means: art 2(2). In applying the provisions of the Convention the competent authority must consult with representatives of employers and workers: art 1.

5 Ibid art 1. The United Kingdom gives effect to the Convention in various ways, eg by regulations under the Health and Safety at Work etc Act 1974: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 647 et seq.

6 Radiation Protection Convention 1960 art 5.

7 See ibid arts 6-8.

8 See ibid art 9(1).

9 See ibid art 9(2).

10 See ibid art 11.

11 See ibid arts 12, 13.

12 See ibid art 14.

UPDATE

1344 The Radiation Protection Convention 1960

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(1) INTERNATIONAL PROVISIONS AND BODIES/(ii) Other International Provisions and Bodies/A. INTERNATIONAL PROVISIONS/1345. The Paris Convention on Third Party Liability in the Field of Nuclear Energy.

1345. The Paris Convention on Third Party Liability in the Field of Nuclear Energy.

A Convention on Third Party Liability in the Field of Nuclear Energy was signed by 16 European countries at Paris on 29 July 1960¹. The purpose of this Convention, which was prepared by the European Nuclear Energy Agency of the Organisation for European Economic Co-operation (now the Organisation for Economic Co-operation and Development Nuclear Energy Agency ('the NEA'))², was to unify the basic rules applying, in the Organisation for Economic Co-operation and Development member countries, to the liability incurred for damage caused by nuclear incidents³ involving either nuclear fuel⁴ or radioactive products or waste⁵ in, or nuclear substances⁶ coming from, land-based nuclear installations⁷.

The main principles of the Convention are the absolute and exclusive liability, without proof of fault, of the operator⁸ of the nuclear installation concerned; limitations of liability in time and in amount; the operator's obligation to cover his liability by insurance or otherwise; and that there is to be one court, normally the court of the place where the incident occurs, competent for all claims arising out of the same incident, with the obligatory enforcement of its judgments in all countries party to the Convention.

In order to ensure that as far as possible there were no differences between this Convention and the Vienna Convention on Civil Liability for Nuclear Damage⁹, the signatories of the Paris Convention signed an Additional Protocol to that Convention on 28 January 1964¹⁰, the purpose of which was to bring the two Conventions into line with each other. The Paris Convention, as amended by the Protocol, has been ratified by the United Kingdom¹¹, and came into force in 1968¹².

A further Protocol amending the Paris Convention, in particular by replacing the original unit of account with the Special Drawing Right of the International Monetary Fund¹³ and also making technical modifications to take account of experience gained from practical application of the Convention, was signed on 16 November 1982¹⁴. The 1982 Protocol has been ratified or acceded to by all the states which ratified or acceded to the Convention as originally amended and came into force in 1988.

A Joint Protocol to establish a link between the Paris Convention and the Vienna Convention by mutually extending the benefit of the regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous application of both Conventions to a nuclear incident was opened for signature on 21 September 1988¹⁵. The Joint Protocol came into force in 1992¹⁶.

The Energy Act 2004 confers power on the Secretary of State to amend the Nuclear Installations Act 1965 and certain other enactments in order to give effect to the Joint Protocol or any Protocol amending the Paris Convention¹⁷.

1 See the Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960; Misc 17 (1960); Cmnd 1211) ('the Paris Convention'). See also note 10 infra.

2 As to the NEA see PARA 1355 post.

3 For the meaning of 'a nuclear incident' see the Paris Convention art 1(a)(i).

- 4 For the meaning of 'nuclear fuel' see *ibid* art 1(a)(iii).
- 5 For the meaning of 'radioactive products or waste' see *ibid* art 1(a)(iv).
- 6 For the meaning of 'nuclear substances' see *ibid* art 1(a)(v).
- 7 *Ibid* preamble, arts 1-3. For the meaning of 'nuclear installation' see *ibid* art 1(a)(ii).
- 8 For the meaning of 'operator' see *ibid* art 1(a)(vi).
- 9 As to the Vienna Convention see *PARA 1347 post*.
- 10 *Ie* the Additional Protocol to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy (Paris, 28 January 1964; Misc 13 (1964); Cmnd 2356). For the English text of the Paris Convention as amended by the Additional Protocol see Misc 22 (1964); Cmnd 2514.
- 11 For the meaning of 'United Kingdom' see *PARA 602 note 7 ante*.
- 12 The provisions of the Paris Convention and the Additional Protocol, the Brussels Supplementary Convention and the Additional Protocol to that Convention (see *PARA 1346 post*), and the Vienna Convention (see *PARA 1347 post*) are given effect in United Kingdom law by the Nuclear Installations Act 1965 and the Energy Act 1983: see *PARA 1487 et seq post*.
- 13 As to the International Monetary Fund see *FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1391*.
- 14 See the Protocol to amend the Convention on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 (Paris, 16 November 1982; Misc 21 (1983); Cmnd 9028).
- 15 See the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention (Vienna, from 21 September 1988; Misc 12 (1988); Cm 774).
- 16 The United Kingdom has signed the Joint Protocol but had not ratified it at the date at which this title states the law.
- 17 See the Energy Act 2004 s 76; and *PARA 1359 post*.

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1346. The Brussels Convention on Third Party Liability in the Field of Nuclear Energy.

A Convention supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy¹ was signed at Brussels on 31 January 1963². The object of this Convention is to provide for the payment of additional compensation out of public funds and jointly by the contracting parties where the maximum amount laid down in the Paris Convention is insufficient. A Protocol additional to the Brussels Supplementary Convention was signed on 28 January 1964³, having become necessary as a result of the modifications made to the Paris Convention by the Additional Protocol to the Paris Convention of 28 January 1964⁴. The Brussels Supplementary Convention, as amended by the Protocol, has been ratified by the United Kingdom⁵, and came into force on 4 December 1974⁶. A further Protocol amending the Convention, mainly providing for higher amounts of compensation to be provided by the contracting parties, was signed on 16 November 1982⁷. The 1982 Protocol has been ratified or acceded to by all the states which have ratified or acceded to the Convention as originally amended and came into force in 1991.

The Energy Act 2004 confers power on the Secretary of State to amend the Nuclear Installations Act 1965 and certain other enactments in order to give effect to any Protocol amending the Brussels Supplementary Convention⁸.

1 As to the Paris Convention and subsequent Protocols thereto see PARA 1345 ante.

2 See the Convention on Third Party Liability in the Field of Nuclear Energy ('the Brussels Supplementary Convention') (Brussels, 31 January 1963; Misc 8 (1963); Cmnd 2090).

3 For the English text of the Brussels Supplementary Convention as amended by the Additional Protocol see TS 44 (1975); Cmnd 5948.

4 As to the Additional Protocol to the Paris Convention see PARA 1345 the text and note 10 ante.

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 The provisions of the Brussels Supplementary Convention, as amended by the Additional Protocol, are given effect in United Kingdom law by the Nuclear Installations Act 1965 and the Energy Act 1983: see PARA 1487 et seq post.

7 See the Protocol to amend the Brussels Supplementary Convention as amended by the Additional Protocol of 28 January 1964 (Paris, 16 November 1982; TS 17 (1992); Cm 1832).

8 See the Energy Act 2004 s 76; and PARA 1359 post.

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1347. The Vienna Convention on Civil Liability for Nuclear Damage.

The Vienna Convention on Civil Liability for Nuclear Damage and an Optional Protocol concerning the Compulsory Settlement of Disputes were signed at Vienna on 21 May 1963¹. The Convention has been ratified or acceded to by 19 states² and came into force on 12 November 1977. The Convention, which was prepared under the auspices of the International Atomic Energy Agency ('the IAEA')³, embodies the same basic principles as the Paris Convention⁴, but is intended to have worldwide application. A Joint Protocol to establish a link between the Paris Convention and the Vienna Convention by mutually extending the benefit of the regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous application of both Conventions to a nuclear incident was opened for signature on 21 September 1988⁵.

An Additional Protocol to amend the Vienna Convention was opened for signature on 29 September 1997⁶, together with a Convention on Supplementary Compensation for Nuclear Damage⁷.

1 See the Vienna Convention on Civil Liability for Nuclear Damage and an Optional Protocol concerning the Compulsory Settlement of Disputes (Vienna, 21 May 1963; Misc 9 (1964); Cmnd 2333).

2 The United Kingdom signed the Convention and Protocol on 11 November 1964, but had not ratified them at the date at which this title states the law. The United Kingdom has, however, enacted legislation giving effect, inter alia, to the Convention: see the Nuclear Installations Act 1965; the Energy Act 1984; and PARA 1487 et seq post. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 As to the IAEA see PARA 1354 post.

4 As to the Paris Convention and subsequent Protocols thereto see PARA 1345 ante.

5 As to the Joint Protocol (Cm 774) see also PARA 1345 the text and notes 16-17 ante.

6 See the Protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage (Vienna, 29 September 1997).

7 See the Convention on Supplementary Compensation for Nuclear Damage (Vienna, 29 September 1997). The United Kingdom is not a signatory to the Protocol or the supplementary Convention.

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1348. The International Convention for the Safety of Life at Sea 1974.

On 1 November 1974 an International Conference on Safety of Life at Sea, held in London, opened for signature and acceptance an International Convention for the Safety of Life at Sea¹. The Convention entered into force on 25 May 1980 and replaced the International Convention for Safety of Life at Sea 1960. The Convention contains regulations for the carriage of dangerous goods by sea which apply, inter alia, to the carriage of radioactive substances².

The Convention also contains regulations designed to provide the administrative background for the control of the safety of merchant ships equipped with nuclear power plants³.

1 See the International Convention for the Safety of Life at Sea (London, 1 November 1974 to 1 July 1975; TS 46 (1980); Cmnd 7874) with Protocol (London, 1 June 1978 to 1 March 1979; TS 40 (1981); Cmnd 8277). The Convention is commonly known as 'SOLAS'. The Convention was laid before Parliament in October 1978 and ratified by the United Kingdom in November 1979. Numerous amendments have since been made to the Convention, eg amendments adopted on 27 May 1999 make the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships ('INF Code') mandatory.

2 See the International Convention for the Safety of Life at Sea 1974 Annex, Ch VII (carriage of dangerous goods). The provisions of Annex, Ch VII are implemented in the United Kingdom by the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367 (as amended): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 660. See also the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq.

3 See the International Convention for the Safety of Life at Sea 1974 Annex, Ch VIII.

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1349. The Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

The Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material was prepared under the auspices of the International Maritime Organisation¹, the Nuclear Energy Agency ('the NEA')² and the International Atomic Energy Agency ('the IAEA')³, and was signed by nine states, including the United Kingdom, at Brussels on 17 December 1971⁴. It came into force on 15 July 1975, but it has not yet been ratified by the United Kingdom⁵.

The purpose of the Convention is to remove the practical difficulties which have impeded the maritime carriage of nuclear material arising from the fact that, under maritime law, shipowners carrying nuclear material may be held liable for nuclear damage if they can be shown to have been at fault. Accordingly the Convention provides that maritime carriers of nuclear material are exonerated from any liability for damage caused by a nuclear incident if the operator of a land-based nuclear installation is liable under the Paris Convention⁶ or the Vienna Convention⁷, or under national law, provided that that law is in all respects as favourable to persons who suffer damage as either of those Conventions⁸. In addition shipowners are excluded from liability for damage to the nuclear installation itself or the means of transport⁹. The liability of the operator of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, such a ship is not, however, affected¹⁰.

1 The organisation was formerly known as the Intergovernmental Maritime Consultative Organisation, the change of name being made on 22 May 1982. As to the International Maritime Organisation see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 13.

2 As to the NEA see PARA 1355 post.

3 As to the IAEA see PARA 1354 post.

4 See the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Brussels, 17 December 1971; Misc 39 (1972); Cmnd 5094).

5 Ie at the date at which this title states the law. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 As to the Paris Convention see PARA 1345 ante.

7 As to the Vienna Convention see PARA 1347 ante.

8 See the Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Cmnd 5094) art 1.

9 See *ibid* art 2.

10 See *ibid* art 3.

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1350. The Convention on Physical Protection of Nuclear Material.

The Convention on Physical Protection of Nuclear Material was opened for signature on 3 March 1980 and entered into force on 8 February 1987. The Convention has been ratified, acceded to or accepted by more than 120 states and confirmed by Euratom¹. The purpose of the Convention, which was prepared under the auspices of the International Atomic Energy Agency ('the IAEA')², is to establish by international co-operation, in conformity with the national law of each signatory state, effective measures for the physical protection of nuclear material³ and to facilitate the safe transport of nuclear material.

Each state party to the Convention is required to take appropriate steps to ensure that nuclear material in the course of international nuclear transport within its territory, or on board a ship or aircraft under its jurisdiction in so far as such ship or aircraft is engaged in the transport to or from that state, is protected to specified standards⁴. States must not export or import, or authorise the export or import of, nuclear material unless assurances have been received that it will be protected to the specified level⁵, and must not allow the transit of nuclear material through their territory in the course of international nuclear transport unless they have received similar assurances⁶. A state is required to apply through its national law the specified levels of protection to nuclear material being transported from one part of its territory to another part through international waters or airspace⁷. There are provisions for prior notification of intended transport of nuclear material through a state's territory⁸.

The Convention requires states to identify and make known to each other, directly or through the IAEA, their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorised removal, use or alteration of nuclear material or credible threat thereof⁹. They are also required to provide co-operation and assistance to the maximum feasible extent in such eventualities¹⁰. States must co-operate and consult as appropriate with a view to the maintenance and improvement of physical protection of nuclear material¹¹.

The Convention also requires that states are to provide under their national law that specified actions in relation to nuclear material are punishable offences¹² and to assume jurisdiction in respect of these offences both on a territorial and nationality basis¹³. There are provisions for the detention¹⁴ and extradition of persons suspected of having committed such offences¹⁵, and requiring the greatest measure of assistance between states in connection with criminal proceedings brought in respect of such offences¹⁶.

1 See the Convention on Physical Protection of Nuclear Material (Vienna and New York from 3 March 1980; Misc 27 (1980); Cmnd 8112). The United Kingdom ratified the Convention on 6 September 1991, and it has been incorporated in English municipal law, eg by the enactment of the Nuclear Material (Offences) Act 1983: see PARA 1583 post. For the meaning of 'United Kingdom' see PARA 602 note 7 ante. As to Euratom see PARAS 1337-1339 ante.

2 As to the IAEA see PARA 1354 post.

3 For the purposes of the Convention 'nuclear material' means (1) plutonium, except that with isotopic concentration exceeding 80% in plutonium-238; (2) uranium-233; (3) uranium enriched in the isotopes 235 or 233; (4) uranium containing the mixture of isotopes as occurs in nature other than in the form of ore or ore-residue; and (5) any material containing one or more of the above: Convention on the Physical Protection of

Nuclear Material (Cmnd 8112) art 1. Cf the Nuclear Material (Offences) Act 1983 s 6, Schedule: see PARA 1583 note 2 post.

4 Convention on Physical Protection of Nuclear Material (Cmnd 8112) art 3. The levels of protection are described in Annex 1.

5 Ibid art 4(1), (2).

6 Ibid art 4(3).

7 Ibid art 4(4).

8 Ibid art 4(5).

9 Ibid art 5(1).

10 Ibid art 5(2).

11 Ibid art 5(3).

12 Ibid art 7.

13 Ibid art 8.

14 Ibid art 9.

15 Ibid arts 10, 11.

16 Ibid art 13.

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1351. The Convention on Early Notification of a Nuclear Accident.

The Convention on Early Notification of a Nuclear Accident was opened for signature at Vienna on 26 September 1986. The Convention has been ratified, acceded to, approved or accepted by more than 100 states and became effective on 27 October 1986¹. The purpose of the Convention, which was prepared under the auspices of the International Atomic Energy Agency ('the IAEA')², is to ensure that, in the event of an accident involving specified facilities³ in the territory of a signatory state, other states which are or may be physically affected by a consequential release of radioactive material are notified forthwith, either directly or through the IAEA, of the nature, time and location of the accident, and promptly provided with information relevant to minimising the radiological consequences in those states which may be affected⁴.

The information to be provided under the Convention should comprise:

- 3590 (1) the time, exact location where appropriate and the nature of the nuclear accident;
- 3591 (2) the facility or activity involved;
- 3592 (3) the assumed or established cause and the foreseeable development of the accident relevant to the transboundary release of the radioactive materials;
- 3593 (4) the general characteristics of the radioactive release;
- 3594 (5) information on current and forecast meteorological conditions and the results of environmental monitoring relevant as above;
- 3595 (6) all off-site protective measures taken or planned; and
- 3596 (7) the predicted behaviour over time of the radioactive release⁵.

Initial information must be supplemented by further relevant information on the development of the emergency situation, including its foreseeable or actual termination⁶. States must respond promptly to requests from affected states for further information or consultations⁷. States must notify the IAEA and other states which are parties to the Convention, either directly or through the IAEA, of their competent authorities and points of contact for giving and receiving notifications and information under the Convention⁸. The IAEA, upon request from a party to the Convention which does not have nuclear activities itself and which borders on a state having an active nuclear programme but not a party, must conduct investigations into the feasibility and establishment of an appropriate radiation monitoring system to facilitate the achievement of the objectives of the Convention⁹.

1 See the Convention on Early Notification of a Nuclear Accident (Vienna, from 26 September 1986; Misc 2 (1989); Cm 565). The United Kingdom ratified the Convention on 9 February 1990. It has not been incorporated in English municipal law, either directly or indirectly, but see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 802. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 As to the IAEA see PARA 1354 post.

3 The facilities and activities in question are any nuclear reactor wherever located; any nuclear fuel cycle facility; any radioactive waste management facility; the transport and storage of nuclear fuels or radioactive wastes; the manufacture, use, storage, disposal and transport of radioisotopes; and the use of radioisotopes for

power generation in space objects: see the Convention on Early Notification of a Nuclear Accident (Cm 565) art 1(2).

4 See *ibid* arts 1(1), 2, 4.

5 See *ibid* art 5(1).

6 See *ibid* art 5(2).

7 See *ibid* art 6.

8 See *ibid* art 7.

9 See *ibid* art 8.

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1352. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.

The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency was opened for signature at Vienna on 26 September 1986. The Convention has been ratified, acceded to, approved or accepted by more than 90 states and became effective on 26 February 1987¹. The purpose of the Convention, which was prepared under the auspices of the International Atomic Energy Agency ('the IAEA')², is to facilitate the prompt provision of assistance to states by the IAEA and other states in the event of a nuclear accident or radiological emergency to mitigate its consequences.

Parties to the Convention must co-operate between themselves and with the IAEA to facilitate prompt assistance in the event of a nuclear accident or radiological emergency to minimise its consequences and to protect life, property and the environment from the effects of radioactive releases³. If a state party to the Convention requires such assistance it may call for it from any other party, either directly or through the IAEA⁴, and must specify the scope and types of assistance required and provide necessary information to the assisting party⁵. A state to which a request for such assistance is directed must promptly decide and notify the requesting party, directly or through the IAEA, whether it can offer assistance and the scope and terms of such assistance⁶. States must notify the IAEA of the experts, equipment and materials which could be made available to provide assistance⁷. Assistance may be requested relating to medical treatment or temporary relocation into the territory of another signatory state of people involved in a nuclear accident or radiological emergency⁸. The Convention provides for the IAEA to make available resources, transmit information and co-ordinate assistance⁹.

The responsibility for direction and control of assistance within its territory is that of the requesting state, which to the extent of its capabilities must provide appropriate facilities and services and must ensure the protection of personnel, equipment and materials brought into its territory for this purpose by assisting states¹⁰. States must notify the IAEA and other states which are parties to the Convention, either directly or through the IAEA, of their competent authorities and points of contact authorised to make and receive requests for and to accept offers of assistance¹¹. The Convention sets out functions of the IAEA assumed at the request of signatory states¹². There are provisions in relation to the confidentiality of information provided in connection with assistance¹³ and the co-ordination of public statements¹⁴; the reimbursement of costs or offer of assistance without costs¹⁵; privileges, immunities and facilities to be afforded to personnel of assisting states¹⁶; transit of personnel, equipment and property¹⁷; and claims in respect of injury or damage caused within the territory of requesting states in the course of the provision of assistance¹⁸.

1 See the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, from 26 September 1986; Misc 3 (1989); Cm 566). The United Kingdom ratified the Convention on 3 February 1990. The provisions of art 8 (ie art 8(2), (3)) set out in the Atomic Energy Act 1989 s 5, Schedule have the force of law in the United Kingdom and are to be construed for that purpose as granting any privilege or immunity which they require to be afforded: s 5(2). Those provisions require the requesting state to afford the following privileges and immunities to personnel of the assisting party or personnel acting on its behalf who have been duly notified to and accepted by the requesting state: (1) immunity from arrest, detention and legal process, including criminal, civil and administrative jurisdiction, of the requesting state, in respect of acts or

omissions in the performance of their duties; and (2) exemption from taxation, duties or other charges, except those which are normally incorporated in the price of goods or paid for services rendered, in respect of the performance of their assistance functions: Schedule para 2. The requesting state must: (a) afford the assisting party exemption from taxation, duties or other charges on the equipment and property brought into the territory of the requesting state by the assisting party for the purpose of the assistance; and (b) provide immunity from seizure, attachment or requisition of such equipment and property: Schedule para 3. At any time when a declaration under the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Cm 566) art 8(9) is in force, however (ie a declaration that the state making it does not consider itself bound in whole or in part by art 8(2), (3)), art 8(2), (3) only has the force of law in the United Kingdom to the extent that the United Kingdom considers itself bound thereby in accordance with the terms of the declaration: Atomic Energy Act 1989 s 5(3). Her Majesty may by Order in Council certify whether Her Majesty's Government in the United Kingdom has made or withdrawn a declaration under the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Cm 566) art 8(9): Atomic Energy Act 1989 s 5(4). See eg the Atomic Energy (Mutual Assistance Convention) Order 1990, SI 1990/235, art 2, Schedule. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

Nothing in the Atomic Energy Act 1989 s 5 (as amended) is to be construed as granting any privilege or immunity to a person who is a United Kingdom national or permanently resident in the United Kingdom, or prejudice any privilege or immunity afforded pursuant to any other international agreement or rule of customary international law: s 5(5). If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of s 5 (as amended), a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question is conclusive evidence of that fact: s 5(6). For these purposes, 'United Kingdom national' means an individual who is a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen: s 5(8) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to categories of citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 5 et seq. As to the Secretary of State's expenses in providing assistance under the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Cm 566) see the Atomic Energy Act 1989 s 5(1); and PARA 1362 post.

2 As to the IAEA see PARA 1354 post.

3 See the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Cm 566) art 1.

4 See *ibid* art 2(1). If at any time Her Majesty's Government calls for assistance under art 2(1), the Secretary of State must take such steps as are necessary to make public the fact that a call for assistance has been made, the nature of the assistance called for and the reasons for making the call: Atomic Energy Act 1989 s 5(7).

5 See the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Cm 566) art 2(2).

6 See *ibid* art 2(3).

7 See *ibid* art 2(4).

8 See *ibid* art 2(5).

9 See *ibid* art 2(6).

10 See *ibid* art 3.

11 See *ibid* art 4.

12 See *ibid* art 5.

13 See *ibid* art 6(1).

14 See *ibid* art 6(2).

15 See *ibid* art 7.

16 See *ibid* art 8. See also note 1 *supra*.

17 See *ibid* art 9.

18 See *ibid* art 10.

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1353. The Convention on Nuclear Safety.

The Convention on Nuclear Safety was adopted on 17 June 1994 by a diplomatic conference convened by the International Atomic Energy Agency ('the IAEA')¹ at its headquarters and opened for signature on 20 September 1994. It entered into force on 24 October 1996. The Convention applies to the safety of nuclear installations² and its objectives are:

- 3597 (1) to achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international co-operation including, where appropriate, safety-related technical co-operation;
- 3598 (2) to establish and maintain effective defences in nuclear installations against potential radiological hazards in order to protect individuals, society and the environment from harmful effects of ionising radiation from such installations;
- 3599 (3) to prevent accidents with radiological consequences and to mitigate such consequences should they occur³.

Parties to the Convention must establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations⁴ which must provide for:

- 3600 (a) the establishment of applicable national safety requirements and regulations;
- 3601 (b) a system of licensing with regard to nuclear installations and the prohibition of the operation of a nuclear installation without a licence;
- 3602 (c) a system of regulatory inspection and assessment of nuclear installations to ascertain compliance with applicable regulations and the terms of licences;
- 3603 (d) the enforcement of applicable regulations and of the terms of licences, including suspension, modification or revocation⁵.

Parties must ensure that prime responsibility for the safety of a nuclear installation rests with the holder of the relevant licence and must take the appropriate steps to ensure that each such licence holder meets its responsibility⁶. They must also take the appropriate steps:

- 3604 (i) to ensure that all organisations engaged in activities directly related to nuclear installations are to establish policies that give due priority to nuclear safety⁷;
- 3605 (ii) to ensure that adequate financial resources are available to support the safety of each nuclear installation throughout its life⁸;
- 3606 (iii) to ensure that sufficient numbers of qualified staff with appropriate education, training and retraining are available for all safety-related activities in or for each nuclear installation, throughout its life⁹;
- 3607 (iv) to ensure that the capabilities and limitations of human performance are taken into account throughout the life of a nuclear installation¹⁰;
- 3608 (v) to ensure that quality assurance programmes are established and implemented with a view to providing confidence that specified requirements for all

activities important to nuclear safety are satisfied throughout the life of a nuclear installation¹¹;

3609 (vi) to ensure that:
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479. (A) comprehensive and systematic safety assessments are carried out before the construction and commissioning of a nuclear installation and throughout its life; such assessments must be well documented, subsequently updated in the light of operating experience and significant new safety information, and reviewed under the authority of the regulatory body¹²;

480. (B) verification by analysis, surveillance, testing and inspection is carried out to ensure that the physical state and the operation of a nuclear installation continue to be in accordance with its design, applicable national safety requirements, and operational limits and conditions¹³;

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3610 (vii) to ensure that in all operational states the radiation exposure to the workers and the public caused by a nuclear installation is to be kept as low as reasonably achievable and that no individual is to be exposed to radiation doses which exceed prescribed national dose limits¹⁴;

3611 (viii) to ensure that there are on-site and off-site emergency plans that are routinely tested for nuclear installations and cover the activities to be carried out in the event of an emergency¹⁵;

3612 (ix) to ensure that appropriate procedures are established and implemented:
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481. (A) for evaluating all relevant site-related factors likely to affect the safety of a nuclear installation for its projected lifetime¹⁶;

482. (B) for evaluating the likely safety impact of a proposed nuclear installation on individuals, society and the environment¹⁷;

483. (C) for re-evaluating as necessary all relevant factors referred to in heads (A) and (B) above so as to ensure the continued safety acceptability of the nuclear installation¹⁸;

484. (D) for consulting parties in the vicinity of a proposed nuclear installation, in so far as they are likely to be affected by that installation and, upon request providing the necessary information to such parties, in order to enable them to evaluate and make their own assessment of the likely safety impact on their own territory of the nuclear installation¹⁹;

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3613 (x) to ensure that:

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485. (A) the design and construction of a nuclear installation provides for several reliable levels and methods of protection (defence in depth) against the release of radioactive materials, with a view to preventing the occurrence of accidents and to mitigating their radiological consequences should they occur²⁰;

486. (B) the technologies incorporated in the design and construction of a nuclear installation are proven by experience or qualified by testing or analysis²¹;

487. (C) the design of a nuclear installation allows for reliable, stable and easily manageable operation, with specific consideration of human factors and the man-machine interface²²;

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3614 (xi) to ensure that:

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488. (A) the initial authorisation to operate a nuclear installation is based upon an appropriate safety analysis and a commissioning programme demonstrating that the installation, as constructed, is consistent with design and safety requirements²³;

- 489. (B) operational limits and conditions derived from the safety analysis, tests and operational experience are defined and revised as necessary for identifying safe boundaries for operation²⁴;
- 490. (C) operation, maintenance, inspection and testing of a nuclear installation are conducted in accordance with approved procedures²⁵;
- 491. (D) procedures are established for responding to anticipated operational occurrences and to accidents²⁶;
- 492. (E) necessary engineering and technical support in all safety-related fields is available throughout the lifetime of a nuclear installation²⁷;
- 493. (F) incidents significant to safety are reported in a timely manner by the holder of the relevant licence to the regulatory body²⁸;
- 494. (G) programmes to collect and analyse operating experience are established, the results obtained and the conclusions drawn are acted upon and that existing mechanisms are used to share important experience with international bodies and with other operating organisations and regulatory bodies²⁹;
- 495. (H) the generation of radioactive waste resulting from the operation of a nuclear installation is kept to the minimum practicable for the process concerned, both in activity and in volume, and any necessary treatment and storage of spent fuel and waste directly related to the operation and on the same site as that of the nuclear installation take into consideration conditioning and disposal³⁰.

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The provisions of the Convention do not affect the rights and obligations of the parties to it under their law to protect information from disclosure³¹.

1 As to the IAEA see PARA 1354 post.

2 See the Convention on Nuclear Safety art 3. 'Nuclear installation' means for each contracting party any land-based civil nuclear power plant under its jurisdiction including such storage, handling and treatment facilities for radioactive materials as are on the same site and are directly related to the operation of the nuclear power plant. Such a plant ceases to be a nuclear installation when all nuclear fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures, and a decommissioning programme has been agreed to by the regulatory body: art 2(i). 'Regulatory body' means for each contracting party any body or bodies given the legal authority by that contracting party to grant licences and to regulate the siting, design, construction, commissioning, operation or decommissioning of nuclear installations (art 2(ii)); and 'licence' means any authorisation granted by the regulatory body to the applicant to have the responsibility for the siting, design, construction, commissioning, operation or decommissioning of a nuclear installation (art 2(iii)).

The Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic: see art 35. The United Kingdom government signed the Convention on 20 September 1994 and ratified it on 17 January 1996 with effect from 24 October 1996. Euratom acceded to the Convention on 31 January 2000 with effect from 30 April 2000. See, however, Case C-29/99 *EC Commission v EU Council* [2002] ECR I-11221, [2002] All ER (D) 119 (Dec), ECJ.

3 Convention on Nuclear Safety art 1.

4 Ibid art 7(1).

5 Ibid art 7(2).

6 Ibid art 9.

7 Ibid art 10.

8 Ibid art 11(1).

9 Ibid art 11(2).

10 Ibid art 12.

11 Ibid art 13.

12 Ibid art 14(i).

13 Ibid art 14(ii).

14 Ibid art 15.

15 See ibid art 16(1).

16 Ibid art 17(i).

17 Ibid art 17(ii).

18 Ibid art 17(iii).

19 Ibid art 17(iv).

20 Ibid art 18(i).

21 Ibid art 18(ii).

22 Ibid art 18(iii).

23 Ibid art 19(i).

24 Ibid art 19(ii).

25 Ibid art 19(iii).

26 Ibid art 19(iv).

27 Ibid art 19(v).

28 Ibid art 19(vi).

29 Ibid art 19(vii).

30 Ibid art 19(viii).

31 See ibid art 27(1). For these purposes, 'information' includes, inter alia: (1) personal data; (2) information protected by intellectual property rights or by industrial or commercial confidentiality; and (3) information relating to national security or to the physical protection of nuclear materials or nuclear installations: art 27(1).

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B. INTERNATIONAL BODIES

1354. The International Atomic Energy Agency.

The Statute of the International Atomic Energy Agency ('the IAEA')¹ was approved on 26 October 1956 by the Conference on the Statute of the International Atomic Energy Agency held at United Nations Headquarters, New York, and entered into force on 29 July 1957. The IAEA's objectives are to seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world and to ensure, so far as the IAEA is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose². Membership of the IAEA is limited to states and is based on the sovereign equality of all of the members³. The United Kingdom is a member.

The IAEA has, among other functions, authority to apply safeguards at the request of a state to any of that state's activities in the field of atomic energy⁴, and to establish or adopt standards of safety for health protection and minimisation of danger to life and property⁵. By resolution of the Economic and Social Council of the United Nations, the IAEA was in 1959 entrusted with the drafting of recommendations on the transport of radioactive substances, provided that they were consistent with the framework and general principles of recommendations of the Committee of Experts on the Transport of Dangerous Goods of the United Nations and that they were established in consultation with the United Nations and the specialised agencies concerned⁶. Accordingly in 1961 the IAEA published Regulations for the Safe Transport of Radioactive Materials, which have been revised from time to time.

An Agreement on the Privileges and Immunities of the International Atomic Energy Agency was approved by the Board of Governors on 1 July 1959⁷, and has been accepted by the United Kingdom⁸.

1 For the text of the Statute of the International Atomic Energy Agency and the amendments to it see Cmnds 450, 2053, 5393.

2 Statute of the International Atomic Energy Agency art II.

3 See *ibid* art IV.

4 See *ibid* art IIIA(5). See also the Agreement of 14 December 1972 between the International Atomic Energy Agency and the Government of the United Kingdom of Great Britain and Northern Ireland for the Application of Safeguards (Cmnd 5221). As to safeguards under the Treaty on the Non-Proliferation of Nuclear Weapons see PARA 1341 the text and notes 7-11 ante; and as to Euratom safeguards see PARA 1338 the text and note 8 ante.

5 See the Statute of the International Atomic Energy Agency art IIIA(6).

6 See Resolution 724 C (XXVIII), 17 July 1959.

7 For the text of the agreement see Cmnd 1675.

8 Privileges and immunities in the United Kingdom in accordance with the agreement are conferred upon the Agency, its officers and experts, and representatives of its members, by the International Atomic Energy Agency (Immunities and Privileges) Order 1974, SI 1974/1256 (amended by SI 1975/1209; SI 2006/1075). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

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1355. The Organisation for Economic Co-operation and Development Nuclear Energy Agency.

The Organisation for Economic Co-operation and Development Nuclear Energy Agency ('the NEA') was originally set up in 1957 as the European Nuclear Energy Agency of the Organisation for European Economic Co-operation¹, and was renamed in 1972 on the addition of Japan as a full member. Nineteen European countries, including the United Kingdom, together with Australia, Canada, the United States of America and Japan, are members of the Agency². The European Atomic Energy Community ('Euratom') also participates in its work³.

The purpose of the NEA is to further the development of the production and uses of nuclear energy, including applications of ionising radiations, for peaceful purposes by the participating countries, through co-operation between those countries and a harmonisation of measures taken at the national level⁴. The NEA's duties and objectives are:

- 3615 (1) to promote technical and economic studies and undertake consultations on the programme and projects of participating countries relating to the development of research and industry in the field of the production and uses of nuclear energy for peaceful purposes, in collaboration with other bodies of the Organisation for Economic Co-operation and Development ('the OECD') in matters falling within their competence⁵;
- 3616 (2) to promote the formation of joint undertakings for the production and uses of nuclear energy for peaceful purposes, endeavouring to secure the participation of the greatest possible number of countries⁶;
- 3617 (3) to ensure that the operation of joint undertakings and the materials, equipment and services made available by the NEA or under its supervision are used solely for peaceful purposes⁷;
- 3618 (4) to encourage the development of research into the production and uses of nuclear energy for peaceful purposes in participating countries and the exchange of scientific and technical information related to its purposes between participating countries⁸;
- 3619 (5) to contribute to the promotion, by the responsible national authorities, of the protection of workers and the public against the hazards of ionising radiations and of the preservation of the environment⁹;
- 3620 (6) to contribute to the promotion of the safety of nuclear installations and materials by the responsible national authorities¹⁰;
- 3621 (7) to contribute to the promotion of a system for third party liability and insurance with respect to nuclear damage¹¹;
- 3622 (8) to encourage measures to ensure the most efficient use of patented inventions in the field of nuclear energy¹²;
- 3623 (9) to contribute¹³ to the elimination of obstacles to international trade or to development of the nuclear industry¹⁴;
- 3624 (10) to contribute to the dissemination of information which may be freely distributed on the peaceful uses of nuclear energy, in particular on the safety and regulation of nuclear activities as well as on the physical protection of nuclear installations and materials¹⁵.

The NEA must establish a close collaboration with Euratom, details of which must be determined by common agreement¹⁶.

1 See the Decision of the Council of the Organisation for European Economic Co-operation establishing a European Nuclear Energy Agency and Convention on the Establishment of a Security Control in the Field of Nuclear Energy on 20 December 1957 (as amended by a revised Statute adopted by the Council on 5 April 1978). For the English text of the decision see Cmnd 357. The Statute of the OECD Nuclear Energy Agency was further amended on 10 December 1992 and 13 July 1995.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 See the Statute of the OECD Nuclear Energy Agency art 18. As to Euratom see PARAS 1337-1339 ante.

4 See *ibid* art 1(b).

5 See *ibid* art 4(a).

6 See *ibid* art 5(a).

7 See *ibid* art 6(a). To that end, the Agency must establish a security control: art 6(a). The security control may be applied, at the request of the parties, to any bilateral or multilateral agreement, or, at the request of a participating country, to any of that country's activities in the field of nuclear energy: art 6(b). As to the security control see PARA 1343 ante.

8 See *ibid* art 7(a), (c).

9 See *ibid* art 8(a)(i).

10 See *ibid* art 8(a)(ii).

11 See *ibid* art 8(a)(iii).

12 See *ibid* art 8(a)(iv).

13 In so far as is consistent with *ibid* art 1(b): see the text and note 4 *supra*.

14 See *ibid* art 8(a)(v).

15 See *ibid* art 8(a)(vi).

16 See *ibid* art 18. Corresponding provision for collaboration is made in the Euratom Treaty art 201. As to the objectives of Euratom see PARA 1338 ante.

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1356. Non-governmental bodies.

The International Commission on Radiological Protection ('ICRP'), which was set up in 1928 under the name of the International X-ray and Radium Protection Commission¹ by the Second International Congress of Radiology, is a private association of experts, from various countries, who are elected on the basis of their recognised activity in the fields of medical radiology, radiation protection, physics, health physics, biology, genetics, biochemistry or biophysics, and who are independent of any political or commercial interests. It provides guidance within the whole field of radiation protection². It is an independent registered charity in the United Kingdom and currently has its scientific secretariat in Sweden³.

From time to time the ICRP publishes recommendations upon which appropriate protection measures against the hazards of ionising radiation can be based, while leaving to the various national protection bodies the responsibility of formulating the specific legislation, codes of practice or advice that are best suited to the needs of their individual countries. The recommendations, which specify limits consisting of maximum permissible doses of ionising radiation to which particular categories of persons or the population generally may be exposed, are well established as authoritative guides to permissible levels of such exposure, and have a considerable influence on the regulatory activities of the relevant international organisations as well as on national legislation in the field of radiation protection. Radiation units and measurements used in the work of the ICRP have been defined and worked out by the International Commission on Radiation Units and Measurements ('ICRU'), which is a private association of experts set up in 1925 by the International Congress of Radiology⁴.

1 The International Commission on Radiological Protection assumed its present name and organisational form in 1950, with a view to covering more effectively the expanding field of radiation protection.

2 See the text and note 4 infra.

3 At the date at which this title states the law, information about the status of the ICRP was accessible at www.icrp.org.

4 The ICRU is based in Bethesda in the United States of America. At the date at which this title states the law, information about the ICRU was accessible at www.icru.org.

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(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL

(i) The Legislation

1357. The controlling legislation.

The principal Acts under which the production and use of atomic energy¹, radioactive substances² and radioactive material³ are controlled are the Atomic Energy Act 1946⁴, the Atomic Energy Authority Acts 1954⁵, 1971⁶ and 1986⁷, the Radioactive Substances Act 1993⁸ and the Nuclear Installations Acts 1965 and 1969⁹. The Energy Act 2004 makes new provision with regard to nuclear decommissioning¹⁰, transfers relating to nuclear undertakings¹¹ and security at nuclear installations¹².

Control is also exercised under the Health and Safety at Work etc Act 1974 with respect to the use of ionising radiations in the workplace¹³ and the carriage of radioactive material by rail¹⁴. Regulations now having effect under the Education Act 2002 make provision with respect to the use of radioactive substances and X-ray equipment in certain types of educational establishments¹⁵; and regulations made under the Food Safety Act 1990 make provision with regard to the application of ionising radiations to food intended for sale for human consumption¹⁶. Control is also exercised under the Merchant Shipping Act 1995¹⁷, the Civil Aviation Act 1982¹⁸ and the Radioactive Material (Road Transport) Act 1991¹⁹ with respect to the carriage of radioactive materials by sea, air and road; and under the Medicines Act 1968 with respect to the medical administration of radioactive substances²⁰.

1 'Atomic energy' means the energy released from atomic nuclei as a result of any process, including the fission process, but does not include energy released in any process of natural transmutation or radioactive decay which is not accelerated or influenced by external means: Atomic Energy Act 1946 s 18(1) (applied for the purposes of the Atomic Energy Authority Act 1954 by s 8(1); and for the purposes of the Nuclear Installations Act 1965 by s 26(1)).

2 'Radioactive substance' means any substance which consists of or contains any radioactive chemical element, whether natural or artificial; and 'substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour, and also includes any manufactured article or article which has been subjected to any artificial treatment or process: see the Atomic Energy Authority Act 1954 s 8(1) (which incorporated by reference the definition formerly in the Radioactive Substances Act 1948 s 12 (repealed)). The Radioactive Substances Act 1993 contains separate definitions of 'radioactive material', 'mobile radioactive apparatus' and 'radioactive waste' (see ss 1-3; and PARAS 1439-1445, 1450 post), but no definition of 'radioactive substance'.

3 For the meaning of 'radioactive material' see *ibid* s 1; and PARA 1439 post.

4 The Atomic Energy Act 1946 provides for the general promotion and control of the development of atomic energy by the Secretary of State, and for connected purposes. Under the 1946 Act the Secretary of State has powers, *inter alia*, to obtain information relating to certain materials, plant and processes, to authorise entry on and inspection of certain premises, to search for and work minerals and compulsorily acquire certain property and rights under contracts, and to control the production and use of atomic energy. There are restrictions on the disclosure of information relating to certain plant, and special provisions as to inventions relating to atomic energy. Contraventions of certain provisions of the Act constitute offences, for which penalties are provided. See PARAS 1358, 1361, 1425 et seq, 1515, 1566, 1571, 1588 post.

5 The Atomic Energy Authority Act 1954 established the United Kingdom Atomic Energy Authority ('the UKAEA') and provided for its functions, powers and duties. See PARA 1363 et seq post.

6 Under the Atomic Energy Authority Act 1971, certain parts of the UKAEA's undertaking were transferred to the nuclear fuels company and the radiochemical company: see PARA 1377 et seq post.

7 The Atomic Energy Authority Act 1986 introduced changes to the UKAEA's constitution intended to facilitate trading activities. See PARAS 1366, 1375-1376 post.

8 The Radioactive Substances Act 1993 regulates the keeping and use of radioactive material on premises used for the purposes of an undertaking, makes provision as to the disposal and accumulation of radioactive waste and controls the use of mobile radioactive apparatus. See PARA 1439 et seq post. The territorial application of the Radioactive Substances Act 1993 has been extended to certain installations and any waters within 500 metres of such installations, in English areas on the continental shelf: see the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 4 (amended by virtue of the Radioactive Substances Act 1993 ss 49(1), (2), Sch 4 para 1, Sch 5 paras 1, 4); and the Interpretation Act 1978 s 17(2)(a).

9 The Nuclear Installations Act 1965 and the Nuclear Installations Act 1969 (which amends certain provisions of the 1965 Act) may be cited together as the Nuclear Installations Acts 1965 to 1969: see the Nuclear Installations Act 1969 s 5(2). The Nuclear Installations Act 1965 controls the installation and operation of certain nuclear installations, imposes duties on holders of nuclear site licences and makes provision for compensation where injury or damage has been caused in breach of certain of those duties. See PARA 1487 et seq post.

Any provisions of the Nuclear Installations Act 1965 may be extended by Order in Council to any of the Channel Islands, the Isle of Man, or to any other territory outside the United Kingdom for the international relations of which Her Majesty's Government in the United Kingdom is responsible: s 28(1). Any Order in Council so made may be varied or revoked by any subsequent order so made: s 28(2). For the purposes of s 28 the Congenital Disabilities (Civil Liability) Act 1976 s 3 (disabled birth due to radiation: see PARAS 1494 note 9, 1495 note 5, 1502 note 14 post) is to be treated as if it were a provision of the Nuclear Installations Act 1965: Congenital Disabilities (Civil Liability) Act 1976 s 4(6). Under the Nuclear Installations Act 1965 s 28, a number of orders have been made extending ss 10-17 (as amended) (see PARA 1497 et seq post), s 21 (as amended) (see PARAS 1513-1514 post), s 26 (as amended: interpretation), and s 30 (short title and commencement) with adaptations and modifications, to other territories: see eg the Nuclear Installations (Falkland Islands and Dependencies) Order 1972, SI 1972/124; the Nuclear Installations (Isle of Man) Order 1977, SI 1977/429 (amended by SI 1987/668); the Nuclear Installations (Guernsey) Order 1978, SI 1978/1528 (varied by SI 1985/1640); and the Nuclear Installations (Jersey) Order 1980, SI 1980/1527 (varied by SI 1987/2207).

As to the application of the Nuclear Installations Act 1965 to Northern Ireland see s 27 (as amended).

10 The Energy Act 2004 Pt 1 Ch 1 (ss 1-37) (as amended) establishes the Nuclear Decommissioning Authority ('the NDA') (see PARAS 1394-1397 post) and sets out its powers and duties with regard to cleaning up and decommissioning of nuclear sites (see PARA 1592 et seq post).

11 See ibid Pt 1 Ch 2 (ss 38-50); and PARA 1402 et seq post.

12 Ibid Pt 1 Ch 3 (ss 51-71) (as amended) makes provision for the Civil Nuclear Constabulary: see PARA 1520 et seq post.

13 See PARA 1474 post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 647 et seq.

14 See PARA 1476 post.

15 See the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351, reg 7 (amended in relation to England by 2004/571). As to the 1989 Regulations see EDUCATION vol 15(2) (2006 Reissue) PARA 627.

16 See the Food (Control of Irradiation) Regulations 1990, SI 1990/2490 (as amended); and FOOD vol 18(2) (Reissue) PARA 320 et seq.

17 See PARA 1476 post; and SHIPPING AND MARITIME LAW.

18 See PARA 1476 post; and AIR LAW.

19 See PARA 1475 post; and ROAD TRAFFIC.

20 See PARA 1474 post; and MEDICINAL PRODUCTS AND DRUGS.

UPDATE

1357 The controlling legislation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 15--SI 1989/351 revoked in relation to England: SI 2008/1701.

NOTE 16--SI 1990/2490 replaced: Food Irradiation (England) Regulations 2009, SI 2009/1584; Food Irradiation (Wales) Regulations 2009, SI 2009/1795.

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(ii) Powers and Functions of the Secretary of State

1358. General functions of the Secretary of State with regard to atomic energy.

It is the general duty of the Secretary of State¹ to promote and control the development of atomic energy². This duty includes in particular the duty of securing that, in the conduct of the affairs of the United Kingdom Atomic Energy Authority ('the UKAEA')³, the proper degrees of importance are attached to the various applications of atomic energy⁴. Certain powers originally conferred on the former Minister of Supply⁵, including powers relating to the acquisition of land, apply in relation to any functions of the Secretary of State under the Atomic Energy Act 1946 or any property vested in him or under his control by virtue of that Act⁶.

Powers are vested in the Secretary of State to search for minerals⁷, acquire compulsorily rights to work minerals⁸, and prohibit the working or dealing in or use of certain minerals⁹, in connection with atomic energy. He may store, transport or dispose of any articles¹⁰ acquired by him either in the exercise of any rights to work minerals vested in him under the Atomic Energy Act 1946 or in or by reason of the exercise of the powers conferred on him under that Act in relation to the search for minerals and the acquisition of prescribed substances, mineral stocks, plant and contractual rights, and he may do all such things as appear to him to be necessary or expedient for the exercise of such powers¹¹.

¹ As to the Secretary of State see PARA 601 note 1 ante.

² Atomic Energy Act 1946 s 1. For the meaning of 'atomic energy' see PARA 1357 note 1 ante. The Atomic Energy Act 1946 refers throughout to 'the Minister of Supply', in whom powers under that Act were originally vested, but these references are now to be construed as references to the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry).

³ As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq post; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 post.

⁴ Atomic Energy Authority Act 1954 s 3(1). The Atomic Energy Authority Act 1954 refers throughout to the 'Lord President of the Council', in whom powers under that Act were originally vested, but these references are now to be construed as references to the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry).

⁵ The powers originally conferred by the Ministry of Supply Act 1939 s 2(2), (3), Schedule (repealed), but now conferred by the Supply Powers Act 1975 s 2(1), (2), Sch 1 (as amended) (which provide for the application of specified statutory provisions, including provisions relating to the acquisition of land, in relation to the Secretary of State or his property), and the Ministry of Supply (Transfer of Powers) (No 1) Order 1939, SR & O 1939/877, arts 5, 6, Schs 1, 2 (revoked with savings): see the Atomic Energy Act 1946 s 2(2) (amended by the Supply Powers Act 1975 s 8(2)). As to the repeal of the Ministry of Supply Act 1939, and the revocation of the Ministry of Supply (Transfer of Powers) (No 1) Order 1939, SR & O 1939/877 (without affecting the operation of arts 5, 6 in relation to any functions of the Secretary of State under the Atomic Energy Act 1946 or any property vested in or under the Secretary of State's control by virtue of that Act), see the Supply Powers Act 1975 s 8(1), (7), Sch 2 Pts I, II.

⁶ Atomic Energy Act 1946 s 2(2) (as amended: see note 5 supra). Powers derived by the Secretary of State under the Ministry of Supply (Transfer of Powers) (No 1) Order 1939, SR & O 1939/877 (revoked with savings) include powers to make byelaws under the Military Lands Act 1892 Pt II (ss 14-18) (as amended). As to the power to make byelaws in relation to land vested in or under the management of the UKAEA see PARAS 1363, 1575 post.

- 7 See the Atomic Energy Act 1946 s 6; and PARAS 1425-1426 post.
- 8 See *ibid* s 7 (as amended); and PARAS 1427-1428 post.
- 9 See *ibid* s 10; and PARAS 1429-1431 post.
- 10 For the meaning of 'articles' see PARA 1366 note 5 post.
- 11 See the Atomic Energy Authority Act 1954 s 2(3) proviso (b), (c); and PARAS 1425, 1427, 1432, 1435 post.

UPDATE

1358 General functions of the Secretary of State with regard to atomic energy

NOTES 2, 4--The functions of the Secretary of State for Business, Enterprise and Regulatory Reform have been transferred to the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

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1359. Power to amend legislation in order to give effect to international obligations.

The Secretary of State¹ may by order² make the modifications³ of the Nuclear Installations Act 1965⁴, and any other enactment having effect in relation to a matter to which an international Protocol such as is mentioned in head (1) below relates, that he considers appropriate for the purpose:

- 3625 (1) of facilitating the ratification by Her Majesty's Government in the United Kingdom⁵ of an international Protocol, whether entered into before or after 22 July 2004⁶, that relates to liability for nuclear damage⁷; or
- 3626 (2) of exercising an option under such a Protocol⁸, or of facilitating the exercise of such an option⁹.

This power to modify enactments includes power to modify enactments conferring power to make subordinate legislation¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The power to make an order containing provision authorised by the Energy Act 2004 s 76 is subject to the affirmative resolution procedure: s 76(7). As to that procedure see PARA 754 note 17 ante.

3 For the meaning of 'modifications' see PARA 733 note 8 ante.

4 As to the Nuclear Installations Act 1965 see PARA 1487 et seq post.

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 Ie whether before or after the passing of the Energy Act 2004.

7 The following are the only international Protocols which are to be taken for these purposes to be Protocols relating to liability for nuclear damage: (1) the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention (Vienna, from 21 September 1988; Misc 12 (1988); Cm 774) (see PARA 1345 ante); and (2) any Protocol amending the Paris Convention or the Brussels Supplementary Convention: Energy Act 2004 s 76(3). For these purposes, 'the Brussels Supplementary Convention' means the Supplementary Convention on Third Party Liability in the Field of Nuclear Energy (Brussels, 31 January 1963; Misc 8 (1963); Cmnd 2090, 5948) (see PARA 1346 ante); and 'the Paris Convention' means the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960; Misc 17 (1960); Cmnd 1211) (see PARA 1345 ante); Energy Act 2004 s 76(4).

8 The reference in *ibid* s 76(1) to exercising an option under a Protocol is a reference to making provision the making of which, in connection with the matters to which the Protocol relates, is allowed by that Protocol: s 76(5).

9 *Ibid* s 76(1), (2). At the date at which this title states the law, no such order had been made.

10 *Ibid* s 76(6).

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1360. Other functions and powers of the Secretary of State.

The Secretary of State¹:

- 3627 (1) appoints the members of the United Kingdom Atomic Energy Authority ('the UKAEA')² and the Nuclear Decommissioning Authority ('the NDA')³;
- 3628 (2) has power to grant permits for the use of a site for the treatment of irradiated matter which involves the extraction from it of plutonium or uranium, or for the treatment of uranium such as to increase the proportion of the isotope 235 contained in it⁴;
- 3629 (3) has further responsibilities with regard to the approval of special financial cover to be provided by nuclear site licensees in respect of their liability to pay compensation for breach of duty⁵, the laying before Parliament of copies of certain notices and reports in respect of certain claims for compensation⁶, the appointment of inspectors for certain purposes⁷, and the prosecution of certain offences⁸;
- 3630 (4) has power to make regulations governing the carriage of dangerous goods⁹;
- 3631 (5) has power to make health and safety regulations in connection with the emission of ionising and other radiations and in relation to measures for informing the public about health protection measures to be taken in the event of a radiation emergency¹⁰;
- 3632 (6) has power under the Radioactive Substances Act 1993 to grant exemptions from the requirements for registration or authorisation under that Act¹¹, to give directions to the Environment Agency with regard to the exercise of its powers under that Act¹², to require certain applications under that Act to be determined by him¹³ and to determine appeals against decisions of the Agency under that Act¹⁴;
- 3633 (7) has power to provide, or arrange for the provision of, facilities for the disposal of radioactive waste¹⁵; and
- 3634 (8) has power to enter into agreements with respect to nuclear transfer schemes under the Energy Act 2004¹⁶.

With certain exceptions¹⁷, the functions of the Secretary of State under the Radioactive Substances Act are transferred, in so far as they are exercisable in relation to Wales, to the Welsh Ministers¹⁸. Certain of his functions under the Nuclear Installations Act 1965 are exercisable, so far as they relate to Scotland, either by the Scottish Ministers or only after consultation with them¹⁹.

Where the Secretary of State had promised a 'full public consultation' as to whether the building of new nuclear power stations was a possible option in order to diversify existing energy supplies, the High Court held that that promise was not fulfilled where the consultation document had the impression of an 'issues paper' only and not a consultation paper, and had been misleading given that two key issues had not been properly addressed, those being questions on the economics of developing nuclear sites and questions on the disposal of radioactive waste. The claimant's legitimate expectation of a 'full public consultation' had thus been breached and the Secretary of State had acted unfairly as a matter of procedure²⁰.

- 1 As to the Secretary of State see PARA 601 note 1 ante.
- 2 See PARA 1364 post. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq post; and as to the use of the abbreviation 'the UKAEA' see PARA 1363 the text and notes 4-5 post.
- 3 See PARA 1395 post. As to the establishment and constitution of the NDA see PARAS 1394-1395 post; and as to its functions see PARAS 1592-1595 post.
- 4 See the Nuclear Installations Act 1965 s 2 (as amended); and PARA 1489 post.
- 5 See ibid s 19 (as amended); and PARAS 1285-1286 post.
- 6 See PARA 1512 post.
- 7 See PARA 1518 post.
- 8 See PARA 1586 post.
- 9 See PARAS 1475-1476 post.
- 10 See PARA 1474 post.
- 11 See PARAS 1440-1446, 1450 post.
- 12 See PARAS 1468, 1572 post. As to the Environment Agency see PARA 1390 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 13 See PARA 1469 post.
- 14 See PARAS 1471-1473 post.
- 15 See PARA 1460 post.
- 16 See PARA 1421 post.
- 17 The functions of the Secretary of State under the Radioactive Substances Act 1993 s 1(5) (see PARA 1439 post), s 8(6) (see PARA 1440 post), s 11(1) (see PARA 1446 post), s 15 (as amended) (see PARA 1450 post) and s 25 (as amended) (see PARA 1572 post) are not so transferred; and his functions under s 25 (as amended) and s 39 (as amended) (see PARA 1567 post) are exercisable by the Assembly or the Welsh Ministers concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales and the Welsh Ministers see PARA 602 note 1 ante.
- 18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 602 note 1 ante.
- 19 See the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1; the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, arts 2, 4, Schs 1, 3; the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2.
- 20 See *R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry* [2007] EWHC 311 (Admin), (2007) Times, 20 February, [2007] All ER (D) 192 (Feb). Accordingly, the decision taken in the consultation document that nuclear new build had a 'role to play' was unlawful: *R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry* supra.

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(iii) Other Administrative Provisions

1361. Orders and regulations generally.

Certain orders and regulations must be made by statutory instrument¹ and are subject to annulment in pursuance of a resolution of either House of Parliament². They include certain orders made under the Atomic Energy Act 1946³ and all regulations and certain orders made by the Secretary of State under the Radioactive Substances Act 1993⁴. Certain orders⁵ made under the Nuclear Installations Act 1965 must be made by statutory instrument and a draft of the order must be laid before and approved by resolution of the House of Commons⁶.

Any order made under the Nuclear Installations Act 1965, on the happening of any occurrence in respect of which liability may be incurred to pay compensation under the Act, which makes provision for the registration of such particulars of any person shown to have been within such area during such period as may be specified in the order, must be made by statutory instrument and be laid before Parliament after being made⁷.

The power to make certain orders relating to financial limits⁸ is exercisable subject to the Treasury's approval and no such order may be made unless a draft of it has been laid before, and approved by a resolution of, the House of Commons⁹.

¹ As to statutory instruments see generally the Statutory Instruments Act 1946 s 1 (as amended); and STATUTES.

² If either House of Parliament, within a period of 40 days beginning with the day on which any order made under the Atomic Energy Act 1946 to which s 15(1) (see note 3 infra) applies is laid before it, resolves that the order be annulled, the order ceases to have effect, but without prejudice to anything previously done thereunder or to the making of a new order: s 15(1). In reckoning any such period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 15(1). As to annulment by resolution of either House of Parliament see generally the Statutory Instruments Act 1946 ss 5, 7(1); and PARLIAMENT vol 34 (Reissue) PARA 945.

³ In every order made by the Secretary of State (see PARA 602 note 1 ante) under the Atomic Energy Act 1946, except an order made under s 7 (as amended) or an order varying or revoking such an order: s 15(1). As to orders made under s 7 (as amended) see PARA 1427 the text and note 4 post. Any order made under the Atomic Energy Act 1946 may be varied or revoked by a subsequent order made in like manner and subject to the like conditions: s 15(2).

⁴ See the Radioactive Substances Act 1993 s 44(3), (4). The only exception concerns orders under s 49(2), Sch 5 relating to certain transitional provisions: s 44(4). Section 44 does not extend to Northern Ireland: s 44(5). As to the making of orders relating to Northern Ireland see s 45. The Secretary of State has power to make regulations under the Radioactive Substances Act 1993 for any purpose for which regulations are authorised or required so to be made: s 44(1). As to the transfer of his functions in relation to Wales to the Welsh Ministers see PARA 601 note 1 ante.

⁵ In any order under the Nuclear Installations Act 1965 s 16(1A) (as added: see PARA 1505 post), s 18(1B) (as added: see PARA 1509 post) or s 21(1A) (as added: see PARA 1513 post): see s 25A (added by the Energy Act 1983 s 30).

⁶ Nuclear Installations Act 1965 s 25A (as added: see note 5 supra). Every order made by the Secretary of State under the Nuclear Installations Act 1965 s 2 (as amended: see PARA 1489 post) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see s 2(1C) (added

by the Atomic Energy Authority Act 1971 s 17(1)). The power to make an order conferred by the Nuclear Installations Act 1965 s 2 (as amended) includes power to vary or revoke it by a subsequent order: s 2(1C) (as so added).

7 See *ibid* s 23(1); and *PARA 1500 post*.

8 The orders made for the purposes of the Nuclear Industry (Finance) Act 1977 ss 2(2)(a)-(c), (3)(a)-(b) (as amended) (see *PARA 1384 post*): s 2(4).

9 *Ibid* s 2(4).

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1362. Expenses of ministers.

There must be paid out of money provided by Parliament:

- 3635 (1) any expenses incurred by the Secretary of State in the exercise of functions under, and any sums required to be paid to any person by way of compensation by or under, the Atomic Energy Act 1946¹;
- 3636 (2) any sum payable by a minister in respect of a claim for compensation under the Nuclear Installations Act 1965²;
- 3637 (3) any increase in the sums payable out of money so provided under certain provisions of the Atomic Energy Authority Act 1954³ and under, or in respect of expenses incurred under, certain provisions of the Nuclear Installations Act 1965⁴, being an increase attributable to the Atomic Energy Authority Act 1971⁵;
- 3638 (4) any subscription by the Secretary of State for shares issued by the nuclear fuels company⁶;
- 3639 (5) any increase in the administrative expenses of the Secretary of State attributable to the Atomic Energy (Miscellaneous Provisions) Act 1981⁷;
- 3640 (6) any expenses incurred by the Secretary of State in consequence of the provisions of the Radioactive Material (Road Transport) Act 1991⁸;
- 3641 (7) any expenses incurred by the Secretary of State for Defence in carrying on certain activities⁹ in consequence of the Atomic Energy Authority (Weapons Group) Act 1973, or otherwise carrying that Act into effect, and any increase attributable to that Act in the sums payable out of money provided by Parliament under any other enactment¹⁰;
- 3642 (8) any expenses incurred by the Secretary of State for Defence:
- 333
 - 496. (a) in connection with the formation or operation of any company formed with a view to, or for the purpose of, the carrying on of designated activities under the Atomic Weapons Establishment Act 1991 or with the operation of any such company wholly owned by the Secretary of State; or
 - 497. (b) in assuming responsibility for any liabilities arising out of the carrying on of designated activities or liabilities to or in respect of persons employed or formerly employed in or in connection with the carrying on of such activities¹¹;
- 334
 - 3643 (9) any expenditure incurred by the Secretary of State, with the consent of the Treasury, under or as a result of:
- 335
 - 498. (a) any option under which he or his nominee may acquire an undertaking or property from a British Energy company¹²; or
 - 499. (b) any agreement entered into for the purpose of giving effect to the provisions of such an option, or of continuing or modifying¹³ their effect¹⁴.
- 336

The Secretary of State may require a licensee¹⁵ to repay to him, in such cases and to such extent as it appears to the Secretary of State, with the Treasury's agreement, to be appropriate

to do so, such part as may appear to him to be attributable to the nuclear installations¹⁶ in respect of which nuclear site licences¹⁷ have been granted to that licensee of:

- 3644 (i) any sums paid by him by way of remuneration, allowances or other payments to inspectors appointed by him¹⁸; and
- 3645 (ii) any expenses incurred by him or by any government department; or
- 3646 (iii) such sums as the Treasury may determine in respect of the use of premises belonging to the Crown, which the Secretary of State may with the Treasury's consent determine to be incurred in connection with the exercise by the Secretary of State of his power to appoint inspectors¹⁹.

The licensee must comply with any such requirement; and any sums so repaid to the Secretary of State must be paid into the Consolidated Fund²⁰.

There are provisions in the Science and Technology Act 1965 as to the payment of expenses incurred by certain ministers in carrying on or supporting scientific research²¹ or the dissemination of the results of such research, in furthering the practical application of such results, and in making payments to or in respect of members of certain advisory bodies established for the purpose of assisting ministers in matters connected with scientific research²².

The Secretary of State may pay out of money provided by Parliament any expenses which he incurs in connection with assistance provided under the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency²³, and must pay into the Consolidated Fund any sums which he receives under the Convention by way of reimbursement of any expenses which he so incurs²⁴.

1 Atomic Energy Act 1946 s 16. As to the Secretary of State see PARA 601 note 1 ante. Any compensation, however, required to be paid by an order under s 7 (as amended) (see PARAS 1427-1428 post) vesting any right to work minerals in the United Kingdom Atomic Energy Authority ('the UKAEA') is to be paid by the Authority: s 16 proviso (added by the Atomic Energy Authority Act 1954 s 6(4), Sch 3). As to such orders see PARA 1427 the text and note 4 post. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq post; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 post.

2 See the Nuclear Installations Act 1965 s 16(3), s 18(1), (3) (as amended); and PARAS 1506-1505 post.

3 Ie under the Atomic Energy Authority Act 1954 s 4(1): Atomic Energy Authority Act 1971 s 23(a). See further PARA 1375 the text and note 2 post.

4 Ie under, or in respect of expenses incurred under, the Nuclear Installations Act 1965 s 24 (as substituted and amended) (provisions relating to inspectors): Atomic Energy Authority Act 1971 s 23(b). See further PARA 1518 post.

5 Ibid s 23. Any increase in the sums payable under the Atomic Energy Authority Act 1954 s 4(1) which is attributable to the Science and Technology Act 1965 s 4(1) (see PARA 1369 post) must also be defrayed out of money provided by Parliament: see s 4(2).

6 See the Atomic Energy Authority Act 1971 s 11(4) (amended by the Nuclear Industry (Finance) Act 1977 s 2(5); the Energy Act 2004 s 197(2)). As to the nuclear fuels company see PARA 1377 post. The Treasury's consent is required for such subscription: see the Atomic Energy Authority Act 1971 s 11(4) (as so amended).

7 Atomic Energy (Miscellaneous Provisions) Act 1981 s 3. As to the extension of the powers of the United Kingdom Atomic Energy Authority and the Secretary of State by that Act see PARA 1381 post.

8 Radioactive Material (Road Transport) Act 1991 s 7. See further PARA 1475 post; and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1661 et seq.

9 Ie any activities which before 1 April 1973 were activities of the Weapons Group of the United Kingdom Atomic Energy Authority and involved the doing of work on explosive nuclear devices: Atomic Energy Authority

(Weapons Group) Act 1973 ss 1(1), 8(a); Atomic Energy Authority (Weapons Group) Act 1973 (Appointed Day) Order 1973, SI 1973/463.

10 Atomic Energy Authority (Weapons Group) Act 1973 s 8. See further PARA 1386 ante.

11 Atomic Weapons Establishment Act 1991 s 5. See further PARA 1387 post. It is immaterial whether the liabilities for which responsibility is so assumed are the liabilities of such a company as is mentioned in head (8) (a) in the text or of any other company which is or has been a contractor: see s 5(b). For the meaning of 'designated activities' and 'contractor' see PARA 1387 notes 2, 11 post.

12 For these purposes, 'British Energy company' has the same meaning as in the Electricity (Miscellaneous Provisions) Act 2003 s 1 (ie British Energy plc or a company which either is or immediately before 8 May 2003 was a subsidiary of British Energy plc: see s 1(2)); Energy Act 2004 s 79(2). The Electricity (Miscellaneous Provisions) Act 2003 s 1 provides for the payment out of money provided by Parliament of any expenditure which the Secretary of State may, with the approval of the Treasury, incur with a view to or in connection with (1) the provision by the Secretary of State of financial assistance to a British Energy company; (2) the acquisition by the Secretary of State or his nominee or by a Crown company of (a) any securities of a British Energy company; or (b) any part of the undertaking or assets of a British Energy company; or (3) the carrying on of any undertaking acquired as mentioned in head (2)(b) supra or any undertaking using assets so acquired: see s 1(1). For those purposes, 'Crown company' means a company which is wholly owned by the Crown; 'financial assistance' includes assistance by way of grant or loan, by entering into a guarantee or by any other means (whether the assistance is given in pursuance of an agreement or otherwise); and 'securities' includes shares or stock, debentures or debenture stock, bonds and other securities of a company (whether or not constituting a charge on the assets of the company): s 1(2). A company is wholly owned by the Crown for the purposes of s 1 at any time when none of the issued shares in the company is held otherwise than by the Secretary of State or a nominee of his, or by a company which is itself wholly owned by the Crown: s 1(3).

13 For the meaning of 'modification' and cognate expressions see PARA 733 note 8 ante.

14 Energy Act 2004 s 79(1).

15 For the meaning of 'licensee' see PARA 1490 note 11 post.

16 For the meaning of 'nuclear installation' see PARA 1487 note 3 post.

17 For the meaning of 'nuclear site licence' see PARA 1487 note 1 post.

18 Ie any sum paid at any time by the Secretary of State under the Nuclear Installations Act 1965 s 24(1) (s 24 substituted by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 4): Nuclear Installations Act 1965 s 24(3)(a) (as further substituted by the Atomic Energy Act 1989 s 6(1)(a)). As to the power to appoint inspectors under the Nuclear Installations Act 1965 s 24(1) (as substituted) see PARA 1518 post. As to the Secretary of State see PARA 601 note 1 ante.

19 Ibid s 24(3)(b) (as substituted (see note 18 supra); amended by the Atomic Energy Act 1989 s 6(1)(b)).

20 Nuclear Installations Act 1965 s 24(3) (as substituted (see note 18 supra); amended by the Atomic Energy Act 1989 s 6(1)(c)). In so far, however, as sums so repaid relate to expenses incurred by the Scottish Administration they must be paid to the Scottish Ministers: Nuclear Installations Act 1965 s 24(3) (as so substituted; amended for this purpose by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 38(1), (4)). Any liability of a licensee in respect of sums payable under the Nuclear Installations Act 1965 s 24(3) (as substituted and amended) on account of pensions may, if the Secretary of State so determines, be calculated at such rate as may be determined by the Minister for the Civil Service, by reference to remuneration: s 24(4) (as substituted: see note 18 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

21 'Scientific research' means research and development in any of the sciences (including the social sciences) or in technology: Science and Technology Act 1965 s 6(1).

22 See ibid s 5(1) (as amended); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 973.

23 Ie the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency done at Vienna on 26 September 1986: Atomic Energy Act 1989 s 5(8). See further PARA 1352 ante.

24 Ibid s 5(1).

UPDATE

1362 Expenses of ministers

NOTE 12--Electricity (Miscellaneous Provisions) Act 2003 s 1(2), definition of 'British Energy company' amended: SI 2009/1941.

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(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')

A. IN GENERAL

1363. Establishment and nature of the United Kingdom Atomic Energy Authority.

The United Kingdom Atomic Energy Authority ('the UKAEA') was established on 1 August 1954¹ for the purposes, inter alia, of developing and carrying out research into atomic energy² and producing, distributing and acquiring radioactive substances³. The United Kingdom Atomic Energy Authority is referred to in the Atomic Energy Authority Act 1954, the Nuclear Installations Act 1965 and certain other legislation as 'the Authority'⁴ but in the Energy Act 2004 as 'the UKAEA'⁵.

The Authority is not a government department, although it is treated as such for various purposes, and is not generally entitled to Crown privileges⁶; it is a statutory corporation with perpetual succession and a common seal⁷ under the general control of the Secretary of State⁸. The finances of the Authority were put on a trading fund basis with effect from 1 April 1986⁹.

Premises belonging to or in the occupation of the Authority are deemed to be premises belonging to or occupied by the Crown for the purposes of certain legislation relating to factories¹⁰, and are protected from trespass in the like manner as government factories and magazines¹¹.

For the purpose of making and enforcing byelaws under the Military Lands Act 1892¹² any land vested in or under the management of the Authority is deemed to be land vested in or under the management of the Secretary of State, and any right of the Authority to use land vested in another person is deemed to be a right of the Secretary of State, and the purposes of the Authority are deemed to be purposes of a department or organisation maintained by him¹³.

The Authority's rights with respect to patented inventions are discussed elsewhere in this work¹⁴.

The administrative and departmental records of the Authority are public records¹⁵.

The Secretary of State has power to give the Authority such directions as he may think fit and the Authority must comply with any directions so given¹⁶.

¹ Atomic Energy Authority Act 1954 ss 1(1), 8(2); Atomic Energy Authority (Appointed Day) Order 1954, SI 1954/832. As to the application of the Atomic Energy Authority Act 1954 to Northern Ireland see s 9 (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1; the Statute Law (Repeals) Act 2004; the Energy Act 2004 s 197(9), Sch 23 Pt 1).

² For the meaning of 'atomic energy' see PARA 1357 note 1 ante.

³ As to the Authority's functions see PARA 1366 et seq post. For the meaning of 'radioactive substance' see PARA 1357 note 2 ante.

4 See the Nuclear Installations Act 1965 s 26(1); the Atomic Energy Authority Act 1971 s 1(1)(a); the Atomic Energy Authority (Weapons Group) Act 1973 s 1(1); the Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(1); the Atomic Energy Authority Act 1986 s 9.

5 See the Energy Act 2004 s 196(1). Throughout this title, and for the sake of consistency, where the full name of the United Kingdom Atomic Energy Authority is given it is followed by the abbreviation 'the UKAEA', even if not so followed in the legislation being set out; but where the full name is not given, then either 'the Authority' or 'the UKAEA' is used to refer to the United Kingdom Atomic Energy Authority in accordance with the practice of the legislation in question.

6 See the Atomic Energy Authority Act 1954 s 6(5) (amended by the Statute Law (Repeals) Act 2004, Sch 1 Pt 16).

7 Ibid s 1(9), Sch 1 para 1.

8 As to the Secretary of State see PARA 601 note 1 ante.

9 See the Atomic Energy Authority Act 1986 s 1; and PARA 1375 post.

10 See the Atomic Energy Authority Act 1954 s 6(4), Sch 3 (as amended); the Factories Act 1961 ss 173(1), 183(1), Sch 6 para 1; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 308. The power of entry on land conferred on the police by the Game Laws (Amendment) Act 1960 is not exercisable in relation to land occupied by or under the management of the Authority: see s 2(3)(c) (as amended); and ANIMALS vol 2 (2008) PARA 785.

11 See the Explosives Act 1875 s 97 (as amended); the Atomic Energy Authority Act 1954 Sch 3 (as amended); and EXPLOSIVES vol 17(2) (Reissue) PARA 909 note 5.

12 Ie for the purposes of the Military Lands Act 1892 Pt II (ss 14-18) (as amended): see PARA 1575 post.

13 See the Atomic Energy Authority Act 1954 Sch 3 (as amended); and PARA 1575 post.

14 See the Patents Act 1949 s 46(2) (amended by the Atomic Energy Authority Act 1954 Sch 3); the Atomic Energy Authority (Weapons Group) Act 1973 s 5(1), (2) (amended by the Patents Act 1977 s 132(6), Sch 5 para 6); the Patents Act 1977 s 22 (as amended); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 335-336.

15 See the Public Records Act 1958 s 10, Sch 1 para 3, Table Pt II (as amended). As to the general provisions and effect of that Act see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 837-841.

16 Atomic Energy Authority Act 1954 s 3(2). Such directions may be general or particular in character, but no such direction may be given except after consultation with the Authority, and the Secretary of State may not regard it as his duty to intervene in detail in the conduct by the Authority of its affairs unless in his opinion overriding national interests so require: s 3(3).

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1364. Composition of the United Kingdom Atomic Energy Authority.

The United Kingdom Atomic Energy Authority ('the UKAEA') consists of a chairman and not fewer than four or more than 15 other members¹. All members are appointed by the Secretary of State².

Every member of the Authority holds office and is under a duty to vacate it in accordance with the terms of his appointment, and on ceasing to be a member is eligible for reappointment³. Any member may at any time by notice in writing to the Secretary of State resign his office⁴. The Authority must appoint a secretary and may appoint such other officers and take into its employment such other persons as it may determine⁵.

1 Atomic Energy Authority Act 1954 s 1(2) (amended by the Atomic Energy Authority Act 1959 s 1; the Atomic Energy Authority Act 1995 s 11(2)). The Authority must pay to each of its members, in respect of his office as such, such remuneration (whether by way of salary or fees) and such allowances as the Secretary of State with the Treasury's approval determines in the case of those members respectively: Atomic Energy Authority Act 1954 s 1(6)(a). The Authority may also pay such pensions or make such payments towards the provision of pensions to or in respect of those members as the Secretary of State may with the like approval determine in the case of those members respectively: s 1(6)(b). Such additional remuneration as the Secretary of State with the Treasury's approval determines must be paid to any member (except the chairman) who is employed about the Authority's affairs otherwise than as a member of the Authority: s 1(7). The terms of appointment of a member of the Authority may with the Treasury's approval entitle him to compensation to be paid by the Authority on his ceasing to be a member: s 1(8A) (added by the Atomic Energy Authority Act 1986 s 7(1), (3)). Where a person ceases to be a member other than on the expiry of his term of office and is not entitled to compensation under the terms of his appointment but it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation the Secretary of State may, with the Treasury's approval, require the Authority to make to that person a payment of such amount as may be determined by the Secretary of State with the Treasury's approval: Atomic Energy Authority Act 1954 s 1(8B) (as so added). For these purposes, except in so far as the context otherwise requires, 'pension', in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions, with or without interest thereon or any other addition thereto: s 8(2). As to the Secretary of State see PARA 601 note 1 ante.

2 Atomic Energy Authority Act 1954 s 1(3) (amended by the Atomic Energy Authority Act 1995 s 11(3)).

3 Atomic Energy Authority Act 1954 s 1(4). A member of the Authority who is in any way directly or indirectly interested in a contract made or proposed to be made by the Authority must, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Authority: s 1(9), Sch 1 para 5(1). Any such disclosure must be recorded in the Authority's minutes (Sch 1 para 5(2)), and the member must not take any further part in any deliberation or decision with respect to that contract (Sch 1 para 5(2)(a)).

4 Ibid s 1(4).

5 Ibid s 1(9), Sch 1 para 7(1). The Authority may pay such officers or persons such remuneration as it may determine; and as regards any officers or persons employed in whose case it may be determined by the Authority with the approval of the Secretary of State to do so, may pay to or in respect of them such pensions, or provide and maintain such pension schemes (whether contributory or not) as may be so determined: Sch 1 para 7(2). Where any officer of or person employed by the Authority, being a participant in any pension scheme applicable to his office or employment, becomes a member of the Authority, he may be treated for the purposes of the pension scheme as if his service as a member of the Authority were service as an officer of or person employed by the Authority; and his rights under the scheme are not affected by any provision of the Atomic Energy Authority Act 1954 which requires that the pensions or payments towards the provision of pensions to be paid or made in the case of members of the Authority must be determined by the Secretary of the State with

the Treasury's approval: Sch 1 para 7(3). As to the further application of the Authority's pension schemes see PARA 1374 post; and as to the termination of employment on security grounds see PARA 1577 post.

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1365. Acts of the United Kingdom Atomic Energy Authority.

The United Kingdom Atomic Energy Authority ('the UKAEA')¹ may act notwithstanding a vacancy among its members², its quorum being three or such number not less than three as the Authority may from time to time determine³. In general the Authority regulates its own procedure⁴.

The application of the Authority's seal must be duly authenticated⁵ and every document purporting to be an instrument issued by the Authority and to be so sealed or to be signed on behalf of the Authority is receivable in evidence and is deemed to be such an instrument without further proof, unless the contrary is shown⁶.

1 As to the establishment of the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 Atomic Energy Authority Act 1954 s 1(9), Sch 1 para 2.

3 Ibid Sch 1 para 3. A member who has disclosed an interest in a contract (see PARA 1364 note 3 ante) is disregarded for the purpose of constituting a quorum for any deliberation or decision on it: Sch 1 para 5(2)(b).

4 See ibid Sch 1 para 6.

5 See ibid Sch 1 para 8. Authentication is by the signatures of (1) the chairman or some other member of the Authority authorised by it for that purpose; and (2) the secretary of the Authority or some person authorised by it to act in his stead in that behalf: Sch 1 para 8.

6 Ibid Sch 1 para 9. For these purposes, 'instrument', without prejudice to the generality of that expression, includes in particular rules, regulations, byelaws, awards, contracts, certificates and other documents: s 8(2). In other contexts, 'instrument' also includes Orders in Council, Letters Patent, judgments, decrees and orders: see s 8(2).

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1366. Functions of the United Kingdom Atomic Energy Authority; in general.

The United Kingdom Atomic Energy Authority ('the UKAEA')¹ has power, whether within the United Kingdom² or elsewhere:

- 3647 (1) to produce, use and dispose of atomic energy³ and carry out research into any matters connected with it⁴;
- 3648 (2) to manufacture or otherwise produce, buy or otherwise acquire, store and transport any articles⁵ which in the Authority's opinion are or are likely to be required for or in connection with the production or use of atomic energy or such research, and to dispose of any articles manufactured, produced, bought or acquired by it⁶;
- 3649 (3) to manufacture or otherwise produce, buy or otherwise acquire, treat, store, transport and dispose of any radioactive substances⁷;
- 3650 (4) to make arrangements with universities and other institutions or persons for the conduct of research into matters connected with atomic energy or radioactive substances and, with the approval of the Secretary of State⁸ and the Treasury, to make grants or loans to universities and other institutions or persons engaged in the production or use of atomic energy or radioactive substances or in research into matters connected with atomic energy or radioactive substances⁹; and
- 3651 (5) to distribute information relating to, and educate and train persons in matters connected with, atomic energy or radioactive substances¹⁰.

The Authority also has power to exploit commercially by selling, licensing the use of or otherwise dealing with any intellectual property¹¹ resulting from research and development carried out by the Authority itself or another person in pursuance of arrangements with the Authority, or which is at the Authority's disposal by virtue of arrangements for the exchange of results of research and development, or research and development carried out in collaboration with another person¹².

The Authority must not, however, develop or produce any weapon or part of a weapon, or engage in any work, whether by way of research, experiment, development, production or otherwise, on any explosive nuclear device, whether for war-like applications or otherwise, except in accordance with arrangements made with the Secretary of State¹³. It may not search for minerals¹⁴ in the United Kingdom otherwise than under the authority of the Secretary of State, and may not work minerals¹⁵ in the United Kingdom otherwise than in the exercise of rights vested in the Secretary of State and the Authority under the Atomic Energy Act 1946¹⁶.

1 As to the establishment of the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'atomic energy' see PARA 1357 note 1 ante. Included in the production and use of atomic energy is the carrying out of any process preparatory or ancillary to such production or use: Atomic Energy Act 1946 s 18(4) (applied by the Atomic Energy Authority Act 1954 s 8(1)).

4 Atomic Energy Authority Act 1954 s 2(2)(a). As to the Authority's power to carry out non-nuclear scientific research see PARA 1369 post.

5 'Articles' includes substances, vehicles, vessels and animals and also electricity: Atomic Energy Act 1946 s 18(2) (applied by the Atomic Energy Authority Act 1954 s 8(1)).

6 Atomic Energy Authority Act 1954 s 2(2)(b).

7 Ibid s 2(2)(c). For the meaning of 'radioactive substance' see PARA 1357 note 2 ante. As to the control of radioactive substances under the Radioactive Substances Act 1993 see PARAS 1439 et seq, 1450 et seq, 1468-1469, 1470 et seq, 1516 post.

8 As to the Secretary of State see PARA 601 note 1 ante.

9 Atomic Energy Authority Act 1954 s 2(2)(e).

10 Ibid s 2(2)(f).

11 For these purposes, 'intellectual property' includes patents, trade marks, copyrights, design rights, registered designs and any other scientific or technical information of commercial value: Atomic Energy Authority Act 1986 s 8(2) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 33).

12 Atomic Energy Authority Act 1986 s 8(1).

13 Atomic Energy Authority Act 1954 s 2(2) proviso (i) (amended by the Atomic Energy Authority (Weapons Group) Act 1973 s 6(2)); Atomic Energy Authority (Weapons Group) Act 1973 s 6(1). See also PARA 1357 ante.

14 For these purposes, 'minerals' includes all substances obtained or obtainable from the soil by underground or surface working: Atomic Energy Act 1946 s 18(1).

15 Any reference for these purposes to the working of minerals is to be construed as including a reference to the getting, carrying away, sorting and treating of minerals: ibid s 18(3).

16 See the Atomic Energy Authority Act 1954 s 2(2) proviso (ii). These rights may be vested in the Secretary of State or the Authority by order of the Secretary of State under the Atomic Energy Act 1946 s 7 (as amended): see PARA 1427 post.

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1367. Additional functions with regard to decommissioning etc.

The functions of the United Kingdom Atomic Energy Authority ('the UKAEA')¹ include:

- 3652 (1) power to carry on such activities as it considers appropriate in connection with anything that the Nuclear Decommissioning Authority ('the NDA')² has a responsibility for securing under Part 1 of the Energy Act 2004³;
- 3653 (2) power to enter into such arrangements with the NDA or any other person as it considers appropriate for that purpose; and
- 3654 (3) power for that purpose to develop and commercially to exploit an expertise in relation to things in which the NDA requires an expertise for the purpose of carrying out its functions⁴.

In the case of responsibilities of the NDA in relation to an installation, site or facility it is immaterial for these purposes that the UKAEA is not, for certain statutory purposes⁵, the person with control of it⁶.

The functions of the UKAEA also include:

- 3655 (a) power to manage and commercially to exploit any land or other property of the UKAEA that is no longer required by it for or in connection with the carrying out of its other functions; and
- 3656 (b) power to carry on a business of providing services for the administration of nuclear pension schemes⁷ and such public service pension schemes⁸ as may be approved by the Secretary of State⁹ for these purposes¹⁰.

The UKAEA has power, for the purpose of carrying out its functions, whether conferred by the above provisions or otherwise, to do all such things as appear to it to be likely to facilitate the exercise or performance of its powers and duties, or to be incidental to doing so¹¹; and the ways in which the UKAEA may carry out those functions include¹² carrying them out through subsidiaries and carrying them out in association with, or through arrangements with, other persons¹³.

1 As to the establishment and nature of the United Kingdom Atomic Energy Authority ('the UKAEA') see PARAS 1363-1365 ante; as to its functions see PARA 1366 ante, PARA 1368 et seq post; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 As to the establishment and constitution of the NDA see PARAS 1394-1395 post; and as to its functions see PARAS 1592-1595 post.

3 Ie under the Energy Act 2004 Pt 1 (ss 1-80): see PARAS 1359, 1362 ante, PARAS 1394-1397, 1592 et seq post.

4 Ibid s 80(1). Section 7(5) (things in which the NDA requires an expertise: see PARA 1594 post) has effect for these purposes as it has effect for the purposes of s 7(4): s 80(6).

5 Ie for the purposes of ibid Pt 1 Ch 1 (ss 1-37): see PARAS 1394-1397, 1592 et seq post.

6 Ibid s 80(2).

7 For these purposes, 'nuclear pension scheme' means a scheme that is a nuclear pension scheme for the purposes of *ibid* Sch 8 (see *PARA 1423 post*): s 80(7).

8 For these purposes, 'public service pension scheme' means a public service pension scheme within the meaning of the Pension Schemes Act 1993 (see s 1 (as amended); and *SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 874*) or the Pension Schemes (Northern Ireland) Act 1993 (see s 1): *Energy Act 2004 s 80(7)*.

9 As to the Secretary of State see *PARA 601 note 1 ante*.

10 *Energy Act 2004 s 80(3)*.

11 *Ibid s 80(4)*.

12 *Ie by virtue of ibid s 80(4)*.

13 *Ibid s 80(5)*.

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1368. Functions with respect to waste disposal.

Since 1 January 1976 the United Kingdom Atomic Energy Authority ('the UKAEA')¹ has been empowered (without prejudice to its other powers²) to engage in the United Kingdom³ and elsewhere in such activities relating to the treatment or disposal of waste and other matter as the Secretary of State⁴ may from time to time specify by notice given to the Authority, and to do anything which appears to the Authority to be appropriate for the purpose of exercising the powers so conferred⁵.

1 As to the establishment of the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 As to the general powers and functions of the Authority see PARA 1366 ante.

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 See the Control of Pollution Act 1974 ss 101, 109(2); the Control of Pollution Act 1974 (Commencement No 4) Order 1975, SI 1975/2118, art 3, Schedule Pt III; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 707. As to the disposal of radioactive waste by persons authorised under the Radioactive Substances Act 1993 see PARA 1450 et seq post.

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1369. Non-nuclear scientific research.

The functions of the United Kingdom Atomic Energy Authority ('the UKAEA')¹ include the undertaking of scientific research² in such matters not connected with atomic energy as may, after consultation with the Authority, be required by the Secretary of State³. Any increase in the sums payable to the Authority⁴ in respect of expenses which is attributable to this provision must be defrayed out of money provided by Parliament⁵.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante, PARA 1370 et seq post; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 For the meaning of 'scientific research' see PARA 1362 note 21 ante.

3 Science and Technology Act 1965 s 4(1). The provisions of the Atomic Energy Authority Act 1954 s 2(2) (as amended) (see PARA 1366 ante) apply to such research: Science and Technology Act 1965 s 4(1). As to the Secretary of State see PARA 601 note 1 ante.

4 Ie under the Atomic Energy Authority Act 1954 s 4(1): see PARA 1375 post.

5 Science and Technology Act 1965 s 4(2). As to the expenses of the Authority see PARA 1375 post.

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1370. Powers in relation to land.

The Secretary of State¹ may authorise the United Kingdom Atomic Energy Authority (the UKAEA)² to purchase compulsorily either any land required for the exercise and performance of its functions³, or without purchasing any other interest in land a right to place any pipe across that land, whether above or below ground, and to use, repair and maintain that pipe⁴. The Authority may, if it appears to it necessary or expedient for the due exercise and performance of its functions, place any pipe in any highway and repair and maintain any pipe so placed, and for those purposes open and break up the highway⁵. Buildings belonging to the Authority are exempt from building byelaws⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 As to the functions of the Authority see PARAS 1366-1369 ante. Eg the Authority was deemed to be duly authorised under the Atomic Energy Authority Act 1954 s 5(1) (as amended: see note 4 infra), to purchase compulsorily certain land in Dorset and to extinguish rights of common and similar rights: see the Winfrith Heath Act 1957.

4 Atomic Energy Authority Act 1954 s 5(1). The Acquisition of Land Act 1981 applies as if the Authority were a local authority within the meaning of that Act: Atomic Energy Authority Act 1954 s 5(1) (amended for this purpose by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt 1); and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 507, 508. In relation to the right to place a pipe across land, the Acquisition of Land Act 1981, and enactments incorporated with it, have effect as if references to land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land across which the pipe is to be placed, and as if references to the obtaining or taking possession of the land comprised in the order were construed as references to the exercise of the right: Atomic Energy Authority Act 1954 s 5(1) proviso.

5 Ibid s 5(2). Work carried out will be subject to the provisions of the New Roads and Street Works Act 1991: see HIGHWAYS, STREETS AND BRIDGES.

6 See the Atomic Energy Authority Act 1954 s 5(5) (amended by the Building Act 1984 s 133(1), Sch 6 para 4). This provision is prospectively repealed by the Building Act 1984 s 133(2), Sch 7, and prospectively replaced by s 45 (as amended) on such day or days as the Secretary of State, in exercise of the powers conferred on him by s 134(1), may by order made by statutory instrument appoint. At the date at which this title states the law, no such order had been made and s 45 was not in force. Under the prospective new provisions, the provisions of s 44 (as amended) (which deals with the application of building regulations to the Crown), except s 44(2) and (3) (as amended), will apply in relation to the Authority as if the Authority were a Crown authority, any building belonging to or occupied by the Authority were a Crown building, and the references in s 44(1) to not being a Crown authority were references to being neither a Crown authority nor the Authority, but so that the provisions of s 44 (as amended) will not apply in relation to dwelling houses or offices belonging to or occupied by the Authority: s 45(1) (prospectively amended by the Sustainable and Secure Buildings Act 2004 s 3(1), (9), as from a day to be appointed under s 11(3); at the date at which this title states the law, no such day had been appointed). Subject to the provisions of the Building Act 1984 s 44 (as amended), as applied by s 45(1) (as amended), building regulations and the enactments relating to building regulations will not apply in relation to buildings belonging to or occupied by the Authority, being buildings other than dwelling houses or offices: s 45(2). See further BUILDING.

UPDATE

1370 Powers in relation to land

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1371. Provision of services by the United Kingdom Atomic Energy Authority.

1371. Provision of services by the United Kingdom Atomic Energy Authority.

The United Kingdom Atomic Energy Authority (the UKAEA)¹ has power, at the request of either the nuclear fuels company or the radiochemical company², to provide for that company any service or facility which the Authority would have power to provide for the purposes of its own undertaking³. Without prejudice to the generality of this provision the Authority, with the consent of the Secretary of State⁴ and of the Treasury, may enter into an agreement with either of the companies whereby the Authority undertakes that, if the company incurs any liability of a description specified in the agreement, the Authority will indemnify the company in respect of that liability⁵.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 As to the nuclear fuels company and the radiochemical company and their current status see PARA 1377 et seq post.

3 Atomic Energy Authority Act 1971 s 15(1).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Atomic Energy Authority Act 1971 s 15(2). The terms of any such agreement are to be such as may, with the consent of the Secretary of State and the Treasury, be agreed between the Authority and the company concerned: s 15(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1372. The United Kingdom Atomic Energy Authority's returns, accounts and report.

1372. The United Kingdom Atomic Energy Authority's returns, accounts and report.

The United Kingdom Atomic Energy Authority ('the UKAEA')¹ must furnish the Secretary of State² with such returns, accounts and other information with respect to its property and activities, and prepare programmes and estimates of expenditure, in such form and at such times as he may require³. The Authority must as soon as possible after the end of each financial year⁴ make to the Secretary of State a report on the exercise and performance by it of its functions during that year, indicating what parts of the report ought in the Authority's opinion to be withheld from publication in the interests of national security; and the Secretary of State must lay a copy of the report, with the omission of such parts of it as ought in his opinion to be withheld from publication in the interests of national security, before each House of Parliament, together with such comments as he may think fit to make⁵.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Atomic Energy Authority Act 1954 s 3(4).

4 'Financial year' means the 12 months ending with 31 March: *ibid* s 8(2).

5 *Ibid* s 3(5). As to the supervisory powers of the Secretary of State in respect of the conduct of the Authority's undertaking under the Atomic Energy Authority Act 1986 s 6 see PARA 1376 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1373. Negotiations regarding employment by the United Kingdom Atomic Energy Authority.

1373. Negotiations regarding employment by the United Kingdom Atomic Energy Authority.

Except where it is satisfied that adequate machinery exists, the United Kingdom Atomic Energy Authority ('the UKAEA')¹ is under a duty to seek consultation with any organisation appearing to it to be appropriate with a view to the conclusion between the Authority and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for:

- 3657 (1) the settlement by negotiation of terms and conditions of employment of persons employed by the Authority, with provision for reference to arbitration in default of such settlement of such cases as may be determined by or under the agreements²; and
- 3658 (2) the promotion and encouragement of measures affecting the safety, health and welfare of persons employed by the Authority and, so far as in the opinion of the Authority considerations of national security permit, the discussion of other matters of mutual interest to the Authority and such persons, including efficiency in the Authority's work³.

The Authority must send to the relevant Secretaries of State⁴ copies of any such agreement and of any instrument⁵ varying the terms of any such agreement⁶.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 Atomic Energy Authority Act 1954 s 7(1)(a).

3 Ibid s 7(1)(b).

4 I.e. the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) and the Secretary of State for Work and Pensions. As to the Secretary of State see PARA 601 note 1 ante.

5 For the meaning of 'instrument' see PARA 1365 note 6 ante.

6 Atomic Energy Authority Act 1954 s 7(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1374. Pensions payable by the United Kingdom Atomic Energy Authority.

1374. Pensions payable by the United Kingdom Atomic Energy Authority.

In the case of such members¹ of the United Kingdom Atomic Energy Authority ('the UKAEA')² as the Secretary of State³ with the Treasury's approval determines, the Authority must pay such pensions⁴ or make such payments towards the provision of pensions to or in respect of those members as the Secretary of State may, with the like approval, determine⁵.

As regards any officers or persons employed in whose case it is determined by the Authority with the approval of the Secretary of State so to do, the Authority must pay to or in respect of them such pensions, or provide and maintain for them such pension schemes (whether contributory or not), as may be so determined⁶. The pension rights of these officers and persons are not affected by their becoming members of the Authority⁷.

Provision is made for the continued application of the Authority's pension scheme to persons employed by certain other bodies⁸ and for its extension to persons employed by other bodies⁹.

1 As to the members of the Authority see PARA 1364 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'pension' see PARA 1364 note 1 ante.

5 Atomic Energy Authority Act 1954 s 1(6)(b).

6 See *ibid* s 1(9), Sch 1 para 7(2)(b).

7 See *ibid* Sch 1 para 7(3).

8 See eg the Atomic Energy Authority Act 1971 s 20 (amended by the Energy Act 2004 s 197(4), (9), Sch 23 Pt 1); the Atomic Energy Authority (Weapons Group) Act 1973 s 2(3); the Research Councils (Transfer of Property etc) Order 1995, SI 1995/630, art 7; the Research Councils (Transfer of Property etc) Order 2007, SI 2007/770, art 6; the Energy Act 2004 s 46, Sch 8 Pts 3, 4 (paras 3-12).

9 See *ibid* Sch 8 Pt 2 (para 2), Pt 5 (para 13).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1375. Financial provisions applying to the United Kingdom Atomic Energy Authority.

1375. Financial provisions applying to the United Kingdom Atomic Energy Authority.

The Secretary of State¹ may, out of money provided by Parliament, pay to the United Kingdom Atomic Energy Authority ('the UKAEA')² such sums in respect of the Authority's expenses as he may, with Treasury consent, determine³.

From 1 April 1986 the operations of the Authority were placed on a trading fund basis by the Atomic Energy Authority Act 1986. The Authority was required, in respect of its net assets on that date, to assume a debt ('commencing capital debt') due to the Secretary of State of an amount specified in writing by the Secretary of State, after consulting the Authority and with the Treasury's approval⁴.

The Authority may borrow such sums as may be required to meet the obligations and discharge the functions of the Authority or its subsidiaries⁵ from the Secretary of State in sterling or from any other person in any currency with the consent⁶ of the Secretary of State or in accordance with a general authority given by him⁷. No such consent or authority is, however, necessary where money is borrowed from a wholly owned subsidiary of the Authority⁸. The Secretary of State may give general authority for temporary borrowing by way of overdraft or otherwise and borrowing by subsidiaries of the Authority⁹. The Authority may not borrow money except in accordance with these provisions; but a person lending to the Authority is not prejudiced by the Authority's failure to comply with the statutory requirements as to borrowing¹⁰.

The total amount outstanding by way of principal in respect of:

- 3659 (1) money borrowed by the Authority or a wholly owned subsidiary;
- 3660 (2) money borrowed for the repayment of which the Authority or a wholly owned subsidiary is a guarantor or surety;
- 3661 (3) the Authority's commencing capital debt; and
- 3662 (4) sums issued by the Treasury in fulfilment of its guarantees¹¹,

must not exceed £200 million¹². Borrowing between the Authority and a wholly owned subsidiary, or between two such subsidiaries, is not taken into account when arriving at the total amount of the Authority's borrowing¹³. Where a body corporate ceases to be a wholly owned subsidiary of the Authority, the Secretary of State may by order provide that the above provisions¹⁴ have effect with the substitution of such lower amounts as he considers appropriate¹⁵.

Where the Authority or a wholly owned subsidiary enters into a transaction which involves credit or other financial services being made available to it, the Secretary of State may by order¹⁶ provide:

- 3663 (a) that it is to be treated for the purposes of the above provisions¹⁷ as having borrowed such amount as may be specified in the order; and
- 3664 (b) for determining how much of that amount is to be treated as outstanding at any time¹⁸.

The Secretary of State may lend to the Authority any sums which it has power to borrow from him¹⁹. The Authority's commencing capital debt and any loans made to the Authority must be repaid at such times, and in such manner, as the Secretary of State may direct²⁰ and with interest at such rates and payable at such times as he may direct²¹. The Treasury must issue out of the National Loans Fund such sums as are necessary for the Secretary of State to make loans to the Authority²².

An account must be prepared by the Secretary of State in respect of each financial year²³ in such form and manner as the Treasury may direct, setting out:

- 3665 (i) sums issued to him for loans to the Authority; and
- 3666 (ii) sums received by him from the Authority and the disposal by him of those sums²⁴.

The account must be sent to the Comptroller and Auditor General²⁵.

The Treasury may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, the interest payable on, and any other financial obligation in connection with, any sums which the Authority or any of its subsidiaries borrows from a person other than the Secretary of State²⁶. If any sums are issued in fulfilment of a guarantee, the Authority or subsidiary must make to the Treasury, at such times and in such manner as the Treasury may direct, payments of such amounts as the Treasury may direct in or towards repayment of the sums issued²⁷, and payments of interest on what is outstanding in respect of the sums issued, at such rate as the Treasury may direct²⁸. Any sums required by the Treasury for fulfilling the guarantee or sums received by the Treasury must be charged on and issued out of, or paid into, the Consolidated Fund²⁹.

Any land occupied by the Authority is deemed for the purposes of any rate on property to be occupied by or on behalf of the Crown for public purposes³⁰. Land so occupied is, however, liable to non-domestic rates³¹.

Any sums received by the Authority must be applied by the Authority in such manner as the Secretary of State, with Treasury approval, directs³². The Authority must keep proper accounts and other records, and must prepare and transmit to the Comptroller and Auditor General statements of accounts for each financial year, and he must examine and certify the statements and lay copies, together with his report on them, before each House of Parliament³³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 Atomic Energy Authority Act 1954 s 4(1); Atomic Energy Authority Act 1959 s 3; Science and Technology Act 1965 s 4(2); Atomic Energy Authority Act 1971 s 23. As to the payment of ministers' expenses generally see PARA 1362 ante.

4 Atomic Energy Authority Act 1986 s 1(1). The commencing capital debt of the Authority is deemed to have been assumed by it on 1 April 1986 and a sum equal to the amount of that debt is deemed to have been issued to the Secretary of State out of the National Loans Fund on that date: s 1(2). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

5 For these purposes, 'subsidiary' has the same meaning as in the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25); Atomic Energy Authority Act 1986 s 9 (amended by the Companies Act 1989 s 144(2), (4), Sch 18 para 42).

6 Consent must not be given except with the Treasury's approval: s 2(5).

7 Ibid s 2(1).

8 Ibid s 2(2). The Authority must exercise control over its subsidiaries so as to secure that no subsidiary borrows from a person other than the Authority or another subsidiary except with the consent of the Secretary of State or in accordance with a general authority given by him: s 2(3). For these purposes, 'wholly owned subsidiary' has the same meaning as in the Companies Act 1985 s 736 (as substituted; prospectively repealed and replaced (see note 5 supra)) (see COMPANIES vol 14 (2009) PARA 25): Atomic Energy Authority Act 1986 s 9 (as amended: see note 5 supra).

9 Ibid s 2(4).

10 Ibid s 2(6).

11 Ie under ibid s 5: see the text and notes 26-29 infra.

12 Ibid s 3(1). The sum of £200m is substituted by virtue of the United Kingdom Atomic Energy Authority (Limit on Borrowing) Order 1991, SI 1991/1736, art 2. The Atomic Energy Authority Act 1986 specifies a sum not exceeding '£150m or such greater sum, not exceeding £200m, as the Secretary of State may specify by order': s 3(1). An order under s 3(1) may not be made without the Treasury's approval and a draft must have been approved by a resolution of the House of Commons: s 3(6), (7)(a). When he consents to borrowing in a currency other than sterling, or later, the Secretary of State may give directions, with the Treasury's approval, as to the method of calculation and the date to be taken in determining the value in sterling of the amount outstanding: s 3(5). Before giving such directions the Secretary of State must consult the Authority: s 3(6).

13 Ibid s 3(2).

14 Ie ibid s 3(1): see the text and note 12 supra.

15 Ibid s 3(3). In making this order the Secretary of State must have regard to the extent to which amounts taken into account for the purposes of s 3(1) were attributable to money borrowed for that body corporate and money borrowed for the repayment of which that body corporate is a guarantor or surety: s 3(3). Any order under this provision is subject to annulment in pursuance of a resolution of the House of Commons: s 3(7).

16 Any such order made is subject to annulment in pursuance of a resolution of the House of Commons: ibid s 3(7).

17 Ie for the purposes of ibid s 3(1): see the text and note 12 supra.

18 Ibid s 3(4).

19 Ibid s 4(1). The Secretary of State may not make a loan without the Treasury's approval: s 4(3).

20 Ibid s 4(2)(a).

21 Ibid s 4(2)(b). The Secretary of State may not give a direction without the Treasury's approval, and before giving a direction altering the terms for repayment or for the payment of interest he must consult the Authority: s 4(3).

22 Ibid s 4(4). Any sum received by the Secretary of State in respect of the Authority's commencing capital debt or such a loan must be paid into the National Loans Fund: s 4(5).

23 As to the financial year of the Authority see PARA 1372 note 4 ante.

24 Atomic Energy Authority Act 1986 s 4(6)(a).

25 Ibid s 4(6)(b). The account must be sent not later than the end of November in the following financial year: s 4(6)(b). The Comptroller and Auditor General must examine, certify and make out a report on the account and lay copies of the account and the report before each House of Parliament: s 4(6). As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

26 Ibid s 5(1). The Treasury must lay a statement of the guarantee given before each House of Parliament immediately after it is given: s 5(2).

27 Ibid s 5(3)(a).

28 Ibid s 5(3)(b). Before giving any direction under s 5(3) the Treasury must consult the Authority: s 5(4). The Treasury must as soon as possible lay before each House of Parliament a statement relating to the sum issued for fulfilling the guarantee: s 5(5).

29 Ibid s 5(6). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

30 Atomic Energy Authority Act 1954 s 6(1).

31 See the Local Government Finance Act 1988 s 65A (as added and amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 38.

32 Atomic Energy Authority Act 1954 s 4(2) (amended by the Atomic Energy (Miscellaneous Provisions) Act 1981 s 2). Any such direction may require the whole or any part of these revenues to be paid into the Exchequer: Atomic Energy Authority Act 1954 s 4(2) (as so amended).

33 Ibid s 4(3). The statements in the form directed by the Treasury must be so transmitted on or before 30 November next following the expiration of the financial year in question: s 4(3).

UPDATE

1375 Financial provisions applying to the United Kingdom Atomic Energy Authority

NOTES 5, 8--In definitions of 'subsidiary' and 'wholly owned subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see COMPANIES vol 14 (2009) PARA 25); Atomic Energy Authority Act 1986 s 9 (definitions amended by SI 2009/1941).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/A. IN GENERAL/1376. Supervisory powers of the Secretary of State.

1376. Supervisory powers of the Secretary of State.

The United Kingdom Atomic Energy Authority ('the UKAEA')¹ must, in formulating and carrying out plans for the general conduct of its undertaking and that of its subsidiaries², act on lines settled from time to time by the Authority with the approval of the Secretary of State³. In respect of work involving an outlay on capital account, the Authority must from time to time settle a general programme of work⁴, and at the Secretary of State's request settle a programme of work in respect of a particular project or category of projects⁵. The Authority may not carry out a project involving substantial outlay on capital account, and must exercise control over its subsidiaries so as to secure that they do not carry out such a project, except in accordance with such a programme of work⁶ which has been approved by the Secretary of State⁷.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 For the meaning of 'subsidiary' see PARA 1375 note 5 ante.

3 Atomic Energy Authority Act 1986 s 6(1). These requirements do not, however, affect the power of the Secretary of State to give directions under the Atomic Energy Authority Act 1954 s 3 (see PARA 1363 the text and note 16 ante); Atomic Energy Authority Act 1986 s 6(4). As to the Secretary of State see PARA 601 note 1 ante.

4 Ibid s 6(2)(a).

5 Ibid s 6(2)(b). Programmes settled under s 6(2)(a), (b) must be submitted to the Secretary of State for his approval: s 6(2).

6 Ie in accordance with either (1) a general programme; or (2) where the Secretary of State has requested the Authority to settle a programme relating wholly or partly to the project concerned, in accordance with a programme settled in pursuance of the request: see ibid s 6(3)(a), (b).

7 Ibid s 6(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(iv) The United Kingdom Atomic Energy Authority ('the UKAEA')/B. TRANSFERS OF PARTS OF ORIGINAL UKAEA UNDERTAKING/(A) Transfers to the Nuclear Fuels and Radiochemical Companies/1377. Transfer of part of the United Kingdom Atomic Energy Authority's undertaking to the nuclear fuels company.

B. TRANSFERS OF PARTS OF ORIGINAL UKAEA UNDERTAKING

(A) TRANSFERS TO THE NUCLEAR FUELS AND RADIOCHEMICAL COMPANIES

1377. Transfer of part of the United Kingdom Atomic Energy Authority's undertaking to the nuclear fuels company.

By virtue of the Atomic Energy Authority Act 1971 and without further assurance, so much of the undertaking of the United Kingdom Atomic Energy Authority ('the UKAEA')¹ as, immediately before the appointed day², was financed out of the Authority's trading fund³, was, with certain exceptions⁴, transferred to the nuclear fuels company⁵ on that date⁶. There were also transferred to that company all such property, rights, liabilities and obligations as, immediately before that date, were property, rights, liabilities and obligations of the Authority appertaining⁷ to the transferred parts of the undertaking⁸, with certain exceptions⁹, and all the land and premises which were then the property of the Authority at Springfields, Lancashire, and Windscale, Cumberland, but did not appertain to the transferred parts of the undertaking¹⁰.

A certificate issued by the Secretary of State¹¹ to the effect that any part of the Authority's undertaking or any property of the Authority which is specified in the certificate was, or was not, transferred to the nuclear fuels company, or that any rights, liabilities or obligations of the Authority specified in the certificate were, or were not, so transferred, is conclusive evidence of the matters stated in the certificate¹². Before issuing any such certificate in relation to any matter the Secretary of State must consult the Authority, the nuclear fuels company and the radiochemical company¹³ (if all three are affected by the matter), or the Authority and the nuclear fuels company (if only those two are affected), and on issuing any certificate the Secretary of State must send a copy to each of those bodies which is affected by it¹⁴.

Provision was made with regard to employees in the transferred parts of the undertaking¹⁵ and with regard to the transfer of other rights, liabilities and obligations¹⁶.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 The appointed day was 1 April 1971: Atomic Energy Authority Act 1971 ss 1(1), 24(2); Atomic Energy Authority Act 1971 (Appointed Day) Order 1971, SI 1971/478.

3 Any part of the Authority's undertaking was taken to be financed out of the Authority's trading fund at any time if the Authority's expenses in carrying on that part of the undertaking were at that time treated in the Authority's accounts as payable out of that fund: Atomic Energy Authority Act 1971 s 1(3). The trading fund in question should not be confused with the trading fund basis introduced for the Authority as a whole by virtue of the Atomic Energy Authority Act 1986: see PARA 1375 ante.

4 The parts of the Authority's undertaking financed out of the trading fund which were excepted from the transfer to British Nuclear Fuels Ltd were those parts which were carried on at the Authority's Radiochemical Centre at Amersham, Buckinghamshire, and at the Authority's establishment at Harwell, Berkshire: Atomic Energy Authority Act 1971 s 1(2)(a). As to the transfer of those parts of the undertaking to the radiochemical

company see PARA 1379 et seq post. Harwell became part of Oxfordshire on local government reorganisation in 1974.

5 British Nuclear Fuels Ltd was incorporated in England under the companies legislation on 16 February 1971 and became a public limited company on 3 January 1984. The company was established with the principal objects of taking over from the Authority activities, property and rights, and assuming obligations and liabilities of the Authority, pursuant to the Atomic Energy Authority Act 1971; designing, manufacturing, supplying or dealing in nuclear fuel; carrying out any processing and reprocessing of fissile material and nuclear fuel; manufacturing, supplying or dealing in radioactive substances; operating nuclear reactors and other irradiation facilities; producing, using and disposing of heat and electricity generated by nuclear power stations; designing, manufacturing, supplying or dealing in plant, equipment and apparatus of a kind used in or in connection with any of the above activities; providing services in connection with any of those activities; and carrying out various ancillary and connected activities. The security provisions set out in the Nuclear Installations Act 1965 s 2(1B), Sch 1 (as added and amended) (see PARA 1573 et seq post) have effect in relation to the company: see the Atomic Energy Authority Act 1971 s 21(2); the Nuclear Installations (Application of Security Provisions) Order 1971, SI 1971/569. British Nuclear Fuels Ltd became British Nuclear Fuels plc in 1984. British Nuclear Fuels plc (known as 'BNFL') is now the holding company for Sellafield Ltd, British Nuclear Group Project Services and Nexia Solutions. As to the current corporate structure see further the BNFL website, accessible at the date at which this title states the law at www.bnfl.com.

6 Atomic Energy Authority Act 1971 s 1(1)(a).

7 Property, rights, liabilities and obligations of the Authority were taken to be property, rights, liabilities and obligations appertaining to a transferred part of the Authority's undertaking if they were property held, rights acquired, or liabilities or obligations incurred wholly or mainly for the purposes of, or in the course of carrying on, that part of the Authority's undertaking, as distinct from the Authority's undertaking in general or any other part of that undertaking in particular: *ibid* s 24(3).

8 Any reference to property of the Authority is a reference to property of the Authority whether situated in the United Kingdom or elsewhere, and any reference to rights, liabilities or obligations of the Authority is a reference to rights to which the Authority was entitled or (as the case may be) liabilities or obligations to which the Authority was subject, whether under the laws of, or of a part of, the United Kingdom or under the laws of any country or territory outside the United Kingdom (*ibid* s 24(4)); but nothing in the Atomic Energy Authority Act 1971 may be construed as transferring to the company any right, liability or obligation expressly conferred or imposed on the Authority by name by any enactment (other than the Atomic Energy Authority Act 1954 s 2(1), Sch 2 (as amended) (see PARA 1366 ante)) or by statutory instrument (Atomic Energy Authority Act 1971 s 24(6)). The transfers of property were not subject to stamp duty: see s 22(1). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

9 *Ibid* s 1(1)(b). There were excepted from the transfer all the land and premises which were occupied for the purposes of the Authority's establishment at Risley, Lancashire, whether any of them were then situated in that county or in Cheshire: s 1(2)(b). On local government reorganisation in 1974 Risley became part of Cheshire. Certain industrial property was also excepted from the transfers (see s 3; and PARA 1378 post), as were any rights, liabilities and obligations of the Authority under any contract of employment, under certain agreements for personal services, or under any pension scheme or agreement relating to a pension scheme (see s 6(1)).

10 *Ibid* s 1(1)(c). Windscale became part of Cumbria on local government reorganisation in 1974. The establishment is now known as Sellafield.

11 As to the Secretary of State see PARA 601 note 1 ante.

12 Atomic Energy Authority Act 1971 s 5(5) (s 5(5), (7) amended by the Statute Law (Repeals) Act 2004).

13 As to the radiochemical company see PARA 1379 et seq post.

14 Atomic Energy Authority Act 1971 s 5(7) (as amended: see note 12 supra).

15 See *ibid* ss 8-10 (as amended).

16 See *ibid* s 6 (as amended).

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1378. Exclusions from transfer in respect of intellectual property.

There was excepted from the transfer to the nuclear fuels company any interest of the United Kingdom Atomic Energy Authority ('the UKAEA')¹ in any patent, registered design or registered trade mark², or in any application for the grant of a patent, or for the registration of a design or trade mark, which was pending immediately before the appointed day³ for the purposes of the transfer⁴, or in any invention in respect of which an application for a patent was pending immediately before that day or which, in pursuance of arrangements made by the Authority, was recorded as having been made before that day⁵.

There were also excepted from the transfer:

- 3667 (1) any rights, liabilities or obligations of the Authority in respect of any licence to use a patented invention, registered design or registered trade mark, or to use an invention, design or trade mark in respect of which an application for a patent, or for registration of the design or trade mark, was pending, whether any such licence was granted by or to the Authority, including any rights to grant sub-licences under any such licence⁶;
- 3668 (2) any rights, liabilities or obligations of the Authority arising under any assignment (whether by or to the Authority) of a patent, registered design or registered trade mark, or of the right to apply for or to obtain any patent or to apply for or to obtain registration of a design or trade mark⁷; and
- 3669 (3) any rights, liabilities or obligations of the Authority under any agreement in so far as it provides (whether conditionally or otherwise) for any such licence or sub-licence as is mentioned in head (1) above, or any such assignment as is mentioned in head (2) above, to be granted or made in the future or for the furnishing of information or technical assistance relating to any invention, design or trade mark, whether actual or prospective⁸.

Where any interest, rights, liabilities or obligations were excepted from the transfer as mentioned above, the exceptions included the copyright⁹ in any literary work consisting of a document by which the interest, rights, liabilities or obligations were conferred or imposed or in which the subject matter to which they related was embodied¹⁰, or in any artistic work on which that subject matter was based or from which it was wholly or partly derived¹¹.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 Atomic Energy Authority Act 1971 s 3(1)(a). Any reference in s 3 to a patent or to a registered design or registered trade mark, or to copyright, must be construed as referring to a patent granted, or a design or trade mark registered, or to copyright subsisting, under the laws of any country or territory outside the United Kingdom as well as to a patent granted, design or trade mark registered, or copyright subsisting, under the laws of the United Kingdom: s 3(5). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 ie 1 April 1971: see PARA 1377 note 2 ante.

4 Atomic Energy Authority Act 1971 s 3(1)(b).

5 Ibid s 3(1)(c).

6 Ibid s 3(2)(a).

7 Ibid s 3(2)(b).

8 Ibid s 3(2)(c).

9 See note 2 *supra*.

10 Atomic Energy Authority Act 1971 s 3(3)(a).

11 Ibid s 3(3)(b). The Authority was to make available to the nuclear fuels company such facilities for and information relating to the use of any invention, design or trade mark in respect of which an exception from the transfer was so made as was agreed between the Authority and the company to be requisite for the purposes of the part of the Authority's undertaking transferred to the company, or as, in default of such agreement, the Secretary of State might direct as being requisite for those purposes; and any such facilities or information were to be so made available in such manner, and on such terms as to payment or otherwise, as might be agreed between the Authority and the company or as, in default of such agreement, the Secretary of State might direct: s 3(4). As to the Secretary of State see PARA 601 note 1 *ante*; and as to the nuclear fuels company see PARA 1377 note 5 *ante*.

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1379. Transfer of part of the United Kingdom Atomic Energy Authority's undertaking to the radiochemical company.

By virtue of the Atomic Energy Authority Act 1971 and without further assurance, so much of the undertaking of the United Kingdom Atomic Energy Authority ('the UKAEA')¹ as, immediately before the appointed day², was financed out of the Authority's trading fund³ and was carried on at the Radiochemical Centre at Amersham, Buckinghamshire, or at the Authority's establishment at Harwell, Berkshire, was transferred to the radiochemical company⁴ on that date⁵. There were also transferred to that company all such property, rights, liabilities and obligations as, immediately before that date, were property, rights, liabilities and obligations of the Authority appertaining⁶ to the transferred part of the undertaking, with certain exceptions⁷.

A certificate issued by the Secretary of State⁸ to the effect that any part of the Authority's undertaking or any property of the Authority which is specified in the certificate was, or was not, transferred to the radiochemical company, or that any rights, liabilities or obligations of the Authority specified in the certificate were, or were not, so transferred, is conclusive evidence of the matters stated in the certificate⁹. Before issuing any such certificate the Secretary of State must consult the Authority, the radiochemical company, and the nuclear fuels company¹⁰ (if all three are affected by the matter), or the Authority and the radiochemical company (if only those two are affected), and on issuing any certificate the Secretary of State must send a copy to each of those bodies which is affected by it¹¹.

Provision was made with regard to employees in the transferred parts of the undertaking¹² and with regard to the transfer of other rights, liabilities and obligations¹³.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 I.e 1 April 1971: see PARA 1377 note 2 ante.

3 As to the Authority's trading fund see PARA 1377 note 3 ante.

4 The Radiochemical Centre Ltd was incorporated in England under the companies legislation on 16 February 1971. The company was established with the principal objects of taking over from the Authority activities, property and rights, and assuming obligations and liabilities of the Authority, pursuant to the Atomic Energy Authority Act 1971; designing, manufacturing, dealing in, supplying, hiring, maintaining, repairing, processing and reprocessing radioactive substances, stable isotopes, and products embodying radioactive substances and stable isotopes; designing, manufacturing, supplying or dealing in any plant, equipment or apparatus of a kind used in or in connection with any of the above activities (other than any nuclear reactor having a power output in excess of 1 megawatt or any isotope separator which separates the isotopes of uranium); providing services in connection with any of those activities; and carrying out various ancillary and connected activities. The company was incorporated on change of name to Amersham International Ltd on 5 May 1981 and registered as a public limited company on 10 February 1982. In 1997 Amersham International Ltd merged with Pharmacia Biotech (Sweden) and Nycomed (Norway) to become part of Amersham plc. Amersham is now part of GE Healthcare Ltd, a unit of General Electric Company (NYSE: GE) that is headquartered in the United Kingdom.

5 Atomic Energy Authority Act 1971 s 2(1)(a). Harwell became part of Oxfordshire on local government reorganisation in 1974.

6 As to the meaning of 'appertaining' see PARA 1377 note 7 ante.

7 Atomic Energy Authority Act 1971 s 2(1)(b). There were excepted from the transfer all land and premises forming part of the Authority's establishment at Harwell: s 2(2). There were also excepted from the transfer certain industrial property (see s 3; and PARA 1378 ante) and any rights, liabilities and obligations of the Authority under any contract of employment, under certain agreements for personal services, or under any pension scheme or agreement relating to a pension scheme (see s 6(1); and PARA 1377 note 9 ante), the provisions applicable to those exceptions being the same as apply with respect to the nuclear fuels company.

8 As to the Secretary of State see PARA 601 note 1 ante.

9 Atomic Energy Authority Act 1971 s 5(5) (s 5(5), (7) amended by the Statute Law (Repeals) Act 2004).

10 As to the nuclear fuels company see PARA 1377 note 5 ante.

11 Atomic Energy Authority Act 1971 s 5(7) (as amended: see note 9 supra).

12 See *ibid* ss 8-10 (as amended).

13 See *ibid* s 6 (as amended).

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1380. Use of certain land, premises, apparatus, facilities and services.

The United Kingdom Atomic Energy Authority ('the UKAEA')¹ was required to secure to the radiochemical company² the exclusive occupation and use of the land and premises at Harwell which, immediately before the appointed day for the purposes of the transfer to the company³, were occupied and used exclusively for the purposes of that part of the Authority's undertaking which was so transferred⁴. The Authority must also make available to the radiochemical company the use of:

- 3670 (1) such means of access and other facilities and services as may be agreed between them to be requisite in connection with the occupation and use of that land and those premises or as, in default of such agreement, the Secretary of State⁵ may direct as being in his opinion requisite in connection therewith⁶; and
- 3671 (2) all such additional apparatus, facilities and services (being apparatus, facilities and services which did not form part of the property and rights transferred to the company⁷ and do not fall within the means of access and other facilities and services mentioned above⁸) as may be agreed between the Authority and the radiochemical company to be additional apparatus, facilities and services which, immediately before that date⁹, were used or enjoyed in connection with that part of the Authority's undertaking carried on at Harwell which was so transferred to the company or as, in default of such agreement, the Secretary of State may direct as being in his opinion additional apparatus, facilities and services which were so used or enjoyed¹⁰.

1 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 As to the radiochemical company see PARA 1379 note 4 ante.

3 I.e 1 April 1971: see PARA 1377 note 2 ante.

4 Atomic Energy Authority Act 1971 s 4(2).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Atomic Energy Authority Act 1971 s 4(2)(a).

7 Ibid s 4(5)(a). As to the property and rights transferred to the company see PARA 1379 ante.

8 Ibid s 4(5)(b).

9 See note 3 supra.

10 Atomic Energy Authority Act 1971 s 4(2)(b). Anything which is so required to be secured or made available must be so secured or made available on such terms, as to payment or otherwise, as may be agreed between the Authority and the radiochemical company or as, in default of agreement, the Secretary of State may direct: s 4(4) (amended by the Energy Act 2004 s 197(9), Sch 23 Pt 1).

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1381. Shares in the companies.

Subject to certain limits on payments¹, where any shares are issued by the nuclear fuels company², otherwise than in consideration of the property, rights, liabilities and obligations transferred to it³, the Secretary of State⁴, with the consent of the Treasury, may subscribe for any such shares and pay for them out of money provided by Parliament⁵. Any dividends or other sums received by the Secretary of State in right of or on the disposal of any shares held by him in either of the companies⁶ must be paid into the Consolidated Fund⁷.

The power of the United Kingdom Atomic Energy Authority ('the UKAEA')⁸ to dispose of shares in either of the companies is exercisable whether or not the disposal is consistent with the exercise and performance of its functions and whether the disposal extends to some or all of the shares held in the company⁹. The power of the Secretary of State to dispose of shares held by him in either of the companies is exercisable whether or not the disposal is consistent with promoting or controlling the development of atomic energy and whether the disposal extends to some or all of the shares held in the company¹⁰. Where a disposal by the Authority would not in its opinion be consistent with the exercise or performance of its functions the disposal may only be made:

- 3672 (1) if in the Secretary of State's opinion it will promote the national interest;
and
- 3673 (2) under and in accordance with directions¹¹ given by him¹².

Where a disposal by the Secretary of State would in his opinion be inconsistent with promoting or controlling the development of atomic energy, the disposal may only be made if in his opinion it will promote the national interest¹³.

1 Ie subject to the Nuclear Industry (Finance) Act 1977 s 2 (as amended): see PARA 1384 post.

2 As to the nuclear fuels company see PARA 1377 note 5 ante.

3 Ie otherwise than in pursuance of the Atomic Energy Authority Act 1971 s 7 (repealed).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Atomic Energy Authority Act 1971 s 11(4) (amended by the Nuclear Industry (Finance) Act 1977 s 2(5); the Energy Act 2004 s 197(2)).

6 'The companies' means the nuclear fuels company and the radiochemical company: see the Atomic Energy Authority Act 1971 ss 1(1), 2(1), 24(1). As to the radiochemical company see PARA 1379 note 4 ante.

7 Ibid s 11(5) (amended by the Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(8)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

8 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

9 Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(1), (2). This provision applies to the disposal of shares in any company: s 1(1), (2). The power of the Secretary of State under the Atomic Energy Authority Act 1954 s 3 (see PARA 1363 the text and note 16 ante) to direct the Authority to dispose of shares is correspondingly extended: Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(2).

10 Ibid s 1(1), (3). This provision applies to the disposal of shares held by the Secretary of State in any company whose activities include the development of atomic energy or research into matters connected therewith or the production, treatment, storage or disposal of radioactive substances: s 1(1), (3). For the meaning of 'atomic energy' see PARA 1357 note 1 ante (definition applied by s 4(1)). For these purposes, 'radioactive substance' means any substance which consists of or contains any radioactive chemical element, whether natural or artificial: s 4(1) (definition substituted by the Radioactive Substances Act 1993 s 49(1), Sch 4 para 5).

11 The directions given under the Atomic Energy Authority Act 1954 s 3: see PARA 1363 the text and note 16 ante.

12 Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(4). This does not, however, apply to anything done by the UKAEA in exercise of powers conferred on it by or under the Energy Act 2004 Pt 1 Ch 2 (ss 38-50, Schs 5-9) (as amended) (see PARA 1402 et seq post) or to any disposal of securities in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the Nuclear Commissioning Authority (the 'NDA'): see the Energy Act 2004 s 48(8); and PARA 1421 post. As to the establishment and constitution of the NDA see PARAS 1394-1395 post; and as to its functions see PARAS 1592-1595 post.

13 Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(5).

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1382. Loans by the Secretary of State to the nuclear fuels company.

The Secretary of State¹ may with the Treasury's approval make loans to the nuclear fuels company² (subject to certain limits³) on such terms as may with the like approval be agreed between the Secretary of State and that company⁴; and the Treasury may issue out of the National Loans Fund⁵ to the Secretary of State such sums as are necessary to enable him to make such loans⁶. Any sums received by the Secretary of State by way of repayment of, or interest on, such a loan must be paid into the National Loans Fund⁷.

The Secretary of State must, in respect of each financial year⁸, prepare in such form and manner as the Treasury may direct an account of sums so issued to him by the Treasury and of any sums to be so paid into the National Loans Fund, and of the disposal by him of those sums respectively, and send it to the Comptroller and Auditor General⁹ not later than the end of November in the following financial year; and the Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the nuclear fuels company see PARA 1377 note 5 ante.

3 ie subject to the Nuclear Industry (Finance) Act 1977 s 2 (as amended): see PARA 1384 post.

4 Atomic Energy Authority Act 1971 s 12(1) (amended by the Nuclear Industry (Finance) Act 1977 s 2(5); the Energy Act 2004 s 197(3)).

5 As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

6 Atomic Energy Authority Act 1971 s 12(2).

7 Ibid s 12(3).

8 'Financial year' means the 12 months ending with 31 March: see the Interpretation Act 1978 s 5, Sch 1.

9 As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

10 Atomic Energy Authority Act 1971 s 12(4).

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1383. Guarantees by the Secretary of State of BNFL's borrowing.

The Secretary of State¹ may guarantee² repayment of any loan made to BNFL³ and the guarantee may extend to the payment of loan interest and any other payments falling to be made by that company to the lender or the lender's order in connection with the loan or its repayment⁴. If BNFL enters into agreements requiring that company to perform services for which it is to receive payment or part payment in advance, and the agreements provide for the advances to be repaid in specified circumstances, the Secretary of State may guarantee the repayment and also any payment of interest on sums for which BNFL may be liable under the agreements⁵. If any amount is paid by the Secretary of State in fulfilment of such a guarantee, BNFL will, as from the date of the payment, be indebted to him in that amount, with interest (for so long as the debt remains unpaid) at such rate as the Treasury may specify from time to time⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The Treasury's consent is required for any guarantee to be given by the Secretary of State under the Nuclear Industry (Finance) Act 1977 s 1 (as amended) (see the text and notes 3-6 infra); and immediately after giving it the Secretary of State must lay before each House of Parliament a statement showing the extent and character of the guarantee, and the circumstances in which it came to be given: s 1(3).

3 As to BNFL see PARA 1377 note 5 ante.

4 Nuclear Industry (Finance) Act 1977 s 1(1) (amended by the Energy Act 2004 s 197(5), (9), Sch 23 Pt 1).

5 Nuclear Industry (Finance) Act 1977 s 1(2).

6 Ibid s 1(4). For so long as there remains outstanding any indebtedness of the company to the Secretary of State under s 1(4), the Secretary of State must from time to time as the Treasury may request (and in any case not less than once in any financial year) lay before each House of Parliament a statement showing the amount of the indebtedness and the circumstances in which it arose, and defining (with Treasury approval) his intentions with regard to requiring its repayment: see s 1(5). Any sums required for fulfilling a guarantee are to be paid out of money provided by Parliament, and any sums received as repayment of the company's indebtedness or by way of interest on such indebtedness are to be paid into the Consolidated Fund: see s 1(6). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. For the meaning of 'financial year' see PARA 1382 note 8 ante.

As to the application of s 1 (as amended) to designated BNFL companies see the Energy Act 2004 Sch 7 para 3; and PARA 1422 post.

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1384. Limits on payments by the Secretary of State to BNFL.

The aggregate of:

- 3674 (1) the total amount paid (in or after 1971) by the Secretary of State¹ or by the United Kingdom Atomic Energy Authority ('the UKAEA')², or by both collectively, for shares issued by BNFL³ (otherwise than shares issued in consideration of the property, rights, liabilities and obligations transferred by the Atomic Energy Authority Act 1971⁴); and
 - 3675 (2) the total amount outstanding in respect of the principal of the loans made (in or after 1971) by the Secretary of State to the company under that Act⁵; and
 - 3676 (3) the total of any sums:
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- 500. (a) for which the Secretary of State is, or may in default of payment by the company become, liable in the fulfilment of guarantees given for the company⁶, so far only as the guarantee relates to the principal of any loan to the company; and
 - 501. (b) which he has paid in fulfilment of guarantees given for the company less any repayment by the company of its resulting indebtedness⁷,
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must not at any time exceed the limit for the time being applicable to that company⁸. For these purposes, the financial limit applicable to BNFL is £2,000 million⁹.

The aggregate of any sums for which the Secretary of State is, or may in default of payment by BNFL become, liable in the fulfilment of guarantees given¹⁰, and any sums which he has paid in fulfilment of guarantees so given, less any repayment made by the company of its resulting indebtedness¹¹, must not exceed £400 million, or such greater sum, not exceeding £500 million, as may be specified by order¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 As to BNFL see PARA 1377 note 5 ante.

4 I.e. otherwise than in pursuance of the Atomic Energy Authority Act 1971 s 7 (repealed). As to the transfer to BNFL see PARA 1377 ante.

5 As to the loans by the Secretary of State see PARA 1382 ante.

6 As to the guarantees by the Secretary of State see PARA 1383 ante.

7 I.e. repayment of its resulting indebtedness under the Nuclear Industry (Finance) Act 1977 s 1(4): see PARA 1383 ante.

8 Ibid s 2(1), (2) (amended by the Atomic Energy Act 1989 ss 1, 6(4); the Energy Act 2004 s 197(6), (7), (9), Sch 23 Pt 1).

9 Nuclear Industry (Finance) Act 1977 s 2(1) (as amended: see note 8 supra).

10 Ie under ibid s 1(1): see PARA 1383 ante.

11 See note 7 supra.

12 Nuclear Industry (Finance) Act 1977 s 2(3). The power to make orders for this purpose is exercisable by the Secretary of State with the Treasury's approval and is so exercisable by statutory instrument, but such an order may not be made unless a draft of the order has been laid before the House of Commons and approved by a resolution of that House: s 2(4). At the date at which this title states the law, no such order had been made.

As to the application of s 2 to both BNFL and designated BNFL companies see the Energy Act 2004 Sch 7 para 5; and PARA 1422 post.

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1385. Accounts of the companies.

As soon as practicable after the holding of any general meeting of the nuclear fuels company¹, the Secretary of State² must lay before each House of Parliament a copy of any accounts which, in accordance with any requirement of the companies legislation³, are laid before the company at that meeting, and of any documents which are annexed or attached to any such accounts⁴.

1 As to the nuclear fuels company see PARA 1377 note 5 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie any requirement of the Companies Act 1985 or the Companies Act 2006. As to the relevant requirements see generally COMPANIES.

4 Atomic Energy Authority Act 1971 s 14 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; and by virtue of the Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(7)); Companies Act 2006 s 1297(5).

UPDATE

1385 Accounts of the companies

TEXT AND NOTES--Replaced. As soon as practicable after either of the companies (1) if it is a private company, has sent to members copies of accounts in accordance with the Companies Act 1985 s 238; or (2) if it is a public company, has laid accounts before the company in general meeting in accordance with s 241, the Secretary of State must lay before each House of Parliament a copy of those accounts and of any documents annexed or attached to them: 1971 Act s 14 (substituted by the Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194).

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(B) TRANSFERS OF RESPONSIBILITY FOR WEAPONS RESEARCH ETC

1386. Transfer of United Kingdom Atomic Energy Authority Weapons Group to the Secretary of State.

On 1 April 1973¹ the undertaking of the United Kingdom Atomic Energy Authority ('the UKAEA')² ceased to comprise the part known as the Weapons Group, and it became the responsibility of the Secretary of State³ (and not the Authority, except under contract to, or by direction of, or with the approval of, the Secretary of State) to carry on any activities which before that day were activities of the group and involved the doing of work on explosive nuclear devices⁴. On the same day there were transferred to the Secretary of State for Defence certain land and premises, and certain other property, rights, liabilities and obligations which immediately before that day belonged to or were incumbent upon the Authority and appertained to the group⁵. Any rights, liabilities or obligations of the Authority under:

- 3677 (1) any contract of employment;
- 3678 (2) any agreement for the rendering by a person of services to the Authority in his capacity as a member of it; or
- 3679 (3) any pension scheme or agreement relating to a pension scheme,

were, however, excepted from the transfer, as were certain patent rights and other industrial property⁶. Every employee of the Authority engaged in the group immediately before that day then ceased to be employed by the Authority, but could be taken into employment in the civil service in pursuance of arrangements made by the Secretary of State in connection with the transfer⁷.

The Secretary of State must at the Authority's request enter into arrangements with it for securing that it has access to any of its property which in consequence of the transfer is for the time being in the custody or control of the Secretary of State⁸, and to any technical information which was available to the Authority before the transfer and is required by it for the purposes of any part of its undertaking which was not transferred⁹.

The Atomic Weapons Establishment Act 1991 enabled the Secretary of State to transfer to a company the undertaking of the Atomic Weapons Establishment¹⁰.

¹ Atomic Energy Authority (Weapons Group) Act 1973 ss 1(1), 9(1); Atomic Energy Authority (Weapons Group) Act 1973 (Appointed Day) Order 1973, SI 1973/463.

² As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

³ As to the Secretary of State see PARA 601 note 1 ante.

⁴ Atomic Energy Authority (Weapons Group) Act 1973 s 1(1).

5 See *ibid* ss 1(2), 9(2)(a), (3). Property thus vested in the Secretary of State was transferred without further assurance: s 1(2). A certificate issued by the Secretary of State that any property was or was not, or that any rights, liabilities or obligations were or were not, transferred, is conclusive evidence of the matters stated in the certificate: s 3(4) (s 3(4), (5) amended by the Statute Law (Repeals) Act 2004). Before issuing any such certificate the Secretary of State must consult the Authority: Atomic Energy Authority (Weapons Group) Act 1973 s 3(5) (as so amended). For general transitional provisions see s 4 (amended by the Statute Law (Repeals) Act 2004). See also *Pearce v Secretary of State for Defence* [1988] AC 755, [1988] 2 All ER 348, HL (the transfer of liabilities to the Secretary of State for Defence does not have the effect of taking away accrued rights; the Secretary of State was not, therefore, entitled to claim immunity from suit under the Crown Proceedings Act 1947 s 10(1), (2) (repealed with effect from 15 May 1987) in respect of a claim for damages for personal injury as a result of exposure to radiation during tests of nuclear weapons carried out by the Authority's scientists prior to the transfer).

6 See the Atomic Energy Authority (Weapons Group) Act 1973 s 1(3), Schedule. The rights so reserved to the Authority were (1) any interest of the Authority in a patent, registered design, registered trade mark or copyright; (2) any rights, liabilities or obligations of the Authority so far as arising (a) from an application for the grant of a patent or for the registration of a design or a trade mark, where the application was pending immediately before the appointed day; (b) from any invention (whether patented or not) made before that day; or (c) from the use by the Authority before that day of an unregistered trade mark; (3) any property of the Authority consisting of drawings, models, specifications or designs, or of documents relating thereto (including documents relating to the application or operation of any process or technique), other than those relating to any explosive nuclear device; and (4) any rights, liabilities or obligations of the Authority so far as arising (a) from any licence or assignment, whether to or by the Authority, of an invention, design, copyright or trade mark, or from an agreement for such a licence or assignment; or (b) from any agreement with respect to the making of an application for a patent or for the registration of a design or trade mark; or (c) from any agreement requiring the Authority to provide, or enabling it to receive, technical information or assistance of any description: Schedule paras 1-4. For these purposes, any reference to a patent, or to a registered design, or to copyright, includes a patent granted or design registered or copyright subsisting under the laws of a country or territory outside the United Kingdom; and any reference to a trade mark includes a trade mark subsisting or registered under the laws of any such country or territory: Schedule para 5. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

Where the Secretary of State thinks it necessary or expedient for the purposes of any activities carried on or to be carried on by him he may, by directions given to the Authority, after consultation with it, require it to make available to him, on such terms as to payment or otherwise as he thinks appropriate, (i) facilities for, and information relating to, the use of any invention, design or trade mark so excepted from transfer (s 5(1)(a)); and (ii) any technical information in the possession of or available to the Authority, other than information which it is precluded by contract from disclosing (s 5(1)(b)).

7 See *ibid* ss 2(1), 9(2)(b).

8 *Ibid* s 5(3)(a).

9 *Ibid* s 5(3)(b). The arrangements must include arrangements for enabling servants of the Authority to inspect and take copies of certain relevant documents: see s 5(3).

10 As to the Atomic Weapons Establishment and the provisions of the Atomic Weapons Establishment Act 1991 see PARA 1387 post.

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1387. Arrangements with regard to the Atomic Weapons Establishment.

The Atomic Weapons Establishment Act 1991 provides for arrangements that may be made by the Secretary of State¹ with respect to the undertaking carried on by him and known as the Atomic Weapons Establishment. The Act applies in relation to such activities, carried on at such premises, as may be designated by the Secretary of State by order². The activities that may be so designated are any activities connected with the development, production or maintenance of nuclear devices or with research into such devices or their effects and the premises which may be so designated are those which, at the date when the Act came into force³, formed part of the undertaking carried on by the Secretary of State and known as the Atomic Weapons Establishment⁴.

The Atomic Weapons Establishment Act 1991 applies if, as regards any designated premises, the Secretary of State makes arrangements for a company to carry on designated activities at the premises under contract with him and for that or another company:

- 3680 (1) to become the employer of such of the qualified employees⁵ as are employees to whom the arrangements apply; and
- 3681 (2) to acquire from him rights in or over the premises or any part of them and any property used for the purposes of the undertaking, with a view to their services and that property being made available for carrying on the designated activities at those premises⁶.

Provision is made for regulations governing the status of employees on transfer of an undertaking to apply with modifications when the Secretary of State makes arrangements for a company to carry on designated activities at designated premises⁷. In these circumstances provision is also made for the disapplication to transferred employees of redundancy procedures applicable to persons employed in the civil service of the Crown⁸ and for the modification of their entitlements under certain pension schemes⁹.

There is to be paid out of money provided by Parliament any expenses of the Secretary of State incurred:

- 3682 (a) in connection with the formation of any company formed with a view to, or for any purpose of, the carrying on of designated activities or with the operation of any such company wholly owned by the Secretary of State; or
- 3683 (b) in assuming responsibility for any liabilities (whether of such a company or any other company which is or has been a contractor) which are liabilities arising out of the carrying on of designated activities or liabilities to or in respect of persons employed or formerly employed in or in connection with the carrying on of such activities¹⁰.

Provision is made as to the application of certain enactments for the purpose of conferring privileges and immunities on contractors¹¹. The jurisdiction of the Ministry of Defence Police Force extends to the land and property of a contractor¹².

1 le in practice the Secretary of State for Defence. As to the Secretary of State see PARA 601 note 1 ante.

2 Atomic Weapons Establishment Act 1991 s 1(1). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 1(5). For these purposes, 'designated', with reference to any activity or premises, means designated by an order made by the Secretary of State: s 1(4). The Atomic Weapons Establishment (Designation and Appointed Day) Order 1992, SI 1992/2743, designates any activities connected with the development, production or maintenance of nuclear devices or with research into such devices or their effects (art 3) in relation to each of the premises forming part of the undertaking carried on by the Secretary of State on 25 September 1991 and known as the Atomic Weapons Establishment, more particularly described as the Atomic Weapons Establishment at (1) Aldermaston, Berks (including the separate site at Blacknest, Berks); (2) the Mearings, Burghfield, Berks; (3) Caerphilly Rd, Llanishen, Cardiff; and (4) Foulness, Essex (art 2).

3 le on 25 September 1991: Atomic Weapons Establishment Act 1991 s 6(2).

4 Ibid s 1(2). 'The undertaking' for these purposes in relation to any designated premises means the carrying on by the Secretary of State of designated activities at those premises: s 1(1).

5 'The qualified employees' means the persons who are employed in the civil service of the Crown in or in connection with the undertaking on such day as the Secretary of State appoints by order: ibid s 1(1). The appointed day for this purpose was 31 March 1993: Atomic Weapons Establishment (Designation and Appointed Day) Order 1992, SI 1992/2743, art 4.

6 Atomic Weapons Establishment Act 1991 s 1(3). For these purposes, 'company' means a company formed under the Companies Act 1985 or the Companies Act 2006 or the corresponding provisions of any earlier enactment and 'formed' with reference to the purposes of a company includes the alteration of its objects: Atomic Weapons Establishment Act 1991 s 1(4); Companies Act 2006 s 1297(5). Any reference in the Atomic Weapons Establishment Act 1991 s 1(3) to a company includes a reference to a company formed by the Secretary of State: s 1(3).

7 Ibid s 2(1). The Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, otherwise apply to the transfer of the undertaking or any part of it whether or not the undertaking would be treated as an undertaking to whose transfer those regulations apply: Atomic Weapons Establishment Act 1991 s 2(1) (amended by the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 20(3), Sch 2 para 6(1), (2)). For the purposes of those regulations the services of the qualified employees together with the rights in or over the premises and property used for the purposes of the undertaking are to be treated as part of that undertaking to whose transfer those regulations apply whether or not the company which is to become their employer also carries on designated activities: Atomic Weapons Establishment Act 1991 s 2(2) (amended by the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, Sch 2 para 6(1), (3)). See further EMPLOYMENT vol 39 (2009) PARA 111 et seq.

8 See the Atomic Weapons Establishment Act 1991 s 2(3).

9 Ibid s 2(4). Where in pursuance of the arrangements (1) a person ceases to be employed in the civil service of the Crown on becoming employed by a company; and (2) he would not have so ceased if it were not for the arrangements, he will not, on so ceasing, be treated for the purposes of any scheme under the Superannuation Act 1972 s 1 (as amended), or any pension scheme maintained by the United Kingdom Atomic Energy Authority, as having retired on redundancy: Atomic Weapons Establishment Act 1991 s 2(4).

10 Ibid s 5.

11 See ibid s 3(1), Schedule (as amended). For the purposes of the Military Lands Act 1892 Pt II (ss 14-18) (as amended) (byelaws for lands under the management of the Secretary of State and used for service purposes: see ARMED FORCES vol 2(2) (Reissue) PARAS 123-124), land in designated premises is treated as land under the management of the Secretary of State for military purposes: Atomic Weapons Establishment Act 1991 Schedule para 2. The Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (security of tenure for business tenants: see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 701 et seq) does not apply to any tenancy granted to a contractor in respect of any land in designated premises: Atomic Weapons Establishment Act 1991 Schedule para 3. The Clean Air Act 1993 s 46(1), (2) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 210) has effect in relation to emissions from designated premises as if references to premises under the control of a government department which are occupied for the public service of the Crown include a reference to designated premises (and references to the responsible minister are references to the Secretary of

State); and for all other purposes of that Act any such premises are to be treated as Crown premises occupied by a government department: Atomic Weapons Establishment Act 1991 Schedule para 10B (added by the Clean Air Act 1993 s 67(1), Sch 4 para 5).

The power of the Secretary of State under the Health and Safety at Work etc Act 1974 s 48(4) (Crown exemptions: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 304) includes power to provide for exceptions, in relation to designated premises or activities carried on by a contractor at such premises, from all or any of the relevant statutory provisions within the meaning of Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 note 24); and for the purposes of the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 372), designated premises and the activities carried on by a contractor at such premises are treated as occupied or carried on by the Crown: Atomic Weapons Establishment Act 1991 Schedule para 7; Interpretation Act 1978 s 17(2).

For the purposes of the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended) (liability to non-domestic rates: see RATING AND COUNCIL TAX) land in designated premises is treated as occupied on behalf of the Crown for public purposes: Atomic Weapons Establishment Act 1991 Schedule para 9. For the purposes of the Planning (Hazardous Substances) Act 1990 s 31 (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1214-1215), any interest of a contractor in designated premises is treated as a Crown interest in those premises: Atomic Weapons Establishment Act 1991 Schedule para 10.

As to the application of the Radioactive Substances Act 1993 to designated premises and activities see PARA 1450 note 6 post; and as to the application of the Nuclear Installations Act 1965 to designated premises and contractors see PARA 1492 note 3, 1493 note 9, 1494 note 7 post. For these purposes, 'contractor' means a company which carries on designated activities at designated premises under contract with the Secretary of State or, by making the services of employees or property available, enables such activities to be carried on at such premises, whether by a company or by the Secretary of State: Atomic Weapons Establishment Act 1991 s 1(4). 'Designated premises', for the purposes of the Schedule (as amended), means any designated premises as respects which such arrangements as are referred to in s 1(3) have been made, whatever may be the respective rights of the Secretary of State and any contractor in or over any part of the premises: Schedule para 1. The Secretary of State may by order repeal or amend any provisions of the Schedule (as amended) by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; but this power may not be exercised so as to extend the application of any privilege or immunity which is for the time being provided for by that Schedule: s 3(2), (3). As to the exercise of this power see the Atomic Weapons Establishment Act 1991 Amendment Order 1997, SI 1997/1396, cited in PARA 1492 note 3, 1493 note 9, 1494 note 7 post.

12 See the Atomic Weapons Establishment Act 1991 s 4. The places to which the Ministry of Defence Police Act 1987 s 2(2) (jurisdiction) applies include land, vehicles, vessels, aircraft and hovercraft which are in the possession, under the control or used for the purposes of a contractor, and used for the purposes of, or for purposes which include, carrying on designated activities: Atomic Weapons Establishment Act 1991 s 4(1). The reference to Crown property in the Ministry of Defence Police Act 1987 s 2(3) has effect as if it included a reference to property which belongs to a contractor, is in its possession or under its control, and is (or was immediately before its removal) used to any extent for the purpose of carrying on designated activities: Atomic Weapons Establishment Act 1991 s 4(2).

UPDATE

1387 Arrangements with regard to the Atomic Weapons Establishment

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--'Company' means a company as defined in the Companies Act 2006 s 1(1) (see COMPANIES vol 14 (2009) PARA 24) and 'formed', in relation to a company, includes the alteration of the company's articles so as to add, remove or alter a statement of the company's objects: Atomic Weapons Establishment Act 1991 s 1(4) (definitions substituted by SI 2009/1941).

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(C) TRANSFERS UNDER THE

1388. Transfers under the Atomic Energy Authority Act 1995; in general.

The Atomic Energy Authority Act 1995 gave the Secretary of State¹ power to direct the United Kingdom Atomic Energy Authority ('the UKAEA')² to make, before a date specified in the direction, a transfer scheme which related to such property, rights and liabilities as were specified in, or determined in accordance with, the direction and which contained such other provisions as might be so specified³. If so directed, the UKAEA was to make a scheme or schemes providing for the transfer to any person or persons of such property, rights and liabilities of that Authority as were specified in, or determined in accordance with, the scheme⁴. A nuclear site licence⁵ or the fee simple estate in any land which, immediately before the day on which the scheme came into force, consisted of or was wholly or partly comprised in a site in respect of which such a licence held by the Authority was in force might not, however, be transferred by such a scheme⁶. If the Secretary of State decided not to approve such a scheme, or if the Authority failed to make such a scheme by the date specified in the direction, he might himself make a transfer scheme⁷.

The Authority or the Secretary of State might enter into agreements with respect to transfer schemes⁸. At any time after the coming into force of a transfer scheme, the Secretary of State might by order extinguish all or any of the liabilities of the Authority in respect of the principal of such relevant loans as might be specified in the order to such extent as might be so specified⁹. No liability of the Authority in respect of its commencing capital debt¹⁰ or in respect of certain loans¹¹ was to be transferred by a transfer scheme except to a company which was either wholly owned by the Crown, or a wholly-owned subsidiary of the Authority¹². A transfer scheme might provide for the division of the Authority's undertaking¹³. Where, in consequence of any provisions included in a transfer scheme for the purposes of any such division, the interests, rights or liabilities of a third party were modified, the third party might be entitled to compensation¹⁴.

There was to be an initial government holding in any successor company¹⁵. Provision was made by the 1995 Act to safeguard the pension rights of certain transferred employees¹⁶.

With the exception of amendments made by it to other enactments¹⁷, the 1995 Act was repealed in its entirety by the Energy Act 2004¹⁸. That repeal does not, however, affect any provision of the 1995 Act so far as it has effect in relation to:

- 3684 (1) a transfer scheme under the 1995 Act that was made before 5 October 2004¹⁹; or
- 3685 (2) a company that is a successor company by reference to such a scheme²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

- 3 See the Atomic Energy Authority Act 1995 s 2(1) (repealed).
- 4 See *ibid* s 1(1) (repealed).
- 5 *Ie* within the meaning of the Nuclear Installations Act 1965: see PARA 1487 note 1 post.
- 6 See the Atomic Energy Authority Act 1995 s 1(3) (repealed).
- 7 See *ibid* s 2(3) (repealed).
- 8 See *ibid* s 4 (repealed).
- 9 See *ibid* s 10 (repealed).
- 10 *Ie* under the Atomic Energy Authority Act 1986 s 1: see PARA 1375 ante.
- 11 *Ie* any loan made to the Authority under *ibid* s 4: see PARA 1375 ante.
- 12 See the Atomic Energy Authority Act 1995 s 1(5), Sch 1 para 4 (repealed).
- 13 See *ibid* Sch 1 para 2 (repealed).
- 14 See *ibid* Sch 1 para 10 (repealed).
- 15 See *ibid* s 6, Sch 2 (repealed). 'Successor company' meant any company which, at a time when it was wholly owned by the Crown or was a wholly-owned subsidiary of the Authority, became entitled or subject, in accordance with a transfer scheme, to any property, rights or liabilities: see s 13(1) (repealed).
- 16 See *ibid* s 9, Sch 4 (repealed).
- 17 See *ibid* s 11, which amends the Atomic Energy Authority Act 1954 s 1(2), (3); and PARA 1364 ante.
- 18 See the Energy Act 2004 Sch 23 Pt 1.
- 19 *Ie* the date when the repeal came into force.
- 20 Energy Act 2004 Sch 23 Pt 2 para 2.

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(v) The Health Protection Agency and the Environment Agency

1389. The Health Protection Agency; in general.

The Health Protection Agency was established on 1 April 2005¹. The composition and functions of that Agency are discussed in detail elsewhere in this work². Among those functions are the following functions in relation to risks connected with radiation (whether ionising or not):

- 3686 (1) the advancement of the acquisition of knowledge about protection from such risks;
- 3687 (2) the provision of information and advice in relation to the protection of the community (or any part of the community) from such risks³.

The Agency must also exercise such of the functions which were exercisable on 1 April 2005 by the National Radiological Protection Board as are specified in a direction given by the appropriate authority⁴. The giving of such a direction does not, however, transfer the function to the Agency or prevent the exercise of the function by the appropriate authority⁵.

The Radiological Protection Act 1970, which established the National Radiological Protection Board and set out its functions, is repealed⁶. That board is now part of the Health Protection Agency.

1 See the Health Protection Agency Act 2004 s 1; the Health Protection Agency Act 2004 (Commencement) Order 2005, SI 2005/121, art 2.

2 See HEALTH SERVICES vol 54 (2008) PARAS 213-227.

3 See the Health Protection Agency Act 2004 s 3(1).

4 See *ibid* s 3(2). As to the appropriate authority see s 6. In England, the appropriate authority is the Secretary of State: see s 6(1).

5 See *ibid* s 3(8).

6 See *ibid* s 11, Sch 4.

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1390. The Environment Agency; in general.

The composition and general functions of the Environment Agency ('the Agency') are discussed elsewhere in this work¹. The Agency has specific responsibilities with regard to:

- 3688 (1) the registration of users of radioactive material and mobile radioactive apparatus under the Radioactive Substances Act 1993²;
- 3689 (2) the granting of authorisations for the disposal and accumulation of radioactive waste under that Act³; and
- 3690 (3) the granting of authorisations for the transfrontier shipment of certain radioactive waste⁴ and of approvals for transfrontier shipments which have been authorised by another member state⁵.

Those responsibilities are discussed below⁶. The Agency also has statutory powers of entry with regard to radioactive substances, as is discussed below⁷.

The Agency has a statutory right to be consulted:

- 3691 (a) by the Health and Safety Executive⁸
- 339 502. (i) before the granting of a nuclear site licence under the Nuclear Installations Act 1965 in respect of a site in England and Wales⁹;
- 503. (ii) before the variation of certain nuclear site licences¹⁰;
- 504. (iii) before revoking a nuclear site licence in respect of a site in England and Wales¹¹;
- 340 3692 (b) by the Nuclear Decommissioning Authority ('the NDA')¹² before the NDA:
- 341 505. (i) prepares a strategy under the Energy Act 2004 for carrying out its functions, revises such a strategy in a manner requiring approval, or submits such a strategy to have the approval of the strategy renewed¹³; or
- 506. (ii) prepares or revises its annual plan¹⁴.
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1 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 See PARA 1439 et seq post. For additional powers with regard to high-activity sealed radioactive sources and orphan sources see PARA 1464 et seq post.

3 See PARA 1450 et seq post. For additional powers with regard to high-activity sealed radioactive sources and orphan sources see PARA 1464 et seq post.

4 See PARA 1479 et seq post.

5 See PARA 1483 post.

6 See PARAS 1439 et seq, 1479 et seq, 1567-1568, 1584 post.

- 7 See PARA 1516 post.
- 8 As to the Health and Safety Executive see PARA 1391 post; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 9 See PARA 1490 post.
- 10 See PARA 1490 the text and notes 13-14 post.
- 11 See PARA 1494 post.
- 12 As to the establishment and constitution of the NDA see PARAS 1394-1397 post; and as to its functions see PARAS 1592-1595 post.
- 13 See PARA 1598 post.
- 14 See PARA 1600 post.

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(vi) The Health and Safety Executive

1391. The Health and Safety Executive; in general.

The composition and general functions of the Health and Safety Executive ('the Executive') are discussed elsewhere in this work¹. The Executive has specific responsibilities with regard to nuclear site licensing and inspection² and the granting of consents for projects for dismantling or decommissioning work on any nuclear power station or nuclear reactor to which the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999³ apply⁴. Those responsibilities are discussed below⁵.

The Executive has a statutory right to be consulted:

- 3693 (1) by the Environment Agency⁶ before the granting of an authorisation:
343
- 507. (a) under the Radioactive Substances Act 1993 to dispose of or accumulate
radioactive waste⁷ and before any such authorisation is varied⁸; and
- 508. (b) for the transfrontier shipment of certain radioactive waste⁹;
344
- 3694 (2) by the Nuclear Decommissioning Authority ('the NDA')¹⁰ before the NDA:
345
- 509. (a) prepares a strategy under the Energy Act 2004 for carrying out its
functions, revises such a strategy in a manner requiring approval, or submits such a
strategy to have the approval of the strategy renewed¹¹; or
- 510. (b) prepares or revises its annual plan¹².
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The Executive regulates the nuclear industry through its Nuclear Directorate.

¹ As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

² Ie under the Nuclear Installations Act 1965: see PARA 1487 et seq post.

³ Ie the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended): see PARA 1615 et seq post.

⁴ As to the nuclear power stations and other nuclear reactors to which the 1999 Regulations apply see PARA 1614 post.

⁵ See PARAS 1487 et seq, 1614 et seq post.

⁶ As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

⁷ See PARA 1453 post.

⁸ See PARA 1459 post.

9 See PARA 1480 post.

10 As to the establishment and constitution of the NDA see PARAS 1394-1397 post; and as to its functions see PARAS 1592-1595 post.

11 See PARA 1598 post.

12 See PARA 1600 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(vi) The Health and Safety Executive/1392. Recovery of expenses by the Health and Safety Executive.

1392. Recovery of expenses by the Health and Safety Executive.

The following provisions apply to any expenses incurred by the Health and Safety Executive ('the Executive')¹ and any expenses incurred by the Health and Safety Commission ('the Commission')² which, in either case, the Executive may determine to be incurred wholly or partly in connection with:

- 3695 (1) the carrying into effect of specified provisions of the Nuclear Installations Act 1965³; or
- 3696 (2) the carrying out of research into nuclear safety at the direction of the Commission⁴;

and such expenses incurred by the Executive include any sums paid by it by way of remuneration, allowances or other payments to inspectors appointed under the Health and Safety at Work etc Act 1974⁵.

In such cases and to such extent as it may appear to the Executive appropriate to do so, the Executive must:

- 3697 (a) require a person who has applied for a nuclear site licence⁶ to repay to it so much of any expenses to which these provisions apply as may appear to it to be attributable to dealing with the application⁷;
- 3698 (b) require a person to whom a nuclear site licence has been granted to repay to it:
- 347 511. (i) so much of any expenses to which these provisions apply as may appear to it to be attributable to any nuclear installation⁸ in respect of which the licence has been granted; and
- 512. (ii) so much of any such expenses which are not otherwise recoverable under these provisions as it thinks fit⁹.
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A person must comply with any requirement so made of him¹⁰. Any liability of a person in respect of sums payable by him under these provisions on account of pensions must, if the Executive so determines, be satisfied by way of contributions calculated, at such rate as may be determined by the Treasury, by reference to remuneration¹¹.

Where the Executive anticipates that a person who has applied for or has been granted a nuclear site licence will become subject to a liability under these provisions, it may require him to make to it a payment or payments on account of the liability¹². Where a person has made such a payment on account of an anticipated liability, then:

- 3699 (A) if he does not become subject to the liability, the Executive is liable to repay the payment to him; and
- 3700 (B) if the amount of the liability to which he becomes subject is less than the amount so paid on account, the Executive is liable to repay the difference to him¹³.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367.

3 The such of the provisions of the Nuclear Installations Act 1965 as are mentioned in the Health and Safety at Work etc Act 1974 Sch 1 (as amended). Those provisions (which are 'relevant statutory provisions' for the purposes of the 1974 Act: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 notes 12, 24) are (1) the Nuclear Installations Act 1965 s 1 (as amended) (see PARA 1487 post); (2) ss 3-6 (as amended) (see PARAS 1490-1494 post); (3) s 22 (as amended) (see PARA 1499 post); (4) s 24A (as added) (see the text and notes 4-12 infra); and (5) Sch 2 (repealed except in relation to Northern Ireland): see the Health and Safety at Work etc Act 1974 Sch 1 (amended for these purposes by the Atomic Energy Act 1989 s 6(3)).

4 Nuclear Installations Act 1965 s 24A(1) (s 24A added by the Atomic Energy Act 1989 s 2(1)).

5 See the Nuclear Installations Act 1965 s 24A(2) (as added: see note 4 supra).

6 For the meaning of 'nuclear site licence' see PARA 1487 note 1 post.

7 Nuclear Installations Act 1965 s 24A(3) (as added: see note 4 supra).

8 For the meaning of 'nuclear installation' see PARA 1487 note 3 post.

9 Nuclear Installations Act 1965 s 24A(4) (as added: see note 4 supra).

10 Ibid s 24A(5) (as added: see note 4 supra).

11 Ibid s 24A(6) (as added: see note 4 supra).

12 Ibid s 24A(7) (as added: see note 4 supra).

13 Ibid s 24A(8) (as added: see note 4 supra).

UPDATE

1392-1393 Recovery of expenses by the Health and Safety Executive, Fees payable in relation to nuclear design proposals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1392 Recovery of expenses by the Health and Safety Executive

NOTE 2--Health and Safety Commission abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 4--1965 Act s 24(1) substituted: SI 2008/960.

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1393. Fees payable in relation to nuclear design proposals.

Where, by virtue of the specified provisions of the Health and Safety at Work etc Act 1974¹ or the Nuclear Installations Act 1965², the Health and Safety Executive ('the Executive')³ carries out any work for the purpose of preparing an assessment agreement⁴ or assessing a design proposal for any new nuclear installation⁵, a fee is payable by the person who has requested the assessment of the design proposal⁶. That fee must not exceed the sum of the costs reasonably incurred by the Executive for the work, and is to be payable within 30 days from the date of the invoice that the Executive has sent or given to the person who is required to pay the fee⁷. Such invoices must include a statement of the work done and the costs incurred including the period to which the statement relates⁸.

1 le by virtue of the Health and Safety at Work etc Act 1974 s 11(1), (4)(a), (6) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367.

2 le by virtue of the Nuclear Installations Act 1965 s 1(1) (as amended) (see PARA 1487 post), s 3 (as amended) (see PARAS 1490-1491 post).

3 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 'Assessment agreement' means an agreement between the Executive and the person requesting the assessment of a design proposal, which identifies the scope of the assessment to be made by the Executive of that design proposal: Health and Safety (Fees) Regulations 2007, SI 2007/813, reg 17A(3) (reg 17A, Sch 13A added by SI 2007/1672). The 2007 Regulations are made under the Health and Safety at Work etc Act 1974 s 43 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 354. For the meaning of 'design proposal' see note 5 infra.

5 'Design proposal' means a proposal for any new nuclear installation, including matters relating to the installation's construction, commissioning, operation and decommissioning, which is to be assessed by the Executive prior to any application for a licence under the Nuclear Installations Act 1965 s 1(1) (as amended) which may be made based upon that design proposal; and 'nuclear installation' means a nuclear reactor or an installation within the meaning of s 1(1)(b) (see PARA 1487 post): Health and Safety (Fees) Regulations 2007, SI 2007/813, reg 17A(3) (as added: see note 4 supra).

6 Ibid reg 17A(1), Sch 13A (as added: see note 4 supra).

7 Ibid reg 17A(2)(a) (as added: see note 4 supra).

8 Ibid reg 17A(2)(b) (as added: see note 4 supra).

UPDATE

1392-1393 Recovery of expenses by the Health and Safety Executive, Fees payable in relation to nuclear design proposals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1393 Fees payable in relation to nuclear design proposals

TEXT AND NOTES--SI 2007/813 reg 17A, Sch 13A replaced: Health and Safety (Fees) Regulations 2009, SI 2009/515, reg 16, Sch 13.

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(vii) The Nuclear Decommissioning Authority ('the NDA')

A. ESTABLISHMENT, CONSTITUTION AND PROCEEDINGS

1394. Establishment of the Nuclear Decommissioning Authority.

The Nuclear Decommissioning Authority ('the NDA') is a body corporate established under the Energy Act 2004¹. The NDA is not to be treated, except so far as necessary for the purposes of its function of acting on the Secretary of State's² behalf for specified purposes³, as performing any duty or exercising any power on behalf of the Crown or as enjoying any status, immunity or privilege of the Crown, and the NDA's property is not to be regarded as property of the Crown, or as held on behalf of the Crown⁴. The NDA is a public authority for the purposes of the Freedom of Information Act 2000⁵ and is subject to investigation by the Parliamentary Commissioner⁶.

1 See the Energy Act 2004 s 1(1), which came into force on 27 July 2004: Energy Act 2004 (Commencement No 1) Order 2004, SI 2004/1973, art 2, Schedule.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 le for the purposes of its function under the Energy Act 2004 s 7(2): see PARA 1594 post.

4 Ibid s 1(2).

5 See the Freedom of Information Act 2000 s 3(1)(a)(i), Sch 1 Pt VI (amended for these purposes by the Energy Act 2004 s 2(10), Sch 1 Pt 3 para 18).

6 See the Parliamentary Commissioner Act 1967 s 4 (as substituted and amended), Sch 2 (substituted by the Parliamentary Commissioner (No 2) Order 2005, SI 2005/3430, SI 2005/3430, art 2, Schedule).

UPDATE

1394 Establishment of the Nuclear Decommissioning Authority

NOTE 6--1967 Act Sch 2 further substituted: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

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1395. Constitution of the Nuclear Decommissioning Authority.

Subject to the arrangements for the initial period¹, the Nuclear Decommissioning Authority ('the NDA')² must consist of not fewer than seven and not more than 13 members and must have a membership comprising both non-executive members and executive members³.

The non-executive members must be:

- 3701 (1) a chairman appointed by the Secretary of State⁴; and
- 3702 (2) a number of other persons appointed by the Secretary of State after consultation with the chairman;

and it is for the Secretary of State to determine⁵ how many non-executive members there are to be in addition to the chairman⁶.

The executive members must be:

- 3703 (a) a person appointed by the non-executive members to be the NDA's chief executive; and
- 3704 (b) the other persons, if any, appointed by them after consultation with the chief executive to be executive members in addition to the chief executive;

and it is for the non-executive members to determine⁷ whether there are to be executive members in addition to the chief executive and, if so, how many⁸. The approval of the Secretary of State is required for the appointment of the chief executive⁹. Where the Secretary of State so provides by a direction to the NDA, the non-executive members must secure that the number of executive members in addition to the chief executive is not less than the minimum set by the direction and does not exceed the maximum so set; and the direction must not set a maximum of more than three¹⁰.

Before appointing a person to be the chairman or otherwise to be a non-executive member of the NDA, or approving the appointment of a person to be the chief executive, the Secretary of State must consult the Scottish Ministers¹¹. The Secretary of State must exercise his powers under the above provisions to secure, so far as practicable, that the number of executive members is at all times less than the number of non-executive members¹².

If there are executive members in addition to the chief executive, each must be a member of the staff of the NDA¹³.

The Secretary of State has power by order to modify the above provisions¹⁴.

¹ See subject to the Energy Act 2004 s 2(10), Sch 1 para 4. Until the end of the initial period the NDA consisted of just those members who had been appointed: see Sch 1 para 4(1). As soon as practicable after his own appointment took effect, the chairman of the NDA was to exercise the power to appoint a chief executive: Sch 1 para 4(2). Appointments of members other than the chairman and chief executive might be made during the initial period only after the appointment of the chief executive had taken effect: Sch 1 para 4(3). The chairman must ensure that proper records are kept of everything he did, while he was the only non-executive

member, in the exercise or performance of powers or duties conferred or imposed on the non-executive members: see Sch 1 para 4(5). For these purposes, 'the initial period' means the period which began with the commencement of so much of the Energy Act 2004 as provides for the establishment of the NDA (ie 27 July 2004: see PARA 1394 ante) and ended with whichever of the following first occurred: (1) the time when an appointment took effect that brought the number of members of the NDA up to seven; (2) the time specified as the end of the initial period in a notice given during that period by the Secretary of State to the NDA for these purposes: see Sch 1 para 4(6).

2 As to the establishment of the NDA see PARA 1394 ante.

3 Energy Act 2004 s 2(1).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Ie subject to the Energy Act 2004 s 2(1): see the text and notes 1-3 supra.

6 Ibid s 2(2).

7 Ie subject to ibid s 2(8): see the text and note 10 infra.

8 Ibid s 2(3).

9 Ibid s 2(4).

10 Ibid s 2(8).

11 Ibid s 2(5). Section 2(5) may be satisfied by consultation that took place wholly or partly before the commencement of s 2 (ie 27 July 2004: see the Energy Act 2004 (Commencement No 1) Order 2004, SI 2004/1973, art 2, Schedule): Energy Act 2004 s 2(6).

12 Ibid s 2(9).

13 Ibid s 2(7).

14 See ibid s 35(1)(a). The power to make an order containing provision authorised by s 35 is subject to the affirmative resolution procedure (s 35(4)); and before making such an order the Secretary of State must consult the Scottish Ministers (s 35(2)). As to the affirmative resolution procedure see PARA 754 note 17 ante.

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1396. Members and staff of the Nuclear Decommissioning Authority.

Subject to what follows, the chairman of the Nuclear Decommissioning Authority ('the NDA')¹ and each of the other non-executive members is to hold and vacate office in accordance with the terms of his appointment². Each appointment must state the period for which it is made³, which must not exceed five years; but a person is eligible for reappointment on any number of occasions from the end of a term of office⁴. A non-executive member is not eligible to hold office as chief executive or otherwise to be a member of the staff of the NDA⁵. A non-executive member may at any time resign his office as the chairman or as a member of the NDA, or both, by giving notice of his resignation to the Secretary of State⁶. If the Secretary of State is satisfied that the chairman or another non-executive member:

- 3705 (1) is an undischarged bankrupt or has had his estate sequestrated without being discharged;
- 3706 (2) is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;
- 3707 (3) has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors;
- 3708 (4) has such a financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of the NDA;
- 3709 (5) is unfit for office by reason of misbehaviour; or
- 3710 (6) is otherwise incapable of carrying out, or unfit to carry out, the functions of his office,

the Secretary of State may, by giving him notice to that effect, remove him from office⁷. Before exercising this power, the Secretary of State must consult the Scottish Ministers⁸.

The NDA may pay to the chairman, and to each of the other non-executive members, such remuneration and allowances as the Secretary of State may determine⁹. It may also pay, or make provision for paying, to or in respect of the chairman, and to or in respect of each of the other non-executive members, such sums by way of pensions, allowances or gratuities as the Secretary of State may determine¹⁰. Where a person ceases, otherwise than on the expiry of his term of office, to be a non-executive member, and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the NDA may make a payment to him of such amount as the Secretary of State may determine¹¹.

The chief executive of the NDA is to hold office on such terms and conditions, including terms and conditions as to remuneration, as the non-executive members determine¹²; and each of the other executive members, if any, is to hold office as a member, on such terms and conditions, including terms and conditions as to remuneration, as the non-executive members may determine in his case¹³. The terms and conditions on which an executive member other than the chief executive becomes or remains an employee of the NDA, or (without being an employee) a member of its staff, are also to be determined by the non-executive members¹⁴. If the non-executive members so determine in the case of the chief executive or any of the other executive members, the NDA must pay such pensions, allowances or gratuities to or in respect

of the chief executive and each of those other members, or provide and maintain for the chief executive and those other members such pension schemes (whether contributory or not), as the non-executive members may determine¹⁵. If an executive member is a participant in a pension scheme applicable to his membership of the NDA, and ceases to be an executive member without ceasing to be a member of the NDA's staff, he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if any service of his (after ceasing to be an executive member) as an employee of the NDA were service as an executive member¹⁶.

The NDA may appoint such employees, in addition to those who are its members, as it may determine and may make such other arrangements for the staffing of the NDA as it thinks fit¹⁷. The employees of the NDA who are not its members are to be employed on such terms and conditions, including terms and conditions as to remuneration, as it determines¹⁸; and the NDA may, in the case of any of its employees who are not its members, pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as it determines¹⁹. If an employee of the NDA is a participant in a pension scheme applicable to his employment, and becomes an executive member, he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member were service as an employee of the NDA²⁰.

A pension scheme maintained by the United Kingdom Atomic Energy Authority ('the UKAEA')²¹ may apply to members of the NDA, and members of its staff, as it applies to persons to whom it otherwise applies²².

The Secretary of State has power by order to modify the above provisions²³.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante.

2 Energy Act 2004 s 2(10), Sch 1 paras 1(1), 19.

3 Ibid Sch 1 para 1(2).

4 Ibid Sch 1 para 1(3).

5 Ibid Sch 1 para 1(4).

6 Ibid Sch 1 para 1(5). Oral notice is ineffective for this purpose: Sch 1 para 1(9). As to the Secretary of State see PARA 601 note 1 ante.

7 Ibid Sch 1 para 1(6), (7). Oral notice is ineffective for this purpose: Sch 1 para 1(9).

8 Ibid Sch 1 para 1(8).

9 Ibid Sch 1 para 2(1).

10 Ibid Sch 1 para 2(2). For the purposes of the Energy Act 2004, references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement, and references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of the payment of pensions, allowances or gratuities to or in respect of that person: s 196(2).

11 Ibid Sch 1 para 2(3).

12 Ibid Sch 1 para 3(1).

13 Ibid Sch 1 para 3(2).

14 Ibid Sch 1 para 3(3).

15 Ibid Sch 1 para 3(4). As to pensions see also the text and notes 21-22 infra.

16 Ibid Sch 1 para 3(5).

17 Ibid Sch 1 para 5(1).

18 Ibid Sch 1 para 5(2).

19 Ibid Sch 1 para 5(3). As to pensions see also the text and notes 21-22 *infra*.

20 Ibid Sch 1 para 5(4).

21 *Ie* under the Atomic Energy Authority Act 1954 Sch 1 para 7(2)(b): see PARA 1374 *ante*. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 *et seq ante*; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 *ante*.

22 Energy Act 2004 Sch 1 para 6.

23 See *ibid* s 35(1)(a). As to the manner in which this power is to be exercised see PARA 1395 note 14 *ante*.

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1397. Proceedings of the Nuclear Decommissioning Authority.

The Nuclear Decommissioning Authority ('the NDA')¹ may make such arrangements as it thinks fit for the carrying out of its functions² by committees established by it and for committees established by it to give it advice about matters relating to the carrying out of its functions³. The membership of every committee established by the NDA must include at least one person who is a member of the NDA⁴. Where the NDA establishes a committee for the purpose of giving it advice, and does not authorise it⁵ to do anything on the NDA's behalf, the membership of the committee may include persons (including persons constituting a majority of the committee) who are neither members of the NDA nor members of its staff⁶. In other cases every member of the committee must be either a member of the NDA or a member of its staff⁷. Where a person who is neither a member of the NDA nor a member of its staff is a member of a committee, the NDA may pay to that person such remuneration and expenses as it determines⁸.

Anything that is authorised or required by or under an enactment⁹ to be done by the NDA may be done on its behalf:

- 3711 (1) by a member of the NDA, or of its staff, who has been authorised by it for the purpose, whether generally or specifically; or
- 3712 (2) by a committee established by the NDA which has been so authorised¹⁰.

The NDA must not, however, make arrangements for the final decision on any of the following to be made by a committee or by a member of the NDA or of its staff:

- 3713 (a) the NDA's strategy for carrying out its functions¹¹ or any modification¹² of that strategy;
- 3714 (b) its annual plan¹³ or any modification of that plan;
- 3715 (c) the arrangements for regulating the proceedings of the NDA;
- 3716 (d) the further delegation of anything delegated to a committee or to a member of the NDA or of its staff¹⁴.

A decision of the NDA relating to any of the matters described in heads (a) to (d) above is ineffective unless a majority of the members who were present at the meeting at which the decision was made, or otherwise had an opportunity of participating in the decision-making process, consisted of non-executive members¹⁵; and a decision by the NDA for regulating its own proceedings may determine what, for these purposes, constitutes an opportunity of participating in the decision-making process¹⁶. A question for these purposes about whether a member was present at a meeting of the NDA, or satisfied the requirements that needed to be satisfied for him to be treated as having had an opportunity of participating in a decision, must be determined, if there are any, exclusively by reference to official minutes¹⁷ of the meeting or decision¹⁸.

The NDA may make such other arrangements as it thinks fit for regulating its own proceedings and for regulating the proceedings of the committees it has established¹⁹. Such arrangements

may include such additional arrangements²⁰ as the NDA thinks fit about quorums and the making of decisions by a majority²¹. The procedure for the carrying out of the separate functions which under the Energy Act 2004 are conferred on the non-executive members must be in accordance with such arrangements as may be determined by a majority of the non-executive members²². The NDA must publish, in such manner as it considers appropriate, the arrangements made under these provisions²³.

Authentication of the application of the NDA's seal is to be by the signature of the chairman or another member of the NDA or of any other person authorised by it for the purpose, whether generally or specifically²⁴. A document²⁵ purporting to be duly executed under the seal of the NDA, or signed on behalf of the NDA, may be received in evidence and, except so far as the contrary is shown, is to be taken to be duly so executed or signed²⁶.

The NDA must make arrangements for the keeping of proper records of each of the following:

- 3717 (i) its proceedings;
- 3718 (ii) proceedings of the committees established by it;
- 3719 (iii) proceedings at meetings of the non-executive members; and
- 3720 (iv) anything done by a member of the NDA or of its staff in reliance on a delegation²⁷ of the NDA's functions²⁸.

The validity of proceedings of the NDA, of the non-executive members or of a committee established by the NDA is not affected by:

- 3721 (A) a vacancy in the membership of the NDA or of such a committee;
- 3722 (B) a defect in the appointment of the chairman, of any other non-executive member, of the chief executive or of any other executive member;
- 3723 (C) a failure of the Secretary of State to comply with the statutory requirements as to the numbers of executive and non-executive members²⁹; or
- 3724 (D) a failure to comply with arrangements for regulating the NDA's proceedings made by it³⁰ under the powers set out above³¹.

Nothing in heads (A) to (D) above, however, validates the proceedings of a meeting which would still be inquorate even if defects and failures mentioned within head (B) or head (C) above had not occurred, or a decision which is otherwise ineffective by virtue of the statutory requirements as to quorums³² set out above³³.

The Secretary of State has power by order to modify the above provisions³⁴.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its members and staff see PARA 1396 ante.

2 As to the functions of the NDA see PARA 1592 et seq post.

3 Energy Act 2004 s 2(10), Sch 1 para 7(1).

4 Ibid Sch 1 para 7(2).

5 Ie under ibid Sch 1 para 8: see the text and notes 9-14 infra.

6 Ibid Sch 1 para 7(3).

7 Ibid Sch 1 para 7(4).

8 Ibid Sch 1 para 7(5).

9 For the meaning of 'enactment' see PARA 750 note 9 ante.

- 10 Energy Act 2004 Sch 1 para 8(1).
- 11 *Ie* under *ibid* s 11: see PARA 1598 post.
- 12 For the meaning of 'modification' see PARA 733 note 8 ante.
- 13 *Ie* under the Energy Act 2004 s 13: see PARA 1600 post.
- 14 *Ibid* Sch 1 para 8(2); and see note 28 *infra*.
- 15 *Ibid* Sch 1 para 9(1), (2); and see note 28 *infra*. During the initial period the requirements of Sch 1 para 9(1) did not apply to a decision to which the chairman was a party if it was made when the chairman was the only non-executive member, but were not to be capable of being satisfied in relation to a decision made at any other time unless at least two non-executive members were parties to the decision: see Sch 1 para 4(4). For the meaning of 'the initial period' see PARA 1395 note 1 ante.
- 16 *Ibid* Sch 1 para 9(3).
- 17 For this purpose the official minutes of a meeting or decision are those made in accordance with the arrangements made under *ibid* Sch 1 para 12 (see the text and notes 27-28 *infra*): Sch 1 para 9(5).
- 18 *Ibid* Sch 1 para 9(4).
- 19 *Ibid* Sch 1 para 10(1).
- 20 *Ie* in addition to the provision made by *ibid* Sch 1 para 9 (see the text and notes 15-18 *supra*): Sch 1 para 10(2).
- 21 *Ibid* Sch 1 para 10(2).
- 22 *Ibid* Sch 1 para 10(3).
- 23 *Ibid* Sch 1 para 10(4).
- 24 *Ibid* Sch 1 para 11(1); and see note 26 *infra*.
- 25 For the meaning of 'document' see PARA 733 note 4 ante.
- 26 Energy Act 2004 Sch 1 para 11(2). Schedule 1 para 11 does not extend to Scotland: Sch 1 para 11(3).
- 27 *Ie* under *ibid* Sch 1 para 8: see the text and notes 9-14 *supra*.
- 28 *Ibid* Sch 1 para 12(1). The references in Sch 1 paras 8, 9 to arrangements for regulating the proceedings of the NDA include references to arrangements made under Sch 1 para 12 with respect to such proceedings: Sch 1 para 12(2).
- 29 *Ie* the requirements of *ibid* s 2(9): see PARA 1395 ante.
- 30 *Ie* under *ibid* Sch 1 para 10: see the text and notes 19-23 *supra*.
- 31 *Ibid* Sch 1 para 13(1).
- 32 *Ie* by virtue of *ibid* Sch 1 para 9.
- 33 *Ibid* Sch 1 para 13(2).
- 34 See *ibid* s 35(1)(a). As to the manner in which this power is to be exercised see PARA 1395 note 14 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(vii) The Nuclear Decommissioning Authority ('the NDA')/B. EXPENDITURE, RECEIPTS AND BORROWING/1398. Expenditure and receipts of the Nuclear Decommissioning Authority.

B. EXPENDITURE, RECEIPTS AND BORROWING

1398. Expenditure and receipts of the Nuclear Decommissioning Authority.

The Secretary of State¹ may make grants to the Nuclear Decommissioning Authority ('the NDA')². Grants so made are to be on such terms as the Secretary of State may determine³. In determining whether to make a grant to the NDA, and the amount of such a grant, the Secretary of State must have regard, in particular, to the extent to which he considers that the NDA should exercise its power to make grants or loans of the specified kind⁴ in order to mitigate the effects of the cessation, whether before or after designation, of the operation of a designated installation⁵.

The NDA must pay to the Secretary of State all sums received by it otherwise than by way of such grant⁶, and the Secretary of State must pay sums so received by him into the Consolidated Fund⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Energy Act 2004 s 22(1). As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARA 1592 et seq post.

Every amount so paid by way of grant must be shown in the Nuclear Decommissioning Funding Account as a debit: s 31(3). As to that account see PARAS 1612-1613 post.

3 Ibid s 22(2).

4 Ie of the kind mentioned in ibid s 10(2)(c): see PARA 1597 post. For the meaning of 'designated installation' see PARA 1592 note 3 post.

5 Ibid s 22(5).

6 Ibid s 22(3). This does not apply, however, to the repayment under s 23(3) of a loan made under s 23: see s 23(3); and PARA 1399 post.

Every amount received by the NDA that is required to be paid by it to the Secretary of State under s 22(3) must be shown in the Nuclear Decommissioning Funding Account as a credit: s 31(4)(b); and see note 2 supra.

7 Ibid s 22(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(vii) The Nuclear Decommissioning Authority ('the NDA')/B. EXPENDITURE, RECEIPTS AND BORROWING/1399. Borrowing by the Nuclear Decommissioning Authority.

1399. Borrowing by the Nuclear Decommissioning Authority.

The Nuclear Decommissioning Authority ('the NDA')¹ has no power to borrow money except in accordance with the following provisions² and subject to the statutory limit³ set out below⁴.

The NDA may borrow from the Secretary of State⁵, and the Secretary of State may lend to the NDA, sums in sterling that it requires for or in connection with the carrying out of its functions⁶. Where a loan is made to the NDA by the Secretary of State the loan must be repaid to him at such times and by such methods, and interest on the loan must be paid to him at such rates and at such times, as he may determine⁷.

The NDA may also borrow temporarily, by overdraft or otherwise, from persons other than the Secretary of State sums in sterling that it requires for or in connection with the carrying out of its functions⁸. The consent of the Secretary of State is required for such borrowing⁹.

The approval of the Treasury is required:

- 3725 (1) for a loan to the NDA by the Secretary of State;
- 3726 (2) for a determination by the Secretary of State with regard to repayment of, and interest on, such a loan¹⁰; and
- 3727 (3) for a consent by the Secretary of State to any borrowing¹¹ from other persons¹².

The NDA may not borrow, however, if the effect would be to take the aggregate amount mentioned in heads (a) and (b) below over its borrowing limit¹³ or to increase the amount by which the aggregate amount so outstanding exceeds that limit¹⁴. The aggregate amount referred to is the aggregate of:

- 3728 (a) amounts outstanding from the NDA in respect of the principal of sums borrowed by the NDA; and
- 3729 (b) the amount of every outstanding liability of the NDA that is a liability to which it is subject by virtue of a nuclear transfer scheme¹⁵ and is a liability in respect of the principal of a sum borrowed by another person before the transfer took effect¹⁶.

Subject to Treasury approval¹⁷, the Secretary of State may guarantee:

- 3730 (i) the repayment of the principal of any sum borrowed by the NDA from a person other than the Secretary of State;
- 3731 (ii) the payment of interest on such a sum; and
- 3732 (iii) the discharge of any other financial obligation of the NDA in connection with the borrowing of such a sum¹⁸;

and may give such a guarantee in such manner, and on such terms, as he thinks fit¹⁹. As soon as practicable after giving such a guarantee, the Secretary of State must lay a statement of the

guarantee before Parliament²⁰. If sums are paid out by the Secretary of State under a guarantee so given, the NDA must pay him such amounts in or towards the repayment to him of those sums as he may direct and interest, at such rates as he may direct, on amounts outstanding under this provision²¹; and such payments to the Secretary of State must be made at such times, and in such manner, as he may from time to time direct²². The approval of the Treasury is required for the giving by the Secretary of State of any such direction²³. He must pay sums received by him by virtue of the above provision into the Consolidated Fund²⁴.

Where a sum has been paid out by the Secretary of State under a guarantee so given, he must lay a statement relating to that sum before Parliament:

3733 (A) as soon as practicable after the end of the financial year²⁵ in which that sum is paid out; and

3734 (B) as soon as practicable after the end of each subsequent relevant financial year²⁶.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARA 1592 et seq post.

2 Ie except in accordance with the Energy Act 2004 s 23: see the text and notes 3-12 infra.

3 Ie subject to ibid s 24: see the text and notes 13-16 infra.

4 Ibid s 23(1), (7).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Energy Act 2004 s 23(2).

7 Ibid s 23(3)(a), (b). Nothing in s 22(3) (see PARA 1398 ante) requires the repayment of sums received by way of such a loan otherwise than in accordance with a determination under s 23(3): s 23(3).

8 Ibid s 23(4).

9 Ibid s 23(5).

10 Ie a determination under ibid s 23(3): see the text and note 7 supra.

11 Ie any borrowing under ibid s 23(4): see the text and note 8 supra.

12 Ibid s 23(6).

13 The NDA's borrowing limit is £2,000 million: ibid s 24(3). The Secretary of State may by order increase the NDA's borrowing limit: s 24(4). No such order may be made unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons: s 24(5).

14 Ibid s 24(1).

15 The reference in ibid s 24 to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Sch 5: see PARA 1410 post) in relation to such a scheme: s 24(6). For the meaning of 'nuclear transfer scheme' see PARA 1402 post.

16 Ibid s 24(2).

17 See ibid s 25(8)(a).

18 Ibid s 25(1).

19 Ibid s 25(2).

20 Ibid s 25(3).

21 Ibid s 25(4).

22 Ibid s 25(5).

23 See ibid s 25(8)(b).

24 Ibid s 25(9). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

25 For the meaning of 'financial year' see ibid s 196(1); and PARA 763 note 17 ante.

26 Ibid s 25(6). In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for these purposes unless (1) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under s 25(4); and (2) the NDA is not at any time during that year subject to a liability to pay interest on amounts that became due under s 25(4) in respect of that sum: s 25(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(vii) The Nuclear Decommissioning Authority ('the NDA')/B. EXPENDITURE, RECEIPTS AND BORROWING/1400. Accounts of the Nuclear Decommissioning Authority.

1400. Accounts of the Nuclear Decommissioning Authority.

The Nuclear Decommissioning Authority ('the NDA')¹ must keep proper accounts and proper accounting records² and must, in respect of each of its accounting years³, prepare a statement of its accounts⁴. A statement of accounts so prepared must give a true and fair view of the income and expenditure of the NDA for the accounting year in question and its state of affairs⁵ and must comply with every requirement which has been notified by the Secretary of State⁶ to the NDA⁷. Those requirements may include, in particular, requirements relating to:

- 3735 (1) the information to be contained in the statement;
- 3736 (2) the manner in which that information is to be presented; or
- 3737 (3) the methods and principles according to which the statement is to be prepared⁸;

and the approval of the Treasury is required for the imposition⁹ of such a requirement¹⁰.

The accounts of the NDA relating to each of its accounting years, including the statement of accounts prepared for the year under these provisions, must be audited by the Comptroller and Auditor General¹¹ who must send a copy of his report on what is audited to the NDA¹².

The NDA must send to the Secretary of State and to the Scottish Ministers, in respect of each of its accounting years:

- 3738 (a) a copy of the accounts for that year that are required to be audited under these provisions; and
- 3739 (b) a copy of the Comptroller and Auditor General's report on those accounts¹³;

and the Secretary of State must lay a copy of whatever is so sent to him before Parliament¹⁴.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARA 1592 et seq post.

2 For these purposes, 'accounting records' includes all books, papers and other records of the NDA relating to the accounts which it is required to keep or matters dealt with in those accounts: Energy Act 2004 s 26(12).

3 For these purposes, 'accounting year', in relation to the NDA, means (1) the NDA's first accounting year; or (2) a financial year after the end of the NDA's first accounting year; and 'the NDA's first accounting year' means (a) where the NDA is established at the beginning of a financial year, that financial year; and (b) in any other case, the period which begins with the day on which the NDA is established and ends (i) if no direction is given under head (ii) infra, with 31 March in the financial year current on that day; and (ii) if the Secretary of State so directs, with 31 March at the end of the following financial year: *ibid* s 26(12). For the meaning of 'financial year' see PARA 763 note 17 ante.

4 *Ibid* s 26(1). The NDA must comply with any directions given to it by the Secretary of State about the time by which it must have complied with its obligations to prepare a statement of its accounts under s 26(1)(b): see s 26(9).

5 *Ibid* s 26(2).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Energy Act 2004 s 26(3). As to notification generally see PARA 739 note 2 ante; and as to notification to the NDA see also PARA 1591 post.

8 Ibid s 26(4).

9 Ie under ibid s 26(3); see the text and notes 6-7 supra.

10 Ibid s 26(5).

11 Ibid s 26(6). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. The NDA must comply with any directions given to it by the Secretary of State about the time by which it must have complied with its obligations under s 26(6); see s 26(9).

12 Ibid s 26(7).

13 Ibid s 26(8). The NDA must comply with any directions given to it by the Secretary of State about the time by which it must have complied with its obligations under s 26(8); see s 26(9).

14 Ibid s 26(10). The Scottish Ministers must lay a copy of whatever is sent to them under s 26(8) before the Scottish Parliament: s 26(11).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(2) DOMESTIC LEGISLATION AND ADMINISTRATION; IN GENERAL/(vii) The Nuclear Decommissioning Authority ('the NDA')/C. VALIDITY OF TRANSACTIONS/1401. Validity of transactions with or entered into by the Nuclear Decommissioning Authority.

C. VALIDITY OF TRANSACTIONS

1401. Validity of transactions with or entered into by the Nuclear Decommissioning Authority.

A person who enters into a transaction with the Nuclear Decommissioning Authority ('the NDA')¹ is not required to see or to inquire whether the transaction constitutes or involves:

- 3740 (1) conduct by the NDA which is for the purposes of, or conducive or incidental to, the carrying out of its functions²;
- 3741 (2) a contravention³ of certain specified statutory provisions⁴; or
- 3742 (3) a contravention of a direction given by the Secretary of State⁵.

A transaction entered into by the NDA is not invalidated because the transaction constitutes or involves:

- 3743 (a) conduct by the NDA which is neither for the purposes of, nor conducive or incidental to, the carrying out of its functions; or
- 3744 (b) a contravention such as is mentioned in head (2) or head (3) above⁶.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante.

2 As to the functions of the NDA see PARAS 1592-1595 post.

3 For the meaning of 'contravention' see PARA 761 note 7 ante.

4 Is a contravention of the Energy Act 2004 s 7(6) (see PARA 1594 post) or s 9 (see PARA 1596 post).

5 Ibid s 33(1). As to the Secretary of State see PARA 601 note 1 ante.

6 Ibid s 33(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1402. Power to make nuclear transfer schemes.

(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS

(i) Transfer by Scheme of Property, Rights and Liabilities

A. NUCLEAR TRANSFER SCHEMES; IN GENERAL

1402. Power to make nuclear transfer schemes.

The Secretary of State¹ may make a scheme providing for one or more transfers authorised by the relevant statutory provisions² (a 'nuclear transfer scheme')³. Nothing in those provisions, however, authorises the transfer in accordance with a nuclear transfer scheme of a nuclear site licence⁴.

Before making:

- 3745 (1) a nuclear transfer scheme which transfers property, rights or liabilities to or from the Nuclear Decommissioning Authority ('the NDA')⁵ or a subsidiary⁶ of the NDA; or
- 3746 (2) a nuclear transfer scheme not falling within head (1) above which he is proposing to make for purposes connected with the carrying out of the NDA's functions⁷,

the Secretary of State must consult the NDA⁸. Before making a nuclear transfer scheme which transfers property, rights or liabilities to any person from BNFL⁹, or from a wholly-owned subsidiary¹⁰ of BNFL, the Secretary of State must consult BNFL¹¹; and before making a nuclear transfer scheme that transfers property, rights or liabilities to any person from the United Kingdom Atomic Energy Authority ('the UKAEA')¹², or from a wholly-owned subsidiary of the UKAEA, the Secretary of State must consult the UKAEA¹³. The consent of the Treasury is required for the making of a nuclear transfer scheme¹⁴.

A nuclear transfer scheme is to come into force at such time as the Secretary of State may appoint, whether in the scheme or subsequently¹⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie authorised by the Energy Act 2004 Pt 1 Ch 2 (ss 38-50, Schs 5-9): see the text and notes 3-14 infra; and PARA 1403 et seq post.

3 Ibid ss 38(1), 196(1). See also s 70 (obligation to make a nuclear transfer scheme transferring employees etc of the UKAEA Constabulary to the Civil Nuclear Constabulary); and PARA 1527 post.

4 Ibid s 38(2). For the meaning of 'nuclear site licence' see PARA 1487 note 1 post (definition applied by s 196(1)).

5 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

6 For these purposes, 'subsidiary' has the meaning given by the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be

appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25); Energy Act 2004 s 196(1)).

7 As to the NDA's functions see PARA 1592 et seq post.

8 Energy Act 2004 s 38(3).

9 Ie the nuclear fuels company within the meaning of the Atomic Energy Authority Act 1971 (see PARA 1377 ante); Energy Act 2004 s 196(1).

10 For these purposes, 'wholly-owned subsidiary' has the meaning given by the Companies Act 1985 s 736 (as substituted; prospectively repealed and replaced (see note 6 supra)) (see COMPANIES vol 14 (2009) PARA 25); Energy Act 2004 s 196(1)).

11 Ibid s 38(4). As to the transfer of securities of BNFL or of property, rights and liabilities of BNFL or of a wholly-owned subsidiary of BNFL see s 39; and PARA 1414 post.

12 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

13 Energy Act 2004 s 38(5). As to the transfer of property, rights and liabilities of the UKAEA or of a wholly-owned subsidiary of the UKAEA see s 39; and PARA 1414 post.

14 Ibid s 38(6).

15 Ibid s 38(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1403. Transferor's duty to assist the Secretary of State.

1403. Transferor's duty to assist the Secretary of State.

Where the Secretary of State¹ proposes to make a nuclear transfer scheme², the transferor³ has the duty, within such period as the Secretary of State may allow:

- 3747 (1) to provide the Secretary of State; and
- 3748 (2) to secure, so far as practicable, that its subsidiaries⁴ provide the Secretary of State,

with all such information and other assistance as the Secretary of State may require for the purposes of, or in connection with, the making of the scheme⁵. The duties of the transferor under these provisions are duties owed to the Secretary of State⁶ and are to be enforceable by the Secretary of State in civil proceedings for an injunction or for any other appropriate remedy or relief⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

3 For these purposes, 'the transferor', in relation to a nuclear transfer scheme, means a person from whom it is proposed that property, rights or liabilities are transferred by the scheme: Energy Act 2004 s 49(5).

4 For the meaning of 'subsidiary' see PARA 1402 note 6 ante.

5 Energy Act 2004 s 49(1), (2).

6 Ibid s 49(3).

7 Ibid s 49(4)(a), (c). In Scotland, they are enforceable in civil proceedings for specific performance of a statutory duty under the Court of Session Act 1988 s 45: see the Energy Act 2004 s 49(4)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1404. Identification of relevant property etc; property, rights and liabilities that may be transferred.

1404. Identification of relevant property etc; property, rights and liabilities that may be transferred.

A nuclear transfer scheme¹ may set out the property, rights² and liabilities to be transferred in one or more of the following ways:

- 3749 (1) by specifying or describing them in particular;
- 3750 (2) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
- 3751 (3) by specifying the manner in which they are to be determined³.

The property, rights and liabilities that may be transferred by a nuclear transfer scheme include:

- 3752 (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor⁴;
- 3753 (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme and before it comes into force;
- 3754 (c) rights and liabilities arising after it comes into force in respect of matters occurring before it comes into force;
- 3755 (d) property situated anywhere in the United Kingdom⁵ or elsewhere;
- 3756 (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom; and
- 3757 (f) rights and liabilities under an enactment⁶, Community instrument or subordinate legislation⁷.

The transfers to which effect may be given by a nuclear transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were:

- 3758 (i) no such requirement to obtain a person's consent or concurrence;
- 3759 (ii) no such liability in respect of a contravention of any other requirement; and
- 3760 (iii) no such interference with any interest or right,

as there would be, in the case of a transaction apart from the Energy Act 2004, by reason of a provision having effect, whether under an enactment or agreement or otherwise, in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates⁸.

Where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under the Energy Act 2004 in connection with a nuclear transfer scheme, to terminate, modify, acquire or claim an interest or right or to treat an interest or right as modified or terminated, that entitlement:

- 3761 (A) is not to be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
- 3762 (B) is then to be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement⁹.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 References in the Energy Act 2004 s 38(8), Sch 5 (as amended) (see the text and notes 3-9 infra; and PARA 1405 et seq post) to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right's arising include references to its becoming exercisable: Sch 5 para 13(2).

3 Ibid Sch 5 para 1.

4 For these purposes, 'transferor' (1) in relation to a nuclear transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme; and (2) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created: ibid Sch 5 para 13(1).

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 For the meaning of 'enactment' see PARA 750 note 9 ante.

7 Energy Act 2004 Sch 5 para 2(1). For the meaning of 'subordinate legislation' see PARA 750 note 10 ante.

8 See ibid Sch 5 para 2(2), (3). Schedule 5 para 2(2)-(5) has effect where shares in a subsidiary of the transferor are transferred (1) as if the reference in Sch 5 para 2(3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and (2) in relation to an interest or right of the subsidiary, as if the references in Sch 5 para 2(5) to the transfer of the interest or right included a reference to the transfer of the shares: Sch 5 para 2(6). For the meaning of 'subsidiary' see PARA 1402 note 6 ante.

9 Ibid Sch 5 para 2(4), (5); and see note 8 supra.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1405. Dividing and modifying transferor's property, rights and liabilities.

1405. Dividing and modifying transferor's property, rights and liabilities.

A nuclear transfer scheme¹ may contain provision:

- 3763 (1) for the creation, in favour of a transferor² or transferee³, of an interest or right⁴ in or in relation to property transferred in accordance with the scheme⁵;
- 3764 (2) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property retained by a transferor⁶;
- 3765 (3) for the creation of new rights and liabilities, including rights of indemnity and duties to indemnify, as between different transferees and as between a transferee and a transferor⁷;
- 3766 (4) for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees or between a transferee and a transferor⁸;
- 3767 (5) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor⁹;
- 3768 (6) for rights and liabilities enforceable against more than one person in accordance with provision falling within head (5) above to be enforceable in different or modified respects by or against each or any of them¹⁰;
- 3769 (7) for interests, rights or liabilities of third parties¹¹ in relation to anything to which the scheme relates to be modified¹² in the manner set out in the scheme¹³.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 For the meaning of 'transferor' see PARA 1404 note 4 ante.

3 For these purposes, 'transferee' (1) in relation to a nuclear transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and (2) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created: Energy Act 2004 s 38(8), Sch 5 para 13(1).

4 For the meaning of references to a right see PARA 1404 note 2 ante.

5 Energy Act 2004 Sch 5 para 3(1)(a). Schedule 5 para 2(2), (3) (see PARA 1405 ante) applies to the creation of interests and rights in accordance with a nuclear transfer scheme as it applies to the transfer of interests and rights: Sch 5 para 3(6).

6 Ibid Sch 5 para 3(1)(b).

7 Ibid Sch 5 para 3(1)(c).

8 Ibid Sch 5 para 3(2).

9 Ibid Sch 5 para 3(3)(a).

10 Ibid Sch 5 para 3(3)(b).

11 For these purposes, 'third party', in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee: *ibid* Sch 5 para 3(5).

12 For the meaning of 'modifications' and cognate expressions see *PARA 733* note 8 *ante*.

13 Energy Act 2004 Sch 5 para 3(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1406. Obligation to effect transfers etc under a nuclear transfer scheme.

1406. Obligation to effect transfers etc under a nuclear transfer scheme.

A nuclear transfer scheme¹ may contain provision for imposing on a transferee² or transferor³ an obligation:

- 3770 (1) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of these provisions, whether in the same or a different scheme; or
- 3771 (2) to execute such instruments in favour of any such person,

as may be specified or described in the scheme⁴. An obligation imposed on a person by virtue of the above provision is enforceable by the relevant person⁵ in civil proceedings for an injunction or for any other appropriate remedy or relief⁶.

A nuclear transfer scheme may also provide for:

- 3772 (a) transfers made by or under an agreement or instrument entered into or executed in accordance with an obligation imposed in a nuclear transfer scheme; or
- 3773 (b) interests or rights⁷ created by or under such an agreement or instrument,

to include, to the extent specified in the scheme, a transfer, interest or right that may be made or created by virtue of the specified⁸ statutory provision⁹.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 For the meaning of 'transferee' see PARA 1405 note 3 ante.

3 For the meaning of 'transferor' see PARA 1404 note 4 ante.

4 Energy Act 2004 s 38(8), Sch 5 para 4(1).

5 The relevant person for these purposes is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed: *ibid* Sch 5 para 4(7).

6 *Ibid* Sch 5 para 4(6)(a), (c). In Scotland, such an obligation may be enforced in civil proceedings for specific performance of a statutory duty under the Court of Session Act 1988 s 45: see Sch 5 para 4(6)(b).

7 For the meaning of references to a right see PARA 1404 note 2 ante.

8 *Ie* created by virtue of the Energy Act 2004 Sch 5 para 2(2): see PARA 1404 ante.

9 *Ibid* Sch 5 para 4(3). Subject to Sch 5 para 4(3), (4), Sch 5 para 2 (see PARA 1404 ante) does not enable (1) an agreement or instrument entered into or executed in accordance with an obligation imposed by a nuclear transfer scheme; or (2) anything done under such an agreement or instrument, to give effect to a transfer, or to create an interest or right, which could not have been made or created by or under that agreement or instrument apart from Sch 5 para 2: Sch 5 para 4(2). A nuclear transfer scheme may, however, provide for Sch 5 para 2(4), (5) to apply to interests or rights affected by (a) the provisions of an agreement or instrument which is to be entered into or executed in accordance with the scheme; or (b) a proposal for such an agreement or for the execution of such an instrument: Sch 5 para 4(4). Where Sch 5 para 2(4), (5) does apply to interests

or rights so affected, it applies as if references to the nuclear transfer scheme included references to the agreement or instrument in question: Sch 5 para 4(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1407. Effect of nuclear transfer schemes; proof of title.

1407. Effect of nuclear transfer schemes; proof of title.

In relation to each provision of a nuclear transfer scheme¹ for the transfer of property, rights² or liabilities, or for the creation of interests, rights or liabilities:

- 3774 (1) the Energy Act 2004 has effect so as, without further assurance, to vest the property or interests, or the rights or liabilities, in the transferee³ at the time at which the scheme comes into force; and
- 3775 (2) the provisions of that scheme in relation to that property or those interests, or in relation to those rights or liabilities, have effect from that time⁴.

This is subject to so much of a nuclear transfer scheme as provides for:

- 3776 (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme; or
- 3777 (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,

to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of the relevant⁵ statutory provision⁶.

A certificate issued by the Secretary of State⁷ to the effect that any property, right or liability vested at a particular time in accordance with a nuclear transfer scheme in a person specified in the certificate is to be conclusive evidence of the matters specified in the certificate⁸.

¹ For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

² For the meaning of references to a right see PARA 1404 note 2 ante.

³ For the meaning of 'transferee' see PARA 1405 note 3 ante.

⁴ Energy Act 2004 s 38(8), Sch 5 para 5(1).

⁵ Ie by virtue of ibid Sch 5 para 4(1): see PARA 1406 ante.

⁶ Ibid Sch 5 para 5(2).

⁷ As to the Secretary of State see PARA 601 note 1 ante.

⁸ Energy Act 2004 Sch 5 para 7.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(i) Transfer by Scheme of Property, Rights and Liabilities/A. NUCLEAR TRANSFER SCHEMES; IN GENERAL/1408. Supplementary provisions of schemes.

1408. Supplementary provisions of schemes.

A nuclear transfer scheme¹ may make incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the scheme²; and such provision may include different provision for different cases or different purposes³. In particular, a nuclear transfer scheme may make provision, in relation to transfers in accordance with the scheme:

- 3778 (1) for the transferee⁴ to be treated as the same person in law as the transferor⁵;
- 3779 (2) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
- 3780 (3) for references in an agreement, instrument or other document⁶ to the transferor or to an employee or office holder with the transferor to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme; and
- 3781 (4) for proceedings commenced by or against the transferor to be continued by or against the transferee⁷;

but head (3) above does not apply to references in an enactment⁸ or in subordinate legislation⁹.

A nuclear transfer scheme may make provision for disputes as to the effect of the scheme between different transferees, or between a transferee and a transferor, to be referred to such arbitration as may be specified in or determined under the scheme¹⁰.

Where a person is entitled, in consequence of a nuclear transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property, the scheme may provide for that person to be treated as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of it¹¹.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 Energy Act 2004 s 38(8), Sch 5 para 6(1). For these purposes, references to a transfer in accordance with a nuclear transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability: Sch 5 para 6(8). For the meaning of references to a right see PARA 1404 note 2 ante.

3 Ibid Sch 5 para 6(2).

4 For the meaning of 'transferee' see PARA 1405 note 3 ante.

5 For the meaning of 'transferor' see PARA 1404 note 4 ante.

6 For the meaning of 'document' see PARA 733 note 4 ante.

7 Energy Act 2004 Sch 5 para 6(3).

8 For the meaning of 'enactment' see PARA 750 note 9 ante.

9 Energy Act 2004 Sch 5 para 6(4). For the meaning of 'subordinate legislation' see PARA 750 note 10 ante.

10 Ibid Sch 5 para 6(5).

11 Ibid Sch 5 para 6(6)(a). The Law of Property Act 1925 s 64 (production and safe custody of documents) has effect accordingly, and on the basis that the acknowledgment did not contain an expression of contrary intention: Energy Act 2004 Sch 5 para 6(6)(b).

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1409. Duties in relation to foreign property.

Where there is a transfer in accordance with a nuclear transfer scheme¹ of foreign property², or a foreign right or liability, the transferor³ and the transferee⁴ must take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee by the Energy Act 2004 is effective under the relevant foreign law⁵. Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must either hold the property or right for the benefit of the transferee or discharge the liability on behalf of the transferee⁶. Nothing in the above provisions, however, prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a nuclear transfer scheme⁷.

Where:

- 3782 (1) any foreign property, right or liability is acquired or incurred by the transferor in respect of any other property, right or liability; and
- 3783 (2) by virtue of these provisions, the transferor holds the other property or right for the benefit of another person or is required to discharge the liability on behalf of another person,

the property, right or liability acquired or incurred immediately becomes the property, right or liability of that other person⁸.

Where the transferor of foreign property, or of a foreign right or liability, is the Nuclear Decommissioning Authority ('the NDA')⁹ or the United Kingdom Atomic Energy Authority ('the UKAEA')¹⁰:

- 3784 (a) the transferor has all such powers as it may require for the performance of obligations imposed on it under these provisions; but
- 3785 (b) the transferee must, so far as practicable, act on behalf of the transferor in performing the obligations so imposed on the transferor¹¹.

Expenses incurred by a transferor under these provisions must be met by the transferee¹²; and an obligation imposed thereunder in relation to property, rights or liabilities is to be enforceable as if contained in a contract between the transferor and the transferee¹³.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 References in the Energy Act 2004 s 38(8), Sch 5 para 8 (see the text and notes 3-13 infra) to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom: Sch 5 para 8(7). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'transferor' see PARA 1404 note 4 ante.

4 For the meaning of 'transferee' see PARA 1405 note 3 ante.

5 Energy Act 2004 Sch 5 para 8(1).

6 Ibid Sch 5 para 8(2).

7 Ibid Sch 5 para 8(3).

8 Ibid Sch 5 para 8(4). The provisions of Sch 5 para 8(1)-(4) have effect in relation to foreign property, rights or liabilities transferred to a person under Sch 5 para 8(4) as they have effect in the case of property, rights and liabilities transferred in accordance with a nuclear transfer scheme: Sch 5 para 8(5).

9 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

10 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

11 Energy Act 2004 Sch 5 para 8(6).

12 Ibid Sch 5 para 8(8).

13 Ibid Sch 5 para 8(9).

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1410. Modification of scheme by agreement.

The following provisions apply in the case of a nuclear transfer scheme¹ where a transferee² agrees in writing:

- 3786 (1) with the transferor³;
- 3787 (2) with another transferee under that scheme; or
- 3788 (3) with a transferor or transferee under another nuclear transfer scheme,

that provision be made that property, rights⁴ or liabilities transferred in accordance with the scheme⁵ or either of them, and property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities, be transferred from one party to the agreement to the other as from a date appointed by the agreement, for the purpose of modifying⁶ the effect of the scheme or, as the case may be, the effect of either or both of the schemes⁷. If:

- 3789 (a) the agreement is entered into within the period of three years after the coming into force of any transfer made in accordance with either of the schemes to a party to the agreement; and
- 3790 (b) the Secretary of State⁸ has given his approval to the transfer for which the agreement provides, and to its terms and conditions,

the transfer for which the agreement provides is to take effect on the date appointed by the agreement as if it were a transfer in accordance with a nuclear transfer scheme⁹.

Subject to the approval of the Secretary of State (which requires the consent of the Treasury¹⁰), the provisions that may be contained in a modification agreement¹¹ include any provision in relation to a transfer for which it provides as is capable of being contained in a nuclear transfer scheme in relation to a transfer for which the scheme provides¹². Nothing in a modification agreement is, however, to provide for interests, rights or liabilities to be created, as opposed to transferred, except as between persons who are parties to the agreement¹³. Before refusing his approval for these purposes, or giving his approval for these purposes in a case where the Nuclear Decommissioning Authority ('the NDA')¹⁴ is not a party to the proposed agreement, the Secretary of State must consult the NDA¹⁵.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 For the meaning of 'transferee' see PARA 1405 note 3 ante.

3 For the meaning of 'transferor' see PARA 1404 note 4 ante.

4 For the meaning of references to a right see PARA 1404 note 2 ante.

5 For these purposes, references to a transfer in accordance with a nuclear transfer scheme include references to the creation of an interest, right or liability in accordance with such a scheme: Energy Act 2004 s 38(8), Sch 5 para 9(8).

- 6 For the meaning of 'modification' and cognate expressions see PARA 733 note 8 ante.
- 7 Energy Act 2004 Sch 5 para 9(1), (2).
- 8 As to the Secretary of State see PARA 601 note 1 ante.
- 9 Energy Act 2004 Sch 5 para 9(3).
- 10 See *ibid* Sch 5 para 9(7).
- 11 'Modification agreement' means an agreement for a transfer that is to have effect in accordance with *ibid* Sch 5 para 9(3) (see the text and notes 8-9 *supra*): Sch 5 para 13(1).
- 12 *Ibid* Sch 5 para 9(4).
- 13 *Ibid* Sch 5 para 9(5).
- 14 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 *et seq post*.
- 15 Energy Act 2004 Sch 5 para 9(6).

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1411. Employment protection.

The Transfer of Undertakings (Protection of Employment) Regulations 2006¹ apply to a transfer of an undertaking or business or part of an undertaking or business in accordance with a nuclear transfer scheme², or in accordance with a modification agreement³, as if, in so far as that would not otherwise be the case, the references in those regulations to the transferor were references to the person in whom that undertaking or business or that part of an undertaking or business was vested immediately before the coming into force of the transfer⁴. The 2006 Regulations also apply to a service provision change⁵ in accordance with a nuclear transfer scheme, or in accordance with a modification agreement, as if, in so far as that would not otherwise be the case, the references in those regulations to the transferor were references to the person by whom the activities affected by the service provision change were carried out immediately before the coming into force of the service provision change⁶.

It is the duty of the Secretary of State⁷, before making a nuclear transfer scheme or approving a modification agreement, to give such notice of his proposals to such persons as he considers appropriate for enabling the provisions of the 2006 Regulations applicable to a transfer or service provision change in accordance with the scheme or agreement to be complied with by the transferor⁸.

1 The Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246: see EMPLOYMENT vol 39 (2009) PARA 111 et seq.

2 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

3 For the meaning of 'modification agreement' see PARA 1410 note 11 ante.

4 Energy Act 2004 s 38(8), Sch 5 para 10(1) (Sch 5 para 10(1), (2)-4) amended by the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 20(3), Sch 2 para 14).

5 For these purposes, references to a service provision change are references to a service provision change falling within the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 3(1) (b): Energy Act 2004 Sch 5 para 10(4) (as amended: see note 4 supra).

6 Ibid Sch 5 para 10(1A) (added by the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, Sch 2 para 14(1), (4)).

7 As to the Secretary of State see PARA 601 note 1 ante.

8 Energy Act 2004 Sch 5 para 10(2) (as amended: see note 2 supra). In Sch 5 para 10(2) (as amended), 'the transferor', in relation to a transfer (or service provision change), means the person who is the transferor (or service provision change) in relation to that transfer for the purposes of the 2006 Regulations: Energy Act 2004 Sch 5 para 10(3) (as so amended).

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1412. Compensation for third parties.

Where:

- 3791 (1) an entitlement of a third party¹ to an interest or right² would, apart from a provision of a nuclear transfer scheme³ or the specified statutory provisions⁴, arise in respect of the transfer or creation in accordance with a nuclear transfer scheme of any property, rights or liabilities;
- 3792 (2) the provisions of that scheme or of the specified statutory provisions mentioned in head (1) above have the effect of preventing the third party's entitlement to that interest or right from arising in respect of anything for which the scheme provides; and
- 3793 (3) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party is to be entitled to such compensation as may be just in respect of the extinguishment of his entitlement⁵.

Where, in consequence of provisions included in a nuclear transfer scheme, the interests, rights or liabilities of a third party are modified⁶ as mentioned in heads (a) to (d) below, the third party is to be entitled to such compensation as may be just in respect of any diminution in the value of his interests or rights, or any increase in the burden of his liabilities, which is attributable to that modification⁷. Those modifications are modifications by virtue of which:

- 3794 (a) an interest of the third party in property is transformed into, or replaced by, an interest in only part of that property;
- 3795 (b) an interest of the third party in property is transformed into, or replaced by, separate interests in different parts of that property;
- 3796 (c) a right of the third party against the transferor is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent, disregarding the person against whom it is enforceable, to the right against the transferor; or
- 3797 (d) a liability of the third party to the transferor is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the transferor⁸.

A liability to pay compensation under these provisions is to fall on such of the following persons, namely:

- 3798 (i) a Minister of the Crown;
- 3799 (ii) the Nuclear Decommissioning Authority ('the NDA')⁹;
- 3800 (iii) the United Kingdom Atomic Energy Authority ('the UKAEA')¹⁰;

- 3801 (iv) a publicly owned company¹¹ which is a transferor or a transferee for the purposes of the provisions of the scheme giving rise to the compensation;
- 3802 (v) a person who consented to the provisions of the scheme giving rise to the compensation¹²; and
- 3803 (vi) where in the case of a recovery scheme¹³ the transferor is not a publicly owned company, the relevant contractor¹⁴ and the transferor¹⁵,

as benefit from the extinguishment of the entitlement mentioned in heads (1) to (3) above, have interests in the whole or any part of the property affected by the modification in question, are subject to the rights of the person to be compensated which are affected by that modification or are entitled to enforce the liabilities of the person to be compensated which are affected by that modification¹⁶. Such a liability to pay compensation must be apportioned between the persons liable to pay it in such manner as may be appropriate having regard to the extent of the benefit they respectively obtain from the extinguishment, or the interests, rights or liabilities in respect of which they are liable to pay compensation¹⁷.

Where compensation is paid by any person in connection with provisions of a recovery scheme, the person paying the compensation may, if and to the extent that the Secretary of State¹⁸ so directs, recover the amount paid from the relevant contractor and the transferor¹⁹.

A dispute as to:

- 3804 (A) whether any compensation is to be paid under these provisions;
- 3805 (B) the person to or by whom it is to be paid, or
- 3806 (C) the amount to be paid by any person,

must be referred to and determined by an arbitrator appointed by the Lord Chancellor, where the claimant requires the matter to be determined in England and Wales or in Northern Ireland²⁰.

The above provisions have effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a nuclear transfer scheme, and the provisions of a modification agreement²¹ relating to property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, as it has effect in relation to the scheme but as if, in the case of a modification agreement, everyone who is not a party to the agreement were a third party²².

1 For these purposes, 'third party', in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee: Energy Act 2004 s 38(8), Sch 5 para 11(11). For the meaning of 'transferor' see PARA 1404 note 4 ante; and for the meaning of 'transferee' see PARA 1405 note 3 ante.

2 For the meaning of references to a right see PARA 1404 note 2 ante.

3 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

4 I.e. the Energy Act 2004 Sch 5 para 2(4), (5): see PARA 1404 ante.

5 Ibid Sch 5 para 11(1).

6 For the meaning of 'modification' and cognate expressions see PARA 733 note 8 ante.

7 Energy Act 2004 Sch 5 para 11(2).

8 Ibid Sch 5 para 11(3).

9 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

10 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

11 For these purposes, a body corporate is a publicly owned company if it is a company limited by shares and that company is one in which (1) a person specified in the Energy Act 2004 s 37(4) holds all the shares; or (2) two or more persons so specified, taken together, hold all the shares: s 37(3) (definition applied by s 50(2)). The persons mentioned in s 37(3) are (a) the Treasury; (b) a Minister of the Crown; (c) the NDA; (d) the UKAEA; (e) a publicly owned company; or (f) a nominee of a person falling within heads (a)-(e) supra: s 37(4).

12 See *ibid* Sch 5 para 11(5).

13 'Recovery scheme' means so much of a nuclear transfer scheme as contains provision for or in connection with a transfer authorised by *ibid* s 41 (see PARA 1417 post): Sch 5 para 13(1).

14 'Relevant contractor', in relation to a recovery scheme, means the person who (within the meaning of *ibid* s 41) is the contractor in relation to the contract by reference to the breach of which, or the expiry or other termination of which, that scheme was made: Sch 5 para 13(1).

15 *Ibid* Sch 5 para 11(6).

16 *Ibid* Sch 5 para 11(4).

17 *Ibid* Sch 5 para 11(7).

18 As to the Secretary of State see PARA 601 note 1 ante.

19 Energy Act 2004 Sch 5 para 11(8).

20 See *ibid* Sch 5 para 11(9), (10)(a). Where the claimant requires the matter to be determined in Scotland, the dispute must be referred to and determined by an arbiter appointed by the Lord President of the Court of Session: see Sch 5 para 11(10)(b).

21 For the meaning of 'modification agreement' see PARA 1410 note 11 ante.

22 Energy Act 2004 Sch 5 para 11(12).

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1413. Compensation for transferor in case of a recovery scheme.

If the Secretary of State¹ is satisfied in the case of a recovery scheme² that it is just to do so he may pay compensation to the transferor³ in respect of property or rights⁴ of which he is deprived in accordance with the scheme, or may direct the Nuclear Decommissioning Authority ('the NDA')⁵ to pay such compensation⁶. No compensation is to be payable under these provisions to the relevant contractor⁷.

Where compensation is paid under these provisions and the Secretary of State so directs, so much of the compensation as may be specified in the direction may be recovered by him or, as the case may be, by the NDA from the relevant contractor⁸.

The amount of any such compensation is to be determined by the Secretary of State⁹. A dispute as to:

- 3807 (1) whether any compensation is to be paid under these provisions;
- 3808 (2) the person to or by whom it is to be paid; or
- 3809 (3) the amount to be paid by any person,

must be referred to and determined by an arbitrator appointed by the Lord Chancellor, where the claimant requires the matter to be determined in England and Wales or in Northern Ireland¹⁰.

The above provisions have effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a recovery scheme, and the provisions of a modification agreement¹¹ relating to property, rights and liabilities transferred or created in accordance with a recovery scheme, as it has effect in relation to the scheme¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'recovery scheme' see PARA 1412 note 13 ante.

3 For the meaning of 'transferor' see PARA 1404 note 4 ante.

4 For the meaning of references to a right see PARA 1404 note 2 ante.

5 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

6 Energy Act 2004 s 38(8), Sch 5 para 12(1).

7 Ibid Sch 5 para 12(2). For the meaning of 'relevant contractor' see PARA 1412 note 14 ante.

8 Ibid Sch 5 para 12(3).

9 Ibid Sch 5 para 12(4).

10 Ibid Sch 5 para 12(5), (6)(a). Where the claimant requires the matter to be determined in Scotland, the dispute must be referred to and determined by an arbiter appointed by the Lord President of the Court of Session: Sch 5 para 12(6)(b).

- 11 For the meaning of 'modification agreement' see PARA 1410 note 11 ante.
- 12 Energy Act 2004 Sch 5 para 12(7).

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B. TRANSFERS OF PUBLICLY OWNED ASSETS

1414. Power to provide for transfers of publicly owned assets.

A nuclear transfer scheme¹ may provide for a transfer to a publicly owned company², to the Nuclear Decommissioning Authority ('the NDA')³, or to a consenting person⁴, of the following property, rights and liabilities that are set out in the scheme⁵, namely:

- 3810 (1) securities⁶ of the nuclear fuels company ('BNFL')⁷;
- 3811 (2) securities of a company⁸ if it is either a nuclear company⁹ that is publicly owned or a company designated for these purposes by an order made by the Secretary of State¹⁰;
- 3812 (3) property, rights and liabilities of BNFL or of the United Kingdom Atomic Energy Authority ('the UKAEA')¹¹;
- 3813 (4) property, rights and liabilities of a company such as is described in head (2) above;
- 3814 (5) property, rights and liabilities of a wholly-owned subsidiary¹² of BNFL, of the UKAEA or of a company such as is described in head (2) above¹³.

Nothing in these provisions, however, authorises:

- 3815 (a) a transfer of securities of BNFL, or a transfer of property, rights or liabilities of BNFL or of a wholly-owned subsidiary of BNFL, at a time when BNFL is no longer publicly owned¹⁴;
- 3816 (b) a transfer of securities of a company designated for these purposes, or a transfer of property, rights or liabilities of such a company or of a wholly-owned subsidiary of such a company, at a time when the company is no longer publicly owned¹⁵.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante.

3 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante. For taxation provisions relating to a transfer to the NDA or a subsidiary of the NDA under the Energy Act 2004 s 39 see s 47, Sch 9 Pt 1 (paras 1-15).

4 For these purposes, a person is a consenting person, in relation to a nuclear transfer scheme, if he has consented to the provisions of the scheme so far as they relate to him: *ibid* s 39(9).

5 *Ibid* s 39(1).

6 For the meaning of 'securities' see PARA 744 note 7 ante.

7 As to BNFL see PARA 1377 note 5 ante. For taxation provisions with regard to a transfer in accordance with the Energy Act 2004 s 39 of securities of a BNFL company, or of property, rights or liabilities of such a company, to a publicly owned company that is not a subsidiary of the NDA see Sch 9 Pt 2 (paras 16-27).

8 For these purposes, 'company' has the same meaning as in the Companies Act 1985 or the Companies Act 2006: Energy Act 2004 s 50(5); Companies Act 2006 s 1297(5).

9 For these purposes, 'nuclear company' means a body corporate with control of a designated installation, designated site or designated facility: *ibid* s 50(1). For the meaning of 'designated' in relation to an installation, site or facility see *PARA 1592* note 3 post (definitions applied by s 50(2)).

10 Is a company falling within *ibid* s 39(3). The Secretary of State may designate a company for these purposes only if it is a publicly owned company to which (1) securities of BNFL; (2) property, rights or liabilities of BNFL; or (3) property, rights or liabilities of a wholly-owned subsidiary of BNFL, were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the company and BNFL were publicly owned: s 39(4). The Secretary of State must lay a copy of every order under s 39(3) (see head (2) in the text) before Parliament: s 39(5).

11 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see *PARA 1363* et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see *PARA 1363* the text and notes 4-5 ante. For taxation provisions with regard to a transfer in accordance with the Energy Act 2004 s 39 of property, rights or liabilities of the UKAEA, securities of a wholly-owned subsidiary of the UKAEA or property, rights or liabilities of such a subsidiary, to a transferee which is (1) a publicly owned company which is not a subsidiary of the NDA; or (2) the UKAEA, see *Sch 9 Pt 2* (paras 16-21).

12 For the meaning of 'wholly-owned subsidiary' see *PARA 744* note 6 ante.

13 Energy Act 2004 s 39(2), (3).

14 *Ibid* s 39(6).

15 *Ibid* s 39(7).

UPDATE

1414 Power to provide for transfers of publicly owned assets

NOTE 8--Energy Act 2004 s 50(5) amended: SI 2009/1941.

NOTE 10--See the Energy Act 2004 (Designation of Publicly Owned Companies) Order 2007, SI 2007/3479.

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1415. Structure etc of transferee companies.

Where property, rights and liabilities are transferred to a company¹ ('the transferee company') in accordance with provisions of a nuclear transfer scheme² authorised by the statutory provisions relating to the transfer of publicly owned assets³, and that company is publicly owned⁴ when the transfer takes effect, the following provisions apply⁵. Nothing in these provisions, however, is to be construed as prejudicing the ability of a Minister of the Crown or the Treasury, apart from the powers conferred on him or on it by or under the Energy Act 2004 or any other enactment⁶, to acquire or dispose of securities⁷ of a company other than the transferee company or to act through nominees for the purpose⁸.

As a consequence of the vesting, in accordance with the relevant scheme⁹, of property, rights and liabilities in the transferee company, that company must issue to the Treasury, or to a Minister of the Crown, such securities of the company as the Secretary of State¹⁰ may from time to time direct¹¹. In a case where the transferee company is a wholly-owned subsidiary¹² of one of either the Nuclear Decommissioning Authority ('the NDA') or the United Kingdom Atomic Energy Authority ('the UKAEA') (the Authorities)¹³, that company must, as a consequence of the vesting in that company of property, rights and liabilities, issue to the Authority in question such securities of the company as the Authority may from time to time direct¹⁴. Such a direction by the Secretary of State or the Authority in question may, however, be given to a company only at a time when the company is publicly owned¹⁵. Securities issued in accordance with such a direction must be of such nominal value as the Secretary of State may direct, must be issued as fully paid and must be treated for the purposes of the companies legislation as if they had been paid up by virtue of the payment to the company of their nominal value in cash¹⁶.

The Treasury or a Minister of the Crown may use money provided by Parliament for the acquisition of securities of the transferee company or rights to subscribe for such securities¹⁷.

The Treasury, a Minister of the Crown or either of the Authorities may appoint a person to act as a nominee of the Treasury, of that minister or of that Authority for the above purposes¹⁸. The issue of securities¹⁹ to a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions, if any, as are given from time to time by the Treasury or, with the consent of the Treasury, by the minister²⁰; and the acquisition of securities or rights²¹ by a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions, if any, as are given from time to time by the Treasury or, with the consent of the Treasury, by a Minister of the Crown²². A person who by virtue of these provisions²³ holds securities or rights as a nominee of the Treasury or of a Minister of the Crown must hold them and deal with them on such terms, and in such manner, as the Treasury or, with the consent of the Treasury, the Secretary of State may direct²⁴.

Dividends or other sums received by the Treasury or a Minister of the Crown in right of, or on the disposal of, securities or rights acquired by virtue of these provisions must be paid into the Consolidated Fund²⁵.

Where statutory accounts²⁶ of the transferee company prepared as at a particular time would show the company as having net assets in excess of the aggregate of its called-up share capital²⁷ and the amount, apart from the property, rights and liabilities to which the company has become entitled or subject in accordance with the relevant scheme, of its undistributable

reserves²⁸, provision is made as to the treatment of the excess²⁹. The Energy Act 2004 also provides for the situation where a distribution³⁰ is proposed to be declared either during an accounting reference period³¹ of the transferee company which includes a transfer date³² or before any accounts are laid or filed in respect of such a period³³.

1 Ie a company within the meaning of the Companies Act 1985 or the Companies Act 2006: Energy Act 2004 s 39(8), Sch 6 para 1(3); Companies Act 2006 s 1297(5).

2 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

3 Ie authorised by the Energy Act 2004 s 39: see PARA 1414 ante.

4 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante.

5 Energy Act 2004 Sch 6 para 1(1).

6 For the meaning of 'enactment' see PARA 750 note 9 ante.

7 For the meaning of 'securities' see PARA 744 note 7 ante.

8 Energy Act 2004 Sch 6 para 8.

9 For these purposes, 'the relevant scheme', in relation to the transferee company, means (1) the nuclear transfer scheme containing the provisions authorised by ibid s 39 in accordance with which property, rights and liabilities are vested in that company; and (2) any modification agreement (within the meaning of s 38(8), Sch 5: see PARA 1410 note 11 ante) relating to that scheme: ibid Sch 6 para 1(2).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 Energy Act 2004 Sch 6 para 2(1). The consent of the Treasury is required for the exercise by the Secretary of State of a power conferred by Sch 6 para 2(1)-(4): Sch 6 para 2(5)(a).

12 For the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

13 See the Energy Act 2004 Sch 6 para 1(2). As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

14 Ibid Sch 6 para 2(2). The consent of the Secretary of State is required for the giving of such a direction by either of the Authorities (Sch 6 para 2(6)); and the consent of the Treasury is required for the exercise by either of the Authorities of a power conferred by Sch 6 para 2(2)-(4) (Sch 6 para 2(5)(a)).

15 Ibid Sch 6 para 2(3).

16 See ibid Sch 6 para 2(4). The consent of the Treasury is required for the disposal by a Minister of the Crown, or by either of the Authorities, of securities issued to him or to that Authority in accordance with Sch 6 para 2: Sch 6 para 2(5)(b).

17 Ibid Sch 6 para 3(1). The consent of the Treasury is required for (1) an acquisition by a Minister of the Crown under Sch 6 para 3(1); or (2) a disposal by a Minister of the Crown of securities or rights acquired by virtue of Sch 6 para 3: Sch 6 para 3(2).

18 Ibid Sch 6 para 4(1). In the case of the Treasury or such a Minister, the nominee may act for the purposes of Sch 6 para 2 or 3 (see the text and notes 9-17 supra) and in the case of one of the Authorities, for the purposes of Sch 6 para 2 (see the text and notes 9-16 supra): see Sch 6 para 4(1)(a), (b). The consent of the Treasury is required for the appointment of a nominee by a Minister of the Crown: Sch 6 para 4(2).

19 Ie under ibid Sch 6 para 2.

20 Ibid Sch 6 para 4(3).

21 Ie under ibid Sch 6 para 3.

22 Ibid Sch 6 para 4(4).

23 le by virtue of *ibid* Sch 6 para 2 or Sch 6 para 3 and Sch 6 para 4.

24 *Ibid* Sch 6 para 4(5).

25 *Ibid* Sch 6 para 5. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

26 'Statutory accounts', in relation to a company, means accounts of the company prepared in respect of a period in accordance with the requirements of the Companies Act 1985 or the Companies Act 2006, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period; and 'accounting reference period' has the meaning given by the Companies Act 1985 s 224 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by s 391, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): Energy Act 2004 Sch 6 para 6(8); Companies Act 2006 s 1297(5).

27 'Called-up share capital' has the meaning given by the Companies Act 1985 s 737 (prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by s 547, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): Energy Act 2004 Sch 6 para 6(8).

28 'Undistributable reserves' has the meaning given by the Companies Act 1984 s 264(3) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by s 831(4), as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): Energy Act 2004 Sch 6 para 6(8).

29 See *ibid* Sch 6 para 6.

30 le a distribution within the meaning of the Companies Act 1985 Pt VIII (ss 263-281) (as amended) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by Pt 23 (ss 829-853), as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): see the Energy Act 2004 Sch 6 para 7(5).

31 For these purposes, 'accounting reference period' has the meaning given by the Companies Act 1985 s 224 (prospectively repealed and replaced: see note 26 *supra*): Energy Act 2004 Sch 6 para 7(5).

32 For these purposes, 'a transfer date', in relation to the transferee company, means the date of the coming into force of the relevant scheme: *ibid* Sch 6 para 7(5).

33 See *ibid* Sch 6 para 7.

UPDATE

1415 Structure etc of transferee companies

TEXT AND NOTES 1, 16--Energy Act 2004 Sch 6 paras 1(3), 2(4) amended: SI 2009/1941.

NOTES 26-28--Definitions of 'accounting reference period', 'called-up share capital', and 'undistributable reserves' in the Energy Act 2004 Sch 6 para 6(8) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948; SI 2009/1941.

NOTE 30--Definition of 'distribution' amended: SI 2009/1941.

NOTE 31--Definition of 'accounting reference period' in the 2004 Act Sch 6 para 7(5) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

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C. OTHER PROVISIONS THAT MAY BE MADE BY A NUCLEAR TRANSFER SCHEME

1416. Transfers with the consent of the transferor.

A nuclear transfer scheme¹ may provide for a transfer to a publicly owned company², or to the Nuclear Decommissioning Authority ('the NDA')³, of the following property, rights and liabilities that are set out in the scheme⁴, namely:

- 3817 (1) securities⁵ of a nuclear company⁶ that is not publicly owned;
- 3818 (2) property and rights of such a company in or in relation to a nuclear site⁷ or an installation⁸ in or on such a site; or
- 3819 (3) property, rights and liabilities to which such a company is entitled or subject⁹:
- 349
- 513. (a) in respect of such a site or installation;
- 514. (b) in connection with or by reference to activities carried on in or on such a site or installation; or
- 515. (c) for purposes connected with that site or installation or with any such activities¹⁰.
- 350

Property, rights and liabilities may be transferred by virtue of these provisions, however, only if the person who is entitled or subject to them has consented to their transfer in accordance with a nuclear transfer scheme¹¹.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante.

3 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

4 Energy Act 2004 s 40(1).

5 For the meaning of 'securities' see PARA 744 note 7 ante.

6 For the meaning of 'nuclear company' see PARA 1414 note 9 ante.

7 For the meaning of 'nuclear site' see PARA 1592 note 5 post (definition applied by the Energy Act 2004 s 50(2)).

8 'Installation' includes buildings, structure and apparatus, whether or not fixed to land: ibid s 37(1) (definition applied by s 50(2)).

9 For these purposes, references to the property, rights and liabilities of a company, or to which a company is entitled or subject, include references to the property, rights and liabilities of any of its wholly-owned subsidiaries: ibid s 40(4). For the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

10 Ibid s 40(3).

11 Ibid s 40(2).

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1417. Recovery of property from private ownership.

The following provisions apply in the case of a nuclear company¹ ('the transferred company') all the shares² in which were transferred for the purposes of a management contract³ to the contractor⁴ or to a subsidiary⁵ of the contractor where:

- 3820 (1) the contractor is in breach of that contract; or
- 3821 (2) that contract has come to an end, whether by the expiry of the period for which it was in force or otherwise⁶.

A nuclear transfer scheme⁷ may provide for the transfer to:

- 3822 (a) a publicly owned company⁸;
- 3823 (b) the Nuclear Decommissioning Authority ('the NDA')⁹, or
- 3824 (c) a consenting contractor¹⁰,

of the following property, rights and liabilities that are set out in the scheme¹¹, namely:

- 3825 (i) securities¹² of the transferred company (whether transferred as mentioned above or issued afterwards);
- 3826 (ii) property, rights and liabilities to which the transferred company was entitled or subject immediately before the transfer so mentioned;
- 3827 (iii) property, rights and liabilities transferred for the purposes of the management contract, to the contractor, to a subsidiary of the contractor or to the transferred company or a wholly-owned subsidiary¹³ of the transferred company;
- 3828 (iv) property, rights and liabilities to which the transferred company or a wholly-owned subsidiary of the transferred company first became entitled or subject while that contract was in force¹⁴.

Heads (i) to (iv) above do not, however, apply to property, rights or liabilities to the extent that they have been excluded from those heads either by provision contained in an agreement between the NDA and the person entitled to or subject to them, or by provision contained in a nuclear transfer scheme by virtue of which the property, rights and liabilities or the shares mentioned above were vested in any person¹⁵.

A transfer is authorised by these provisions notwithstanding that what is transferred¹⁶ has ceased, before the transfer, to be the property or a right or liability:

- 3829 (A) of a person to whom anything was transferred for the purposes of the management contract mentioned above;
- 3830 (B) of the transferred company or of a wholly-owned subsidiary of that company; or
- 3831 (C) in the case of securities issued after the transfer for the purposes of that management contract, of the person to whom they were issued¹⁷.

Nothing in these provisions authorises the transfer of property, rights or liabilities from a company at a time when it is publicly owned¹⁸.

1 For the meaning of 'nuclear company' see PARA 1414 note 9 ante.

2 For the meaning of 'shares' see PARA 744 note 7 ante.

3 For these purposes, 'management contract' means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities: Energy Act 2004 s 41(8).

4 For these purposes, 'contractor', in relation to a management contract, means a party to the contract who is not the NDA: *ibid* s 41(8).

5 For the meaning of 'subsidiary' see PARA 744 note 6 ante.

6 Energy Act 2004 s 41(1).

7 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

8 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante (definition applied by the Energy Act 2004 s 50(2)).

9 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 *et seq post*.

10 For these purposes, a person is a consenting contractor, in relation to a nuclear transfer scheme, if (1) he is a contractor under a management contract other than the one that has been broken or come to an end; and (2) he has consented to the provisions of the scheme so far as they relate to him: Energy Act 2004 s 41(7).

11 *Ibid* s 41(2).

12 For the meaning of 'securities' see PARA 744 note 7 ante.

13 For the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

14 Energy Act 2004 s 41(3).

15 *Ibid* s 41(4).

16 For these purposes, 'transferred', in relation to shares, property, rights or liabilities, means transferred in accordance with a nuclear transfer scheme: *ibid* s 41(8).

17 *Ibid* s 41(5).

18 *Ibid* s 41(6).

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1418. Transfer of Nuclear Liabilities Investment Portfolio.

A nuclear transfer scheme¹ may provide for the transfer from BNFL² to the Secretary of State³ of the Nuclear Liabilities Investment Portfolio⁴ or of so much of that portfolio as may be specified in the scheme⁵; but nothing in these provisions authorises a transfer at a time when BNFL is no longer publicly owned⁶.

Where cash is transferred to the Secretary of State by a transfer authorised by these provisions, he must pay it into the Consolidated Fund⁷; and where the Secretary of State receives sums by way of income on property or rights transferred to him by a transfer so authorised, or sums in respect of the disposal of any such property or rights, he must pay those sums into the Consolidated Fund⁸.

The Secretary of State must comply with every direction given to him by the Treasury with respect to:

- 3832 (1) the disposal of property or rights transferred to him by a transfer authorised by these provisions; or
- 3833 (2) the exercise of any other right attached to, or arising in respect of, such property;

and, in a case where there is no applicable direction, the Secretary of State must not dispose of or exercise any property or rights with respect to which he may be given a direction except with the consent of the Treasury⁹.

1 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

2 As to BNFL see PARA 1377 note 5 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For these purposes, 'the Nuclear Liabilities Investment Portfolio' means property and rights to which BNFL is entitled and which appear to the Secretary of State, from BNFL's published accounts, to represent assets held by BNFL for the purpose of being able to meet costs or liabilities for which the NDA has a financial responsibility under the Energy Act 2004 Pt 1 Ch 1 (ss 1-37, Schs 1-4) (as amended) (see PARAS 1394-1397 ante, PARA 1592 et seq post): s 42(6).

5 Ibid s 42(1). For taxation provisions with regard to such transfers see s 47, Sch 9 Pt 4 (paras 31-33).

6 Ibid s 42(2). As to when a company is publicly owned see PARA 1412 note 11 ante.

7 Ibid s 42(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

8 Ibid s 42(4).

9 Ibid s 42(5).

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(ii) Extinguishment of Undertakings and Tax Losses

1419. Undertakings given by the Secretary of State.

Where the Secretary of State¹ has given an undertaking² to a publicly owned company³ to make payments to that company or a subsidiary⁴ of that company, and it appears to him that the financial responsibilities of the Nuclear Decommissioning Authority ('the NDA')⁵ under the provisions of the Energy Act 2004 relating to decommissioning⁶ would⁷ make it unnecessary for those amounts to be paid, the Secretary of State may extinguish the undertaking, and every liability of his that has arisen under the undertaking, with effect from such date as he may notify to the other parties to it⁸. Nothing in these provisions, however, authorises the extinguishment of an undertaking at a time when the company to whom payments would fall to be made under the undertaking is not publicly owned⁹.

The extinguishment of an undertaking under these provisions neither requires nor enables any sum to be brought into account in any person's case for the purposes of corporation tax¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'undertaking' includes any agreement in which an undertaking to make payments is contained: Energy Act 2004 s 43(5).

3 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante.

4 For the meaning of 'subsidiary' see PARA 744 note 6 ante.

5 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

6 I.e. under the Energy Act 2004 Pt 1 Ch 1 (ss 1-37, Schs 1-4) (as amended): see PARAS 1394-1397 ante, PARA 1592 et seq post.

7 I.e. apart from ibid s 21(8): see PARA 1607 post.

8 Ibid s 43(1), (2).

9 Ibid s 43(3). For the meaning of 'company' see PARA 1422 note 4 post.

10 Ibid s 43(4).

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1420. Extinguishment of BNFL losses for tax purposes.

In relation to accounting periods¹ beginning on or after the trigger date², all the relevant losses³ of every BNFL company⁴ arising before that date are to be treated for the purposes of corporation tax as extinguished⁵; but this applies to the relevant losses of a BNFL company only if it is publicly owned on the day before the trigger date⁶.

1 'Accounting period' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 12 (as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 837); s 834(1) (definition applied by the Energy Act 2004 s 44(5)).

2 For these purposes, 'trigger date' means whichever is the earlier of the following: (1) the date of the first occasion on which ibid s 21 (see PARA 1607 post) operates so as to confer financial responsibilities on the Nuclear Decommissioning Authority ('the NDA') in relation to an installation, site or facility the person with control of which is a BNFL company that is publicly owned; and (2) the date of the first occasion on which a transfer takes effect which is a transfer to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by s 39 (see PARA 1402 ante) of property, rights or liabilities of a BNFL company: s 44(4). For the meaning of 'subsidiary' see PARA 744 note 6 ante; for the meaning of 'BNFL company' see note 4 infra; and for the meaning of 'installation' see PARA 1416 note 8 ante (definition applied by s 50(2)). 'Site' includes (a) land within the United Kingdom; (b) an area of territorial waters adjacent to the United Kingdom; (c) the sea bed and subsoil in any such area; 'facility' includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking; and 'vehicle' includes vessel: s 37(1) (definitions so applied). For the meaning of 'person with control' see PARA 1592 note 13 post (definition so applied). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 The following are relevant losses of a BNFL company for these purposes: (1) losses incurred by the company in a trade; (2) losses incurred by the company in a transaction a profit or gain from which would have been chargeable to tax under the Income and Corporation Taxes Act 1988 s 18(1), (3) Schedule D, Case VI (as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 560 et seq); (3) excesses to be carried forward in the company's case under s 75(9) (as substituted) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1345); (4) Schedule A losses (within the meaning of s 392A (as added and amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 866) incurred by the company; (5) losses to be carried forward in the company's case under s 392B(1) (as added) (see INCOME TAXATION vol 23(1) (Reissue) PARA 866); (6) any tax loss of the company falling within s 400(2)(d) (see INCOME TAXATION vol 23(1) (Reissue) PARA 867 note 4); (7) allowable losses (within the meaning of the Taxation of Chargeable Gains Act 1992 s 8 (as amended)) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 169-170) that have accrued to the company; (8) deficits of the kind mentioned in the Finance Act 1996 s 83(1) to the extent that they are to be carried forward in the company's case under s 83(3A) (as added) (see INCOME TAXATION vol 23(1) (Reissue) PARA 852); (9) excesses of the kind mentioned in the Capital Allowances Act 2001 s 260 (see INCOME TAXATION vol 23(1) (Reissue) PARA 373) in relation to the company; (10) losses of the kind mentioned in the Finance Act 2002 Sch 29 para 35(1) incurred by the company; (11) unrelieved surplus advance corporation tax of the company (within the meaning of the Finance Act 1998 s 32 (as amended)); Energy Act 2004 s 44(2) (amended by the Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004, SI 2004/2310, reg 2, Schedule para 72).

4 For these purposes, 'BNFL company' means (1) the nuclear fuels company ('BNFL'); (2) a company that is a 75% subsidiary of BNFL at a time during the qualifying period; or (3) a company (other than BNFL) that is a 75% subsidiary of a BNFL parent company at a time during the qualifying period; 'BNFL parent company' means a company of which BNFL is a 75% subsidiary; and 'qualifying period' means the period beginning with 16 March 2004 and ending with the trigger date: Energy Act 2004 s 44(4). As to BNFL see PARA 1377 note 5 ante.

5 Ibid s 44(1).

6 Ibid s 44(3).

UPDATE

1420 Extinguishment of BNFL losses for tax purposes

NOTE 1--Reference to Income and Corporation Taxes Act 1988 s 12 now to Corporation Tax Act 2009 Pt 2 Ch 2 (ss 9-12): Income and Corporation Taxes Act 1988 s 834(1) (amended by Corporation Tax Act 2009 Sch 1 para 273(2)(a)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(iii) Supplementary Provisions/1421. Supplementary powers of the Secretary of State, the Nuclear Decommissioning Authority and the United Kingdom Atomic Energy Authority.

(iii) Supplementary Provisions

1421. Supplementary powers of the Secretary of State, the Nuclear Decommissioning Authority and the United Kingdom Atomic Energy Authority.

The Secretary of State¹ has power to enter into agreements for the purpose of accepting or imposing such contractual obligations as he thinks fit with respect to:

- 3834 (1) nuclear transfer schemes² and proposals for such schemes;
- 3835 (2) anything connected with such a scheme or proposal; or
- 3836 (3) the exercise of powers conferred on the Secretary of State or any other person by or under the relevant provisions³ of the Energy Act 2004⁴.

The Nuclear Decommissioning Authority ('the NDA')⁵ and the United Kingdom Atomic Energy Authority ('the UKAEA')⁶ each has power to enter into agreements for the purpose of accepting or imposing such contractual obligations as it or they think fit with respect to:

- 3837 (a) nuclear transfer schemes and proposals for such schemes;
- 3838 (b) anything connected with such a scheme or proposal; or
- 3839 (c) the exercise of powers conferred on it or them, or any other person, by or under the relevant provisions⁷ of the 2004 Act⁸.

The NDA and the UKAEA also each has power to do anything else which, in its or their opinion, is appropriate for facilitating:

- 3840 (i) a transfer which is or is proposed to be effected in accordance with a nuclear transfer scheme; or
- 3841 (ii) any other transfer of property, rights or liabilities of the NDA or (as the case may be) the UKAEA which is or is proposed to be effected for purposes connected with the carrying out by any person of any functions conferred on that person by or under those relevant provisions⁹.

Agreements entered into in exercise of the powers conferred by heads (1) to (3) or heads (a) to (c) above¹⁰ may, in particular, include provision for the making of payments (whether by way of consideration or otherwise) to the Secretary of State, or to the NDA or the UKAEA, in respect of anything transferred or created in accordance with a nuclear transfer scheme¹¹. The consent of the Treasury is required for the Secretary of State or the UKAEA to enter into an agreement in exercise of those powers¹² and the consent of the Secretary of State is also required for the UKAEA to enter into an agreement in exercise of those powers¹³. Sums received by the Secretary of State in pursuance of an agreement under these provisions must be paid into the Consolidated Fund¹⁴.

Before making any disposal of securities¹⁵ of a company¹⁶ in a case in which:

- 3842 (A) the disposal is made in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA;
 3843 (B) those arrangements are not arrangements to which the Secretary of State has consented as described above; and
 3844 (C) in the opinion of the UKAEA, the disposal is one which it would not have power to make but for the statutory provision allowing a disposal otherwise inconsistent with the UKAEA's functions¹⁷,

the UKAEA must consult the Secretary of State¹⁸. The statutory limitation on the cases in which the UKAEA may make share disposals that are inconsistent with its functions¹⁹ does not, however, apply to anything done by the UKAEA in exercise of powers conferred on it by or under the relevant provisions of the Energy Act 2004²⁰ or to any disposal of securities in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA²¹.

The powers conferred on the Secretary of State, the NDA and the UKAEA by the above provisions are in addition to their other powers and are to be disregarded in determining the extent of those powers²².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

3 I.e. the Energy Act 2004 Pt 1 Ch 2 (ss 38-50, Schs 5-9) (as amended): see PARA 1402 et seq ante, PARA 1422 et seq post.

4 Ibid s 48(1).

5 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

6 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

7 See note 3 supra.

8 Energy Act 2004 s 48(2).

9 Ibid s 48(3).

10 I.e. conferred by ibid s 48(1) or (2): see the text and notes 1-8 supra.

11 Ibid s 48(4).

12 Ibid s 48(5).

13 Ibid s 48(6).

14 Ibid s 48(9). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

15 For the meaning of 'securities' see PARA 744 note 7 ante.

16 For the meaning of 'company' see PARA 1422 note 3 post.

17 I.e. but for the Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(2): see PARA 1381 ante.

18 Energy Act 2004 s 48(7).

19 I.e. the Atomic Energy (Miscellaneous Provisions) Act 1981 s 1(4): see PARA 1381 ante.

20 See note 3 supra.

- 21 Energy Act 2004 s 48(8).
- 22 Ibid s 48(10).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(iii) Supplementary Provisions/1422. Finances and accounts of transferee companies.

1422. Finances and accounts of transferee companies.

The Secretary of State¹ may², with the approval of the Treasury, make loans of such amounts as he thinks fit to:

- 3845 (1) a designated BNFL company³ which is publicly controlled⁴; or
- 3846 (2) a publicly controlled transferee company⁵ which is not a designated BNFL company⁶.

Loans which the Secretary of State makes under these provisions must be repaid to him at such times and by such methods as he may direct from time to time⁷; and interest on such loans must be paid to him at such rates and at such times as he may so direct⁸. The approval of the Treasury is required for any such direction⁹. The Secretary of State must pay sums received by him by virtue of these provisions into the Consolidated Fund¹⁰.

The Secretary of State may guarantee repayment of any loans made to any designated BNFL company that is publicly controlled at the time when the guarantee is given¹¹, subject to the statutory financial limits¹². He may also guarantee, subject to Treasury approval¹³ and to the relevant financial limits¹⁴:

- 3847 (a) the repayment of the principal of any sum borrowed otherwise than from him by a transferee company which is not a designated BNFL company but is publicly controlled at the time of the giving of the guarantee;
- 3848 (b) the payment of interest on such a sum; and
- 3849 (c) the discharge of any other financial obligation of such a transferee company in connection with the borrowing of such a sum¹⁵;

and may give such a guarantee in such manner, and on such terms, as he thinks fit¹⁶. As soon as practicable after giving a guarantee under heads (a) to (c) above, the Secretary of State must lay a statement of the guarantee before Parliament¹⁷. If sums are paid out by the Secretary of State under a guarantee so given, the company whose obligations are fulfilled by the payment must pay him such amounts in or towards the repayment to him of those sums as he may direct and interest, at such rates as he may direct, on amounts outstanding under this provision¹⁸. Such payments to the Secretary of State must be made at such times, and in such manner, as he may from time to time direct¹⁹. The Treasury's approval is required for the giving of any direction under these provisions²⁰. Where a sum has been paid out by the Secretary of State under a guarantee given under heads (a) to (c) above, he must lay a statement relating to that sum before Parliament as soon as practicable after the end of the financial year²¹ in which that sum is paid out and as soon as practicable after the end of each subsequent relevant financial year²². The Secretary of State must pay sums received by him by virtue of the above provisions²³ into the Consolidated Fund²⁴.

If the articles of association of a transferee company confer on a Minister of the Crown powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money that may be borrowed or raised during any period by some or all of the members of the group²⁵ to which that company belongs, those powers are to be exercisable in the national

interest notwithstanding any rule of law or the provisions of any enactment²⁶; but for these purposes, an alteration of the articles of association of the company is to be disregarded if the alteration has the effect of conferring or extending any such power and it is made at a time when the company is not publicly owned²⁷.

For the purposes of the statutory accounts²⁸ of each of the following:

- 3850 (i) a transferee company;
- 3851 (ii) a subsidiary of the UKAEA to which a transfer has been made in accordance with a nuclear transfer scheme;
- 3852 (iii) a company that is the transferor²⁹ in relation to a transfer in accordance with such a scheme to a company falling within head (i) or head (ii) above,

the vesting in the company mentioned in head (i) or head (ii) above of property, rights and liabilities in accordance with the nuclear transfer scheme is to be taken to have been effected immediately after the end of the last accounting year³⁰ of the transferor³¹. Where a nuclear transfer scheme either specifies the value of an asset or the amount of a liability transferred in accordance with the scheme, or provides for the determination of that value or amount, the value or amount is to be taken to be the value or amount specified in or determined in accordance with the provisions of the scheme³².

As soon as practicable after the holding of a general meeting of a transferee company which, at the time of the meeting, is wholly-owned by the Crown³³, a Minister of the Crown must lay before Parliament a copy of all accounts which, in accordance with a requirement of the companies legislation, are laid before the company at that meeting, and all documents³⁴ which are annexed or attached to those accounts³⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The Energy Act 2004 s 45(1), Sch 7 paras 5, 6 (see notes 12, 14 infra) has effect for these purposes: s 45(1).

3 For these purposes, 'designated BNFL company' means a company designated for the purposes of ibid Sch 7 by an order made by the Secretary of State: Sch 7 para 1(1). The Secretary of State may designate a company for those purposes as a designated BNFL company only if, without being a subsidiary of the United Kingdom Atomic Energy Authority ('the UKAEA'), it is a publicly controlled company to which (1) securities of BNFL or of a designated BNFL company; (2) property, rights or liabilities of BNFL or of a designated BNFL company; or (3) property, rights or liabilities of a wholly-owned subsidiary of BNFL or of a designated BNFL company, were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the person from whom they were transferred and the company to which they were transferred were publicly controlled: Sch 7 para 1(2). An order designating a company for the purposes of Sch 7 must be laid before Parliament: Sch 7 para 1(5). References in Sch 7 to a nuclear transfer scheme include references to any modification agreement (within the meaning of s 38(8), Sch 5: see PARA 1410 note 11 ante) relating to that scheme: Sch 7 para 1(6). In Sch 7 para 1, 'company' has the same meaning as in the Companies Act 1985 or the Companies Act 2006: Energy Act 2004 Sch 7 para 1(7); Companies Act 2006 s 1297(5). For the meaning of 'nuclear transfer scheme' generally see PARA 1402 ante; for the meanings of 'subsidiary' and wholly-owned subsidiary' see PARA 744 note 6 ante; for the meaning of 'securities' see PARA 744 note 7 ante; and as to the nuclear fuels company ('BNFL') see PARA 1377 note 5 ante. For the meaning of 'publicly controlled company' see note 4 infra. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

4 For the purposes ibid of Pt 1 Ch 2 (ss 38-50, Schs 5-9) (as amended), a body corporate is a publicly controlled company if it is a company limited by shares that is either publicly owned or is otherwise a company in which: (a) a person specified in s 50(4) holds a majority of the voting rights; or (b) two or more persons so specified, taken together, hold a majority of the voting rights: s 50(1), (3). The persons specified are: (i) the Treasury; (ii) a Minister of the Crown; (iii) the Nuclear Decommissioning Authority ('the NDA'); (iv) the United Kingdom Atomic Energy Authority ('the UKAEA'); (v) a publicly owned company; or (vi) a nominee of a person falling within heads (i)-(v) supra: s 50(4). 'Company' has the same meaning as in the Companies Act 1985 or the Companies Act 2006: Energy Act 2004 ss 37(7), 50(5); Companies Act 2006 s 1297(5). For these purposes, 'voting rights' is to be construed in accordance with s 37(5): ss 37(1), 50(2). The Companies Act 1985 s 736A (as added) (prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by s 1159(3), Sch

6, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (meaning of 'voting rights' etc) applies for construing references in the Energy Act 2004 Pt 1 Chs 1, 2 (ss 1-50) (as amended) to holding voting rights in a company as it applies for construing the Companies Act 1985 s 736(1)(a) (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): Energy Act 2004 ss 37(5), 50(2). For the meaning of 'shares' see PARA 744 note 7 ante; for the meaning of 'publicly owned company' see PARA 1412 note 11 ante; as to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

5 For these purposes, 'transferee company' means a body corporate which is (1) a body corporate to which a transfer has been made in accordance with a nuclear transfer scheme; but (2) not a subsidiary of the UKAEA: *ibid* Sch 7 para 1(1).

6 *Ibid* Sch 7 para 2(1).

7 *Ibid* Sch 7 para 2(2).

8 *Ibid* Sch 7 para 2(3).

9 *Ibid* Sch 7 para 2(4).

10 *Ibid* Sch 7 para 2(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

11 See *ibid* Sch 7 para 3, applying the Nuclear Industry (Finance) Act 1977 s 1 (as amended) with appropriate modifications. See further PARA 1383 ante.

12 The Nuclear Industry (Finance) Act 1977 s 2 (as amended) (financial limits for BNFL: see PARA 1384 ante) has effect (1) as if the limit specified in s 2(1) (as amended) applied to BNFL and the designated BNFL companies, taken together, as it previously applied just to BNFL; and (2) as if the amounts specified in the Energy Act 2004 Sch 7 para 5(2) were included, in the case of the application of the Nuclear Industry (Finance) Act 1977 s 2(1) (as amended) to BNFL and those companies, in the amounts specified in s 2(2) (as amended): Energy Act 2004 Sch 7 para 5(1). The amounts treated as included in the amounts specified in the Nuclear Industry (Finance) Act 1977 s 2(2) (as amended) are: (a) the total paid after 27 July 2004 (ie the date of the passing of the Energy Act 2004) by the Secretary of State or the Treasury for securities issued, otherwise than in pursuance of Sch 6 para 2 (see PARA 1415 ante), by a designated BNFL company which is publicly controlled both before and after the acquisition of those securities by the Secretary of State or the Treasury; (b) the total amount outstanding in respect of the principal of loans made by virtue of Sch 7 para 2 to a designated BNFL company; (c) every sum for which the Secretary of State is liable in fulfilment of so much of a guarantee given under the Nuclear Industry (Finance) Act 1977 s 1(1) (as amended) as relates to the principal of any loan to a company which is a designated BNFL company; (d) every sum to which the Secretary of State may become so liable in default of payment by such a company; (e) so much of every sum which the Secretary of State has paid in fulfilment of guarantees given for such a company under s 1(1) (as amended) as has not been repaid under s 1(4) (as amended): Energy Act 2004 Sch 7 para 5(2). The Nuclear Industry (Finance) Act 1977 s 2(3) (limit of £400 million on certain other guarantees for BNFL) has effect as if references to BNFL included references to a designated BNFL company that was publicly controlled when the guarantee was given: Energy Act 2004 Sch 7 para 5(3). The Secretary of State may by order increase the limit for the time being specified in the Nuclear Industry (Finance) Act 1977 s 2(1) (as amended) or provide for the apportionment of that limit between the different companies in relation to which it applies and for its operation as apportioned: Energy Act 2004 Sch 7 para 5(4). An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil: Sch 7 para 5(5). No order is to be made containing provision increasing that limit unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons: Sch 7 para 5(6). An order under Sch 7 para 5 providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament: Sch 7 para 5(7).

13 See *ibid* Sch 7 para 4(8)(a).

14 *Ie* subject to *ibid* Sch 7 para 6. The aggregate amount outstanding by way of principal in respect of the amounts specified in *ibid* Sch 7 para 6(2) must not exceed £100 million: Sch 7 para 6(1). Those amounts are (1) money borrowed by BNFL or by the UKAEA the liability to pay which falls, by virtue of one or more nuclear transfer schemes, on a company which at the time when the scheme came into force was publicly controlled but was neither a designated BNFL company nor a subsidiary of the UKAEA; (2) money borrowed by a transferee company which at the time of the borrowing was publicly controlled but not a designated BNFL company; (3) borrowed money for the repayment of which a publicly controlled transferee company which is not a designated BNFL company is a guarantor or a surety; and (4) sums paid by the Secretary of State in fulfilment of guarantees given under Sch 7 para 4 in respect of borrowing by a transferee company which at the time of the giving of the guarantee was publicly controlled but was not a designated BNFL company: Sch 7 para

6(2). Borrowing by a wholly-owned subsidiary of a company ('the holding company') which would not otherwise be taken into account for these purposes is to be taken into account as if it were borrowing by the holding company; but borrowing between a company and any of its wholly-owned subsidiaries, or between two such subsidiaries, is not to be taken into account: Sch 7 para 6(3). Nothing in Sch 7 para 6 restricts the amount that may be borrowed by a company that has ceased to be publicly controlled or requires amounts in respect of the liabilities of such a company to repay borrowing to be taken into account for these purposes, except in so far as they are liabilities to repay the Secretary of State: Sch 7 para 6(4). The Secretary of State may by order increase the limit for the time being specified in Sch 7 para 6(1) or provide for the apportionment of that limit between the different companies in relation to which it applies and for its application as apportioned: Sch 7 para 6(5). An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil: Sch 7 para 6(6). No order is to be made containing provision increasing that limit unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons: Sch 7 para 6(7). An order under Sch 7 para 6 providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament: Sch 7 para 6(8).

15 Ibid Sch 7 para 4(1).

16 Ibid Sch 7 para 4(2).

17 Ibid Sch 7 para 4(3).

18 Ibid Sch 7 para 4(4).

19 Ibid Sch 7 para 4(5).

20 See *ibid* Sch 7 para 4(8)(b).

21 For the meaning of 'financial year' see PARA 763 note 17 *ante*.

22 Ibid Sch 7 para 4(6). In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for these purposes unless (1) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under Sch 7 para 4(4); and (2) the company in question is not at any time during that year subject to a liability to pay interest on amounts that became due under Sch 7 para 4(4) in respect of that sum: Sch 7 para 4(7).

23 *Ie* by virtue of *ibid* Sch 7 para 4(4).

24 Ibid Sch 7 para 4(9).

25 For these purposes, 'group', in relation to a company, means the following companies, taken together: (1) that company; (2) all of its subsidiaries; (3) every company of which that company is a subsidiary; and (4) every company not mentioned in heads (1)-(3) *supra* which is a subsidiary of a company falling within head (3) *supra*: *ibid* Sch 7 para 7(4).

26 Ibid Sch 7 para 7(1), (2). For the meaning of 'enactment' see PARA 750 note 9 *ante*.

27 Ibid Sch 7 para 7(3).

28 For these purposes, 'statutory accounts', in relation to a company, means accounts of that company prepared for the purposes of a provision of the Companies Act 1985 or the Companies Act 2006, including group accounts: Energy Act 2004 Sch 7 para 8(4); Companies Act 2006 s 1297(5).

29 'Transferor', in relation to a transfer scheme, means the person from whom property, rights and liabilities are transferred to a transferee company in accordance with the scheme: *ibid* Sch 7 para 1(1).

30 For these purposes, 'accounting year', in relation to a body corporate, means the period for which its annual accounts are prepared; and 'last accounting year', in relation to a nuclear transfer scheme, means the last complete accounting year ending before the scheme comes into force: *ibid* Sch 7 para 8(4).

31 Ibid Sch 7 para 8(1), (2).

32 Ibid Sch 7 para 8(3).

33 For these purposes, a body corporate is wholly-owned by the Crown if it is a company limited by shares each of which is held on behalf of the Crown: *ibid* Sch 7 para 1(3). A share in a company is held on behalf of the Crown if, and only if, it is held by (1) the Treasury; (2) a Minister of the Crown; (3) another company which is wholly-owned by the Crown; or (4) a nominee of a person falling within heads (1)-(3) *supra*: Sch 7 para 1(4).

34 For the meaning of 'document' see PARA 733 note 4 ante.

35 Energy Act 2004 Sch 7 para 9.

UPDATE

1422 Finances and accounts of transferee companies

NOTES 3, 4--Energy Act 2004 ss 37(5), (7), 50(5), Sch 7 para 1(7) amended: SI 2009/1941.

NOTE 28--Definition of 'statutory accounts' amended: SI 2008/948.

NOTE 35--Energy Act 2004 Sch 7 para 9 amended: SI 2008/948.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(3) TRANSFERS RELATING TO CIVIL NUCLEAR UNDERTAKINGS/(iii) Supplementary Provisions/1423. Pensions; in general.

1423. Pensions; in general.

Schedule 8 to the Energy Act 2004 makes provision, in connection with nuclear transfer schemes¹:

- 3853 (1) for the modification², by a direction of the Nuclear Decommissioning Authority ('the NDA')³, of a relevant pension scheme⁴ so as to extend the groups of persons who may participate in the scheme⁵;
- 3854 (2) with regard to public sector transfers of members of a United Kingdom Atomic Energy Authority ('UKAEA') pension scheme⁶;
- 3855 (3) to protect pension entitlements on certain other transfers⁷; and
- 3856 (4) to enable a UKAEA pension scheme to apply to employees of a designated BNFL company⁸ which is publicly controlled⁹.

1 A reference in the Energy Act 2004 s 46, Sch 8 to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of s 38(8), Sch 5: see PARA 1410 note 11 ante): Sch 8 para 1(5). For the meaning of 'nuclear transfer scheme' generally see PARA 1402 ante.

2 References in *ibid* Sch 8 to the modification of a pension scheme include references to the modification of any one or more of the following: (1) the trust deed of the scheme, if there is one; (2) rules of the scheme; or (3) any other instrument relating to the constitution, management or operation of the scheme: *ibid* Sch 8 para 1(2).

3 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post.

4 For these purposes, 'relevant pension scheme' means (1) a nuclear pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown; (2) a nuclear pension scheme designated as a relevant pension scheme for these purposes by an order made by the Secretary of State: Energy Act 2004 Sch 8 para 2(10). 'Nuclear pension scheme' means (a) a UKAEA pension scheme; (b) an NDA pension scheme; (c) a pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown; or (d) a pension scheme designated for the purposes of Sch 8 by an order made by the Secretary of State: Sch 8 para 1(1). 'NDA pension scheme' means a pension scheme maintained by or on behalf of the NDA under or by virtue of s 8(1)(a) or (b) (see PARA 1595 post); and 'UKAEA pension scheme' means a pension scheme maintained by the UKAEA under the Atomic Energy Authority Act 1954 Sch 1 para 7(2)(b) (see PARA 1426 ante): Energy Act 2004 Sch 8 para 1(1). For the meaning of 'nuclear company' see PARA 1414 note 9 ante; as to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

For the purposes of Sch 8, a body corporate is wholly-owned by the Crown if it is a company limited by shares and that company is one in which either a person specified in Sch 8 para 1(4) holds all the shares or two or more persons so specified, taken together, hold all the shares: Sch 8 para 1(3). Those persons are (i) the Treasury; (ii) a Minister of the Crown; (iii) another company which is wholly-owned by the Crown; or (iv) a nominee of a person falling within heads (i)-(iii) supra: Sch 8 para 1(4).

5 See *ibid* Sch 8 Pt 2 (para 2(1)-(10)). The Secretary of State's consent is required for the giving of any such direction by the NDA: Sch 8 para 2(9).

6 See *ibid* Sch 8 Pt 3 (paras 3-8). As to transfers of employment for NDA purposes see Sch 8 para 3; as to the application of the UKAEA pension scheme to a person who becomes an employee of a relevant public sector employer and who was, immediately before the transfer of his employment took effect, a participant in a UKAEA pension scheme see Sch 8 para 4; as to modifications of a UKAEA pension scheme to give effect to Sch 8 para 4 see Sch 8 para 5; as to the transfer of funds from a UKAEA pension scheme see Sch 8 para 6; as to the manner in which the Secretary of State is to exercise his powers to give directions for the purposes of Sch 8 paras 5, 6 see Sch 8 para 7; and as to payments to the UKAEA by a relevant public sector employer see Sch 8 para 8.

'Relevant public sector employer' means any of the following: (1) the UKAEA; (2) the NDA; (3) the Civil Nuclear Police Authority (as to which see PARA 1520 et seq post); (4) a publicly controlled company (for the meaning of which see PARA 1422 note 4 ante): Sch 8 para 1(1).

7 See ibid Sch 8 Pt 4 (paras 9-12). As to the persons entitled to pension protection see Sch 8 para 9; as to protection on transfer in accordance with a nuclear transfer scheme see Sch 8 para 10; as to protection on a transfer in accordance with transfer arrangements see Sch 8 para 11; and as to the Secretary of State's power to direct modifications of an NDA pension scheme see Sch 8 para 12. 'Transfer arrangements' means arrangements for the transfer of any of the following otherwise than in accordance with a nuclear transfer scheme (1) securities of, or voting rights in, a company; or (2) a business, or a part of a business: Sch 8 para 1(1). For the meaning of 'securities' see PARA 744 note 7 ante; and for the meaning of 'voting rights' see PARA 1422 note 4 ante.

8 For these purposes, 'designated BNFL company' has the same meaning as in ibid s 45(1), Sch 7 (see PARA 1422 ante): Sch 8 para 13(8).

9 See ibid Sch 8 Pt 5 (para 13).

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1424. Taxation provisions.

Schedule 9 to the Energy Act 2004 makes provision, in connection with nuclear transfer schemes¹, for the treatment for the purposes of corporation tax and the taxation of chargeable gains of transfers¹:

- 3857 (1) to the Nuclear Decommissioning Authority ('the NDA') or a subsidiary of the NDA²;
- 3858 (2) relating to BNFL or the United Kingdom Atomic Energy Authority ('the UKAEA') or a subsidiary of the UKAEA³;
- 3859 (3) relating to relevant site licensees⁴; and
- 3860 (4) to the Secretary of State⁵.

Stamp duty is not to be chargeable:

- 3861 (a) on a nuclear transfer scheme; or
- 3862 (b) on an instrument⁶ certified by the Secretary of State to the Commissioners for Revenue and Customs as made for the purposes of such a scheme, or as made for purposes connected with such a scheme,

except to the extent that the scheme or instrument includes provision in relation to private transfers⁷. Where, however, by virtue of the above provision stamp duty is not chargeable at all, or is chargeable only to a reduced extent, on a nuclear transfer scheme or instrument, the scheme or instrument is to be treated as duly stamped only if:

- 3863 (i) in accordance with the relevant provision of the Stamp Act 1891⁸ it has been stamped with a stamp denoting either that it is not chargeable to duty or that it has been duly stamped; or
- 3864 (ii) it is stamped with the duty to which it would be otherwise be chargeable⁹.

An agreement which is made for the purposes of a nuclear transfer scheme or purposes connected with such a scheme is not to give rise to stamp duty reserve tax except to the extent that the agreement relates to private transfers¹⁰.

¹ For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

² See the Energy Act 2004 s 47, Sch 9 Pt 1 (paras 1-15). For supplemental provisions see Sch 2 Pt 6 (paras 35-37). As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARA 1592 et seq post. For the meaning of 'subsidiary' see PARA 744 note 6 ante.

³ See *ibid* Sch 9 Pt 2 (paras 16-27). See also note 2 *supra*. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

⁴ See *ibid* Sch 2 Pt 3 (paras 28-30). See also note 2 *supra*. For these purposes, 'relevant site licensee' has the same meaning as in the Energy Act 2004 s 27(4) (see s 27(5); and PARA 1608 post): s 47, Sch 9 para 30.

5 See *ibid* Sch 2 Pt 4 (paras 31-33). See also note 2 *supra*. As to the Secretary of State see PARA 601 note 1 *ante*.

6 For these purposes, 'instrument' has the same meaning as in the Stamp Act 1891 (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1001): Energy Act 2004 s 47, Sch 9 para 34(4).

7 Energy Act 2004 Sch 9 para 34(1). For these purposes, 'private transfer' means: (1) a transfer of any property, right or liability to a person other than the Secretary of State, the NDA or a publicly owned company; or (2) the creation of an interest or right in favour of a person other than the Secretary of State, the NDA or a publicly owned company: Sch 9 para 34(4). For the meaning of 'publicly owned company' see PARA 1412 note 11 *ante*.

8 *Ie* the Stamp Act 1891 s 12 (as substituted): see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111.

9 Energy Act 2004 Sch 9 para 34(2).

10 *Ibid* Sch 9 para 34(3).

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(4) CONTROL OF MINERALS, PRESCRIBED SUBSTANCES, RIGHTS AND INVENTIONS

1425. Power to search for minerals.

The Secretary of State¹ or any person authorised by him in that behalf may do on, over or below the surface of any land such work as the Secretary of State considers necessary for the purpose of discovering whether there are present in or on the land, either in a natural state or in a deposit of waste material obtained from any underground or surface working, any minerals² from which in his opinion any of the prescribed substances³ can be obtained, and the extent to which any such mineral is so present⁴.

The above powers include a power to remove any work constructed or other thing placed on, over or below the surface of the land in the course of the exercise of those powers, and to do such work on the land as the Secretary of State or person authorised by him in that behalf thinks fit for the purpose of restoring the land wholly or partly to the condition in which it would have been but for the exercise of those powers⁵.

For the purpose of exercising the above powers any person authorised by the Secretary of State in that behalf may pass, with or without animals or vehicles, over any land⁶.

The Secretary of State may store, transport or dispose of any articles⁷ acquired by him in or by reason of any exercise of the above powers⁸, and may do all such things, including the erection of buildings and the execution of works, as appear to him to be necessary or expedient for the exercise of those powers⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'minerals' see PARA 1366 note 14 ante.

3 'Prescribed substance' means uranium, thorium, plutonium, neptunium or any of their respective compounds or any such other substance as the Secretary of State may by order prescribe, being a substance which in his opinion is or may be used for the production or use of atomic energy, or research into matters connected therewith: Atomic Energy Act 1946 s 18(1). In the exercise of this power, the Secretary of State has made the Atomic Energy (Americium) Order 2002, SI 2002/2533, which came into force on 1 December 2002 (art 1) and prescribes americium for these purposes (art 2). For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to its production or use see PARA 1366 note 3 ante.

4 Atomic Energy Act 1946 s 6(1).

5 Ibid s 6(5). Before any of the powers described in the text are exercised in relation to any land, the Secretary of State must serve a notice in writing on every owner, lessee and occupier of the land specifying the nature of the work proposed to be done and the extent of the land affected, and the time, not being less than 28 days, within which and the manner in which objections can be made to it: s 6(2). No such power may be exercised otherwise than in pursuance of the notice or before the expiration of the time specified in it for making objections: s 6(2). If any such objection is duly made and not withdrawn, the Secretary of State must, before exercising any such powers, afford an opportunity to the person making the objection of appearing before and being heard by a person appointed by the Secretary of State for the purpose and, if the person making the objection avails himself of that opportunity, the Secretary of State may afford to any other persons to whom it appears to him expedient to afford it an opportunity of being heard on the same occasion: s 6(3). After considering any such objection and the report of the person so appointed, the Secretary of State may serve on the persons on whom the original notice was served a further notice in writing withdrawing the original notice or modifying its terms, but not so as to increase the extent of the land affected; and, in the case of

modification, no powers may be exercised under s 6(1) otherwise than in pursuance of the original notice as so modified: s 6(4). As to compensation see PARA 1426 post. As to the service of notices see PARA 1589 post.

6 Ibid s 6(6). If any person wilfully obstructs or interferes with the exercise of powers under s 6 he is guilty of an offence: s 6(7). As to offences and penalties see s 14 (as amended); and PARA 1588 post.

7 For the meaning of 'articles' see PARA 1366 note 5 ante.

8 Atomic Energy Authority Act 1954 s 2(3) proviso (b).

9 Ibid s 2(3) proviso (c).

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1426. Compensation for work done in searching for minerals.

Where, as a result of the exercise of powers of searching for minerals¹, the value of any land is diminished, compensation must be determined and paid².

The compensation must, in the first instance, be a sum calculated by reference to the diminution of the annual value³ of the land ascribable to the exercise of the powers, and must be paid in instalments, quarterly in arrear, to the person who for the time being is entitled to occupy the land⁴. Any such compensation is considered as accruing due from day to day, is apportionable in respect of time accordingly⁵, and carries interest⁶.

The Secretary of State⁷ may at any time serve a notice in writing⁸ on every owner, lessee and occupier of land in respect of which such powers⁹ have been exercised stating that he does not propose to exercise those powers any further in relation to that land, and thereupon the period in respect of which compensation is payable ends and the powers cease to be exercisable in so far as they depend on any notice previously served under those powers, but without prejudice to the service of a new notice under them¹⁰. If the period in which compensation is payable comes to an end in this manner, then if, at the expiration of that period, the value of any estate or interest which a person then has in the land is less than it would be but for the exercise of the powers, there must be paid to him by way of compensation a sum equal to the amount of that depreciation; and that compensation is taken to accrue due at the expiration of that period¹¹, and carries interest¹².

Any dispute arising as to whether compensation is payable or as to the amount of the compensation or the persons to whom it is payable must be referred to and determined by the Lands Tribunal¹³.

1 Ie under the Atomic Energy Act 1946 s 6: see PARA 1425 ante.

2 Ibid s 6(8). The compensation is to be determined and paid in accordance with s 6(8), Sch 1: s 6(8).

3 'Annual value' means, in relation to any land, the rent at which the land might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and to bear the costs of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent: *ibid* Sch 1 para 8. As to a tenant's liability for rates and taxes see generally LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 521 et seq.

4 Ibid Sch 1 para 1. In assessing any such compensation it must be assumed that the land cannot be restored to the condition in which it would be but for the exercise of the right: Sch 1 para 7.

5 Ibid Sch 1 para 1.

6 Ibid Sch 1 para 5. Any such compensation carries interest, as from the time at which it accrues due, until payment, at such rate per annum as the Treasury may from time to time by order prescribe; and for these purposes, compensation payable in accordance with Sch 1 para 1 is deemed to accrue on the last day of each quarter in respect of which it is payable: Sch 1 para 5.

7 As to the Secretary of State see PARA 601 note 1 ante.

8 The Secretary of State must cause the fact of service to be published in such manner as he thinks best adapted for informing persons affected (other than persons on whom the notice was served): Atomic Energy Act 1946 Sch 1 para 6. As to the service of notices see PARA 1589 post.

9 le powers exercised under *ibid* s 6: see PARA 1425 ante.

10 *Ibid* Sch 1 para 2.

11 *Ibid* Sch 1 para 3. Where compensation is payable under Sch 1 para 3 in respect of any estate or interest which, to the knowledge of the Secretary of State, is subject to a mortgage, that compensation and any interest on it must be paid to the mortgagee and he is liable to account for it as if the compensation were proceeds of sale of that estate or interest arising under a power of sale exercised by the mortgagee at the material time and the interest on that compensation were interest on those proceeds: Sch 1 para 4. If, however, that estate or interest is subject to two or more successive mortgages, Sch 1 para 4 has effect with the substitution for the reference to the mortgagee of references to the first mortgagee: Sch 1 para 4 proviso.

12 See *ibid* Sch 1 para 5; and note 6 *supra*.

13 *Ibid* Sch 1 para 9 (amended by the Lands Tribunal Act 1949 s 10, Sch 2; the Statute Law (Repeals) Act 1974; and by virtue of the Land Compensation Act 1961 s 40(1)). For the procedure see the Lands Tribunal Rules 1996, SI 1996/1022 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 747 *et seq*.

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1427. Compulsory acquisition of rights to work minerals.

Where it appears to the Secretary of State¹ that any minerals² from which in his opinion any of the prescribed substances³ can be obtained are present in or on any land, either in a natural state or in a deposit of waste material obtained from any underground or surface working, he may by order⁴ provide for compulsorily vesting in him or in the United Kingdom Atomic Energy Authority ('the UKAEA')⁵ the exclusive right, so long as the order remains in force, to work those minerals and any other minerals which it appears to him to be necessary to work with those minerals⁶.

The Secretary of State may also provide, by that order or a subsequent order⁷, for compulsorily vesting in him or in the Authority any other ancillary rights which appear to him to be necessary for the purpose of working such minerals⁸, including rights:

- 3865 (1) to withdraw support⁹;
- 3866 (2) necessary for the purpose of access to or conveyance of those minerals or the ventilation or drainage of the workings¹⁰;
- 3867 (3) to use and occupy the surface of any land for the purpose of erecting any necessary buildings and installing any necessary plant¹¹ in connection with the working of those minerals¹²;
- 3868 (4) to use and occupy for the purposes of working those minerals any land forming part of or used in connection with an existing mine or quarry, and to use or acquire any plant used in connection with any such mine or quarry¹³; and
- 3869 (5) to obtain a supply of water for purposes connected with the working of those minerals, or to dispose of water or other liquid matter obtained in consequence of working them¹⁴.

The Secretary of State may store, transport or dispose of any articles¹⁵ acquired by him in the exercise of the above rights¹⁶, and may do all things as appear to him to be necessary or expedient for the exercise of such powers¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'minerals' see PARA 1366 note 14 ante.

3 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

4 Any order so made is subject to special parliamentary procedure and the Statutory Orders (Special Procedure) Act 1945 applies to it subject to the modification that s 2(1), Sch 1 para 1 is deemed to include a provision requiring the notice of the order as proposed to be made to be served by the Secretary of State (1) on all persons who, but for the order, would be entitled to work the minerals affected; and (2) on every owner, lessee and occupier, except tenants for a month or any period less than a month, of any land in respect of which rights are proposed to be acquired under the order: Atomic Energy Act 1946 s 7(3); and see PARLIAMENT vol 34 (Reissue) PARA 914 et seq. As to the payment of compensation see PARA 1428 post; and as to the working of minerals see PARA 1366 note 15 ante.

5 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

6 Atomic Energy Act 1946 s 7(1) (amended by the Atomic Energy Authority Act 1954 s 6(4), Sch 3). These powers are unaffected by the repeal of the Atomic Energy Act 1946 s 2: see the Atomic Energy Authority Act 1954 s 2(3) proviso (a).

7 See note 4 *supra*.

8 Atomic Energy Act 1946 s 7(1) (as amended: see note 6 *supra*).

9 *Ibid* s 7(1)(a).

10 *Ibid* s 7(1)(b).

11 'Plant' includes any machinery, equipment or appliance, whether affixed to land or not: *ibid* s 18(1).

12 *Ibid* s 7(1)(c).

13 *Ibid* s 7(1)(d).

14 *Ibid* s 7(1)(e).

15 For the meaning of 'articles' see PARA 1366 note 5 *ante*.

16 Atomic Energy Authority Act 1954 s 2(3) proviso (b).

17 *Ibid* s 2(3) proviso (c). As to the Secretary of State's powers compulsorily to acquire prescribed substances, stocks of minerals and plant see PARA 1432 *post*; and as to the powers to obtain information, and of entry and inspection see PARAS 1515, 1566 *post*.

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1428. Compensation on compulsory acquisition of rights to work minerals.

Any order made for the compulsory acquisition of rights to work minerals¹ must provide for the payment of compensation, in such cases and subject to such conditions as may be specified in the order or determined under it, in respect of loss suffered as the result of the acquisition or exercise of rights under the order². No account may, however, be taken, in calculating the compensation, of the value of any minerals present in or on land affected by the order, being minerals specified in the order as those from which in the opinion of the Secretary of State³ any of the prescribed substances⁴ can be obtained⁵.

1 Ie an order under the Atomic Energy Act 1946 s 7 (as amended): see PARA 1427 ante. For the meaning of 'minerals', and as to the working of minerals, see PARA 1366 notes 14-15 ante.

2 Ibid s 7(2).

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

5 Atomic Energy Act 1946 s 7(2).

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1429. Control and prohibition of working minerals and of the production, use or disposal of radioactive material and plant.

The Secretary of State¹ may by order² provide for prohibiting, except under the authority of a licence granted by him:

- 3870 (1) the working of any minerals³ specified in the order and being minerals from which, in his opinion, any of the prescribed substances⁴ can be obtained⁵; or
- 3871 (2) the acquisition, production, treatment, possession, use, disposal, export or import of:
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- 516. (a) any of the prescribed substances⁶; or
- 517. (b) any minerals which are specified in the order, being minerals from which in his opinion any of the prescribed substances can be obtained and not being minerals in a natural state or contained in a deposit of waste material obtained from any underground or surface working⁷; or
- 518. (c) any plant⁸ designed or adapted for the production or use of atomic energy⁹ or for research into matters connected therewith¹⁰.
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The above powers of control do not apply to the United Kingdom Atomic Energy Authority ('the UKAEA')¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of orders see PARA 1361 the text and notes 2-3 ante. At the date at which this title states the law, no such order had been made. An order made under this power may contain such incidental and supplementary provisions as the Secretary of State considers necessary: Atomic Energy Act 1946 s 10(1). Contravention of such an order is an offence, as is also the failure to comply with the order or with any condition attached to the grant of a licence under s 10: s 10(4). As to the prosecution of the offence and the penalties see s 14 (as amended); and PARAS 1582, 1588 post.

3 For the meaning of 'minerals', and as to the working of minerals, see PARA 1366 notes 14-15 ante.

4 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

5 Atomic Energy Act 1946 s 10(1)(a).

6 Ibid s 10(1)(b)(i). As to the further control of the importation, exportation, sale and supply of radioactive substances see PARA 1436 et seq post.

7 Ibid s 10(1)(b)(ii).

8 For the meaning of 'plant' see PARA 1427 note 11 ante.

9 For the meaning of 'atomic energy' see PARA 1357 note 1 ante. As to its production or use see PARA 1366 note 3 ante.

10 Atomic Energy Act 1946 s 10(1)(b)(iii).

11 Atomic Energy Authority Act 1954 s 6(4), Sch 3. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

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1430. Seizure of articles.

An order under the power to control the working etc of minerals and other prescribed substances¹ may provide for:

- 3872 (1) the seizure of any article² in respect of which there are reasonable grounds for suspecting that a contravention of the order of prohibition has been committed; and
- 3873 (2) the retention of any such article pending the institution and final determination of proceedings in respect of the contravention; and
- 3874 (3) if the proceedings lead finally to a conviction, the disposal of any such article³.

¹ ie an order made under the Atomic Energy Act 1946 s 10: see PARA 1429 note 2 ante. For the meaning of 'minerals', and as to the working of minerals, see PARA 1366 notes 14-15 ante. For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

² For the meaning of 'article' see PARA 1366 note 5 ante.

³ Atomic Energy Act 1946 s 10(3). Contravention of the order is an offence: see PARA 1429 note 2 ante.

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1431. Availability of minerals, substances and plant for research etc.

The Secretary of State¹ must secure so far as practicable, by the issue of licences in such cases or classes of cases as he thinks fit, that minerals², prescribed substances³ and plant⁴ which may be the subject of a prohibition order⁵ are available for purposes of research and education, for medical and biological purposes and for commercial purposes not involving the production or use of atomic energy⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'minerals' see PARA 1366 note 14 ante.

3 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

4 For the meaning of 'plant' see PARA 1427 note 11 ante.

5 Ie an order under the Atomic Energy Act 1946 s 10: see PARA 1429 note 2 ante.

6 Ibid s 10(2). For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to its production or use see PARA 1366 note 3 ante.

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1432. Compulsory acquisition of substances, minerals and plant.

The Secretary of State¹ may compulsorily acquire any prescribed substances², any minerals³ from which in his opinion any such substance can be obtained, other than minerals in a natural state or contained in a deposit of waste material obtained from any underground or surface working⁴, or any plant⁵ designed or adapted for the production or use of atomic energy⁶ or research into connected matters⁷. There is a statutory procedure prescribed for the acquisition⁸.

The Secretary of State may store, transport or dispose of any articles⁹ acquired by him in or by reason of any exercise of the above powers¹⁰, and may do all things as appear to him to be necessary or expedient for the exercise of such powers¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Atomic Energy Act 1946 s 8(1)(a). For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

3 For the meaning of 'minerals' see PARA 1366 note 14 ante.

4 Atomic Energy Act 1946 s 8(1)(b). The Secretary of State may compulsorily acquire the rights to work such minerals subject to the payment of compensation: see PARAS 1427-1428 ante. As to the working of minerals see PARA 1366 note 15 ante.

5 For the meaning of 'plant' see PARA 1427 note 11 ante.

6 For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to the production or use of atomic energy see PARA 1366 note 3 ante.

7 Atomic Energy Act 1946 s 8(1)(c). In the case of any plant which is affixed to land the Secretary of State may sever it from the land, in which case he must make good any damage caused by the severance: s 8(1).

8 See *ibid* s 8(1), Sch 2 Pt I (paras 1-6); and PARA 1433 post.

9 For the meaning of 'articles' see PARA 1366 note 5 ante.

10 Atomic Energy Authority Act 1954 s 2(3) proviso (b).

11 *Ibid* s 2(3) proviso (c).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(4) CONTROL OF MINERALS, PRESCRIBED SUBSTANCES, RIGHTS AND INVENTIONS/1433. Procedure for compulsory acquisition of prescribed substances etc.

1433. Procedure for compulsory acquisition of prescribed substances etc.

Where the Secretary of State¹ proposes to acquire any articles² he must serve upon the person appearing to him to be the owner³ of them a notice in writing (a 'notice of acquisition') specifying the articles to be acquired and requiring that person to make a declaration containing specified particulars as to the ownership of those articles and as to any agreement or charge by virtue of which any other person has an interest in any of those articles⁴. Upon the service of such a notice of acquisition, no article specified in it must be removed from the premises where it was situated at the time of service of the notice, without the consent of the person specified in the notice; and any person knowingly removing an article or causing or permitting it to be removed in contravention of this provision is guilty of an offence⁵.

If it appears to the Secretary of State, either in consequence of any written declaration so made to him or otherwise, that some person other than the person on whom the notice of acquisition was served is the owner of the articles to which the notice relates, or has any interest in them, he must serve a copy of the notice of acquisition on that other person⁶. The notice of acquisition must state that an objection may be made to it within such time (not being less than 28 days) and in such manner as is specified in it; and if any such objection is duly made and not withdrawn, the Secretary of State must afford an opportunity to the person making the objection of appearing before and being heard by a person appointed for that purpose by the Secretary of State⁷.

After considering any objection duly made and not withdrawn, and the report of the person appointed to hear the objection, the Secretary of State must serve on all persons upon whom the notice of acquisition, or a copy of it, was served a further notice in writing either withdrawing the notice of acquisition or confirming it as respects all the articles to which it relates or such of those articles as may be specified⁸. Any article with respect to which a notice of acquisition has been served vests in the Secretary of State at the expiration of the time for making an objection if no objection has been duly made⁹. If an objection has been made but the notice is confirmed as respects that article, the article vests in the Secretary of State at the time of service of the confirming notice¹⁰. In either case, the article vests free of mortgage¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. under the Atomic Energy Act 1946 s 8: see PARA 1432 ante. For the meaning of 'articles' see PARA 1366 note 5 ante.

3 For these purposes, 'owner' means, in relation to any article, the person entitled to sell the article, it being assumed not to be subject to any mortgage; and 'mortgage' includes any pledge, lien or other similar obligation and the expression 'mortgagee' is to be construed accordingly: *ibid* s 8(1), (2), Sch 2 Pt II para 6.

4 *Ibid* Sch 2 Pt I para 1. As to the service of notices see PARA 1589 post.

5 *Ibid* Sch 2 Pt I para 2. As to the prosecution of and penalties for the offence see PARAS 1582, 1588 post.

6 *Ibid* Sch 2 Pt I para 3.

7 *Ibid* Sch 2 Pt I para 4. If the person making the objection avails himself of that opportunity, the Secretary of State may afford to any other persons to whom it appears to him expedient to afford it an opportunity of being heard on the same occasion: Sch 2 Pt I para 4.

- 8 Ibid Sch 2 Pt I para 5.
- 9 Ibid Sch 2 Pt I para 6(a).
- 10 Ibid Sch 2 Pt I para 6(b).
- 11 Ibid Sch 2 Pt I para 6. As to compensation see PARA 1434 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(4) CONTROL OF MINERALS, PRESCRIBED SUBSTANCES, RIGHTS AND INVENTIONS/1434. Compensation on compulsory acquisition of substances, minerals and plant.

1434. Compensation on compulsory acquisition of substances, minerals and plant.

Where any article¹ is compulsorily acquired², compensation in respect of the acquisition must be paid³. The compensation is a sum equal to the price which the owner⁴ of the article might reasonably have been expected to obtain upon its sale effected by him immediately before the date of the service of the notice of acquisition⁵, and the compensation accrues due on that date and (subject to the following provisions) must be paid to the owner⁶. Any dispute as to whether any such compensation is payable or as to the amount of it or the persons to whom it is payable must be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers⁷. Any compensation payable carries interest, as from the time at which it accrues due, until payment, at such rate as the Treasury may from time to time by order prescribe⁸.

Where, immediately before the service of the notice of acquisition relating to any article in respect of which compensation is so payable, it was in the possession of some person other than the owner by virtue of a hire purchase agreement⁹ or was subject to a mortgage¹⁰, that person or the mortgagee, as the case may be, may, by a notice served on the Secretary of State, claim to have apportioned to him such part of the compensation as may be specified in his claim; and in default of agreement between the parties the claim must be determined by an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers, who may apportion the compensation between them in such manner as appears to him to be just¹¹. Where any compensation is so paid to a mortgagee he is liable to account for it as if the compensation were proceeds of sale of the article in question arising under a power of sale exercised by the mortgagee at the material time and the interest on that compensation were interest on those proceeds¹².

1 For the meaning of 'articles' see PARA 1366 note 5 ante.

2 As to the compulsory acquisition of articles see PARA 1432 ante; and as to the procedure to be followed see PARA 1433 ante.

3 Atomic Energy Act 1946 s 8(2).

4 For the meaning of 'owner' see PARA 1433 note 3 ante.

5 As to a notice of acquisition see PARA 1433 ante.

6 Atomic Energy Act 1946 s 8(2), Sch 2 Pt II para 1.

7 Ibid Sch 2 Pt II para 2. As to the Institution of Civil Engineers see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 220.

8 Ibid Sch 2 Pt II para 3.

9 'Hire purchase agreement' has the same meaning as in the Hire Purchase Act 1938 (repealed: see now the Consumer Credit Act 1974 s 189(1)): Atomic Energy Act 1946 Sch 2 Pt II para 6. The wording of the 1974 definition is different; quare whether that definition applies for these purposes.

10 For the meaning of 'mortgage' and 'mortgagee' see PARA 1433 note 3 ante.

11 Atomic Energy Act 1946 Sch 2 Pt II para 4. As to the service of notices see PARA 1589 post.

12 Ibid Sch 2 Pt II para 5.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(4) CONTROL OF MINERALS, PRESCRIBED SUBSTANCES, RIGHTS AND INVENTIONS/1435. Compulsory acquisition of contractual rights.

1435. Compulsory acquisition of contractual rights.

The Secretary of State¹ may serve on any person who is a party to a contract relating to the production or use of atomic energy² or research into matters connected with it, which is not a contract for the rendering of personal services, a notice in writing stating that on such date as may be specified in the notice his rights and liabilities under the contract will be transferred to the Secretary of State³. Subject to any withdrawal of the notice⁴, the contract thereupon has effect as regards any rights exercisable, or liabilities incurred, on or after the specified date, as if the Secretary of State were a party to the contract instead of the person on whom the notice was served, and as if for any reference in the contract to that person there were substituted a reference to the Secretary of State⁵.

The notice must contain a statement that an objection may be made to it within such time and in such manner as may be specified; and if any such objection is duly made and not withdrawn the Secretary of State must afford an opportunity to the person making the objection of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose⁶. After considering any such objection and the report of the person appointed, the Secretary of State may withdraw the original notice by the service of a further written notice⁷.

The Secretary of State may store, transport or dispose of any articles⁸ acquired by him in or by reason of the exercise of the above powers⁹, and may do all things as appear to him to be necessary or expedient for the exercise of those powers¹⁰.

Where the rights and liabilities of a party to a contract are thus transferred to the Secretary of State, there must be paid to that party such compensation in respect of any loss suffered by him as may be agreed between him and the Secretary of State with the Treasury's approval, or, in default of such agreement, as may be determined by arbitration¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to the production or use of atomic energy see PARA 1366 note 3 ante.

3 Atomic Energy Act 1946 s 9(1). As to the service of notices see PARA 1589 post.

4 *Ie* under *ibid* s 9(2)-(4): see the text and notes 6-7, 11 *infra*.

5 *Ibid* s 9(1).

6 *Ibid* s 9(2).

7 *Ibid* s 9(3). If the original notice has already taken effect, it ceases to operate on or after the date on which the notice of withdrawal was served: s 9(3).

8 For the meaning of 'articles' see PARA 1366 note 5 ante.

9 Atomic Energy Authority Act 1954 s 2(3) proviso (b).

10 *Ibid* s 2(3) proviso (c).

11 Atomic Energy Act 1946 s 9(4). As to the application of the Arbitration Act 1996 to such arbitration see s 94; and ARBITRATION vol 2 (2008) PARA 1209.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(i) Control of Supply/1436. Control of importation and exportation.

(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE

(i) Control of Supply

1436. Control of importation and exportation.

A licence is required from the Secretary of State¹ for the importation or exportation of all radioactive substances².

¹ As to the Secretary of State see PARA 601 note 1 ante.

² See the Import, Export and Customs Powers (Defence) Act 1939 s 1 (amended by the Export Control Act 2002 s 15(1), (2)(a)); the Import of Goods (Control) Order 1954, SI 1954/23 (as amended); the Export Control Act 2002; the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, SI 2003/2764 (as amended); and TRADE AND INDUSTRY vol 97 (2010) PARA 808 et seq.

UPDATE

1436 Control of importation and exportation

NOTE 2--SI 2003/2764 replaced: Export Control Order 2008, SI 2008/3231 (see TRADE AND INDUSTRY vol 97 (2010) PARA 817 et seq).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(i) Control of Supply/1437. Control of sale and supply.

1437. Control of sale and supply.

The Medicines Act 1968¹ provides a framework for the regulation and control of all dealings with medicinal products² which superseded former legislation dealing specifically with the control and supply of radioactive substances³. The Act contains provisions enabling ministers⁴ to apply the statutory provisions, and the regulations relating to clinical trials⁵, to substances other than medicinal products⁶.

The Secretary of State⁷ has by regulations applied certain provisions of the Medicines Act 1968 relating to the licensing of the sale, supply, import, export, manufacture and assembly of medicinal products to radiopharmaceutical kits, generators and precursors⁸. Regulations have also been made under which medicinal products based on radioactive isotopes (other than isotopes based on sealed sources) became licensable under the Act⁹.

1 For the framework of regulation and control under the Medicines Act 1968 see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 1 et seq.

2 'Medicinal products' are defined in ibid s 130 (as amended): see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 7.

3 Ie the Radioactive Substances Act 1948 ss 3, 4 (repealed).

4 As to the ministers responsible see the Medicines Act 1968 s 1(1) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 3.

5 Ie the Medicines for Human Use (Clinical Trials) Regulations 2004, SI 2004/1031 (as amended): see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 82 et seq.

6 See the Medicines Act 1968 s 104(1) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 9. As to the exercise of this power see the Medicines (Radioactive Substances) Order 1978, SI 1978/1004, art 2, Schedule, which applies specified provisions of the Medicines Act 1968 to (1) interstitial and intracavitary appliances (other than nuclear powered cardiac pacemakers) which contain or are to contain a radioactive substance sealed in a container (otherwise than solely for the purpose of storage, transport or disposal) or bonded solely within material and including the immediate container or bonding that are designed to be inserted into the human body or body cavities; (2) surface applicators, ie plates, plaques and ophthalmic applicators which contain or are to contain a radioactive substance sealed in a container (otherwise than solely for the purpose of storage, transport or disposal) or bonded solely within material and including the immediate container or bonding that are designed to be brought into contact with the human body; (3) any apparatus capable of administering neutrons to human beings when the neutrons are administered in order to generate a radioactive substance in the person to whom they are administered for the purpose of diagnosis or research; and (4) other substances or articles (not being an instrument, apparatus or appliance) which consist of or contain or generate a radioactive substance and which (a) consist of or contain or generate that substance in order, when administered, to utilise the radiation emitted therefrom; and (b) are manufactured, sold or supplied for use wholly or mainly by being administered to one or more human beings solely by way of a test for ascertaining what effects it has when so administered. 'Radioactive substance' for the purposes of this legislation means any substance containing one or more radionuclides of which the activity or concentration cannot be disregarded as far as radiation protection is concerned: art 1(2). The specified provisions so applied are the provisions contained in the Medicines Act 1968 Pt I (ss 1-5) (as amended) (administration: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 1 et seq); s 60 (as amended) (restrictions on sale, supply and administration of certain medicines: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 143); s 67(2), (4) (as amended) (provisions about offences: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 48); and Pt VIII (ss 104-136) (as amended) (miscellaneous and supplementary provisions): Medicines (Radioactive Substances) Order 1978, SI 1978/1004, art 2. For the exercise of the extended power under the Medicines Act 1968 s 60 (as amended) in relation to the administration of radioactive medicinal products see PARA 1438 note 3 post.

7 le the Secretary of State for Health acting under the European Communities Act 1972 s 2(2).

8 See the Medicines Act 1968 (Application to Radiopharmaceutical-associated Products) Regulations 1992, SI 1992/605 (amended by SI 2005/2754; SI 2006/2407). A radiopharmaceutical product for human use is exempted from the requirement for a product licence imposed by the Medicines Act 1968 s 7 (as amended) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 44) if it is prepared from a kit, generator or precursor which itself has a product licence under the Act, where the product is prepared at the time of its administration and where that administration is not a contravention of the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006 (as amended) (see PARA 1438 post): Medicines (Exemption from Licensing) (Radiopharmaceuticals) Order 1992, SI 1992/2844, art 2. This order, and the Medicines Act 1968 (Application to Radiopharmaceutical-associated Products) Regulations 1992, SI 1992/605 (as amended), implement in the United Kingdom EC Council Directive 89/343 (OJ L142, 25.5.89, p 16) (repealed: see now European Parliament and EC Council Directive 2001/83 (OJ L311, 28.11.2001, p 67) (as amended) which is implemented in the United Kingdom by the Medicines (Codification Amendments Etc) Regulations 2002, SI 2002/236 (as amended): see MEDICINAL PRODUCTS AND DRUGS).

9 See the Medicines Act 1968 (Amendment) Regulations 1992, SI 1992/604, regs 2, 3.

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1438. Medical administration of radioactive substances.

The responsible ministers¹ have made regulations² prohibiting the administration of radioactive medicinal products to human beings (other than self-administration) except by doctors and dentists holding a certificate issued by the ministers in respect of such products or by persons acting under the directions of such a doctor or dentist, and except in accordance with any specifications in that certificate as to descriptions or classes of products which may be administered and as to purposes for which they may be administered³.

¹ As to the ministers responsible see the Medicines Act 1968 s 1(1) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 3.

² For this purpose the statutory provisions enabling the ministers to make regulations are the Medicines Act 1968 s 60 (as amended) and the European Communities Act 1972 s 2(2): see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 143. In so far as the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006 (as amended), are not made under the Medicines Act 1968 s 60 (as amended) they are to be treated for the purposes of s 67(2), (4) (as amended) (provisions about offences: see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 48) and Pt VIII (ss 104-136) (as amended) (miscellaneous and supplementary provisions), and of any order or regulations made under that Act, as though they were regulations made under s 60 (as amended) and any certificate issued under those regulations is to be treated as being issued for the purposes of the Medicines Act 1968 s 60 (as amended): Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006, art 8(2) (added by SI 1995/2147). The Medicines Act 1968 s 6(2) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 43) applies to functions conferred on the ministers by the 1978 Regulations as it applies to functions conferred on the licensing authority by or under that Act: Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006, art 8(1) (as so added; amended by SI 2006/2407).

³ See the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006, art 2 (substituted by SI 2006/2806). As to granting, issue, duration and renewal of certificates see the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006, regs 4-5 (as amended); and as to the suspension, revocation and variation of certificates see reg 6 (as amended). Applicants may be heard or may make written representations before a certificate is refused, suspended, varied or revoked (see reg 7 (as amended)); and a committee (the Administration of Radioactive Substances Advisory Committee) may be appointed to advise the ministers (see reg 3 (as amended)). The Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006 (as amended) implement in the United Kingdom the provisions of Euratom Council Directive 76/579 (OJ L187, 12.7.76, p 1) (as amended).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1439. Prohibition on use of unregistered premises.

(ii) Control of Keeping, Use, Disposal and Accumulation

A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS

1439. Prohibition on use of unregistered premises.

No person may on any premises¹ which are used for the purposes of an undertaking² carried on by him, keep or use, or cause or permit to be kept or used, radioactive material of any description³, knowing or having reasonable grounds for believing it to be such material, unless either:

- 3875 (1) he is registered⁴ in respect of those premises and in respect of the keeping and use on them of radioactive material of that description; or
- 3876 (2) he is exempted from such registration⁵; or
- 3877 (3) the radioactive material in question consists of mobile radioactive apparatus⁶ in respect of which he is registered⁷ or exempted⁸ from such registration⁹.

'Radioactive material' means anything which, not being waste¹⁰, is a substance¹¹ falling within either one or both of the following descriptions, or an article¹² made wholly or partly from, or incorporating such a substance¹³, namely:

- 3878 (a) a substance containing a specified element¹⁴ in such a proportion that the number of becquerels of that element contained in the substance, divided by the number of grams which the substance weighs, is a number greater than that specified¹⁵ in relation to that element¹⁶; or
- 3879 (b) a substance possessing radioactivity which is wholly or partly attributable to a process of nuclear fission or other process of subjecting a substance to bombardment by neutrons or to ionising radiations, not being a process occurring in the course of nature or in consequence of the disposal of radioactive waste¹⁷ or by way of contamination¹⁸ in the course of an application of a process to some other substance¹⁹.

1 'Premises' includes any land, whether covered by buildings or not, including any place under ground, and any land covered by water: Radioactive Substances Act 1993 s 47(1). It includes the plant on a site: *R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2)* [1994] 4 All ER 329 at 342, [1994] 2 CMLR 548 at 561 per Otton J. As to the application of the Radioactive Substances Act 1993 to the Crown see s 42 (as amended); and PARA 1441 post. As to the extension of the territorial application of the Act to certain installations in designated areas on the continental shelf see PARA 1357 note 8 ante.

2 'Undertaking' includes any trade, business or profession, and in relation to a public or local authority includes any of the powers or duties of that authority, and in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body: *ibid* s 47(1). 'Public or local authority', in relation to England and Wales, includes a water undertaker or a sewerage undertaker: s 47(1). As to water

undertakers and the services provided by them see WATER AND WATERWAYS vol 100 (2009) PARA 134 et seq, 318 et seq; and as to sewerage undertakers and the services provided by them see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

3 In determining for these purposes whether any radioactive material is kept or used on any premises, no account is to be taken of any radioactive material kept or used in or on any railway vehicle, road vehicle, vessel or aircraft if either (1) the vehicle, vessel or aircraft is on those premises in the course of a journey; or (2) in the case of a vessel which is on those premises otherwise than in the course of a journey, the material is used in propelling the vessel or is kept in or on the vessel for use in propelling it: *ibid* s 47(3). A reference in the Radioactive Substances Act 1993 to the keeping or use of radioactive material means, in relation to a high-activity source, any practice in relation to that source except the disposal or accumulation of the source: and 'practice' must be construed in accordance with Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation: Radioactive Substances Act 1993 s 47(5A) (added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 17(2)). 'High-activity source' has the same meaning as it has in Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed radioactive sources and orphan sources ('the HASS Directive') (ie a sealed source containing a radionuclide whose activity at the time of manufacture or, if this is not known, of the first placing on the market is equal to or exceeds the relevant activity level specified in Annex I: see art 2(b)); but excluding any such source once its activity level has fallen below the exemption levels specified in Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1), Annex I, Table A col 2: Radioactive Substances Act 1993 s 47(1) (definitions added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 17(1)(a)). 'Sealed source' has the meaning given to it by Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) (ie an apparatus, a radioactive substance or an installation capable of emitting ionising radiation or radioactive substances (a 'source') whose structure is such as to prevent, under normal conditions of use, any dispersion of the radioactive substances into the environment (see art 1)) and includes the capsule, where applicable, enclosing the radioactive material as an integral part of the source: Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57), art 2(k).

4 *Ie* under the Radioactive Substances Act 1993 s 7 (as amended): see PARAS 1442-1443 post.

5 As to exemption see PARA 1440 post.

6 For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 post.

7 *Ie* under the Radioactive Substances Act 1993 s 10 (as amended): see PARAS 1447-1448 post.

8 As to exemption see PARA 1446 post.

9 Radioactive Substances Act 1993 s 6. Contravention of s 6 is an offence: s 32(1)(a). As to penalties see s 32(2) (as amended); and PARA 1584 post. Notwithstanding registration or exemption from it, a permit is required before a nuclear site may be used for the treatment of irradiated matter or uranium in a specified manner: see PARA 1489 post.

10 For the meaning of 'waste' see PARA 1450 note 2 post.

11 'Substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour: Radioactive Substances Act 1993 s 47(1).

12 'Article' includes part of an article: *ibid* s 47(1).

13 *Ibid* s 1(1).

14 The specified elements are actinium, lead, polonium, protoactinium, radium, radon, thorium and uranium: *ibid* s 1(2)(a), Sch 1; but see note 15 *infra*.

15 *Ie* specified in the appropriate column of *ibid* Sch 1: s 1(2)(a). 'The appropriate column' means (1) in relation to a solid substance, Sch 1 col 2; (2) in relation to a liquid substance, Sch 1 col 3; and (3) in relation to a substance which is a gas or vapour, Sch 1 col 4: s 1(3). The Secretary of State may by order vary the provisions of Sch 1 either by adding further entries or by altering or deleting any entry: s 1(5). This power is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. At the date at which this title states the law, no such order had been made. As to the Secretary of State see PARA 601 note 1 *ante*; and as to the application of this provision to Northern Ireland see s 1(6).

16 *Ibid* s 1(2)(a).

17 For the meaning of 'radioactive waste' see PARA 1450 note 3 post; and for the meaning of 'disposal' in relation to waste see PARA 1450 note 2 post.

18 For these purposes, any reference to the contamination of a substance or article is a reference to its being so affected by either or both of the following, ie (1) absorption, admixture or adhesion of radioactive material or radioactive waste; and (2) the emission of neutrons or ionising radiations, as to become radioactive or to possess increased radioactivity: Radioactive Substances Act 1993 s 47(5).

19 Ibid s 1(2)(b). A substance is not treated as radioactive material for the purposes of s 1(2)(b) if the level of radioactivity is less than such a level as may be prescribed for substances of that description: s 1(4). 'Prescribed' in this context means prescribed by regulations made under the Radioactive Substances Act 1993: s 47(1) (definition substituted by the Energy Act 2004 s 75, Sch 15 paras 1, 13). At the date at which this title states the law, no regulations had been made for these purposes and none had effect as if so made.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1440. Exemptions from registration of premises.

1440. Exemptions from registration of premises.

In respect of all premises¹, except those in which clocks or watches are manufactured or repaired by processes involving the use of luminous material², all persons are exempted from registration in respect of the keeping and use thereon of clocks and watches which are radioactive material³.

At any time while a nuclear site licence⁴ is in force in respect of a site, and at any time after the revocation or surrender of that licence⁵ but before the licensee's period of responsibility⁶ has come to an end, the licensee is exempted from registration in respect of the premises and the keeping and use thereon of radioactive material of every description⁷. Where, however, in the case of any such premises, it appears to the Environment Agency ('the Agency')⁸ that, if the licensee had been required to apply for registration⁹ in respect of those premises, the Agency would have imposed certain conditions¹⁰, the Agency may direct that the exemption so conferred is to have effect subject to such conditions (being conditions which in the opinion of the Agency correspond to those which it would so have imposed) as may be specified in the direction¹¹.

The Secretary of State¹² may by order grant further exemptions from registration by reference to such classes of premises and undertakings¹³ and such descriptions of radioactive material as may be specified in the order¹⁴. Any exemption so granted may be granted subject to such limitations or conditions as may be specified in the order¹⁵.

1 For the meaning of 'premises' see PARA 1439 note 1 ante.

2 See the Radioactive Substances Act 1993 s 8(5).

3 Ibid s 8(4), (5). For the meaning of 'radioactive material' generally see PARA 1439 ante; and as to its keeping and use on premises see PARA 1439 note 3 ante.

4 For the meaning of 'nuclear site licence' see PARA 1487 note 1 post (definition applied by the Radioactive Substances Act 1993 s 47(1)).

5 As to the revocation and surrender of licences see PARA 1494 post.

6 For the meanings of 'licensee' and 'period of responsibility' see PARAS 1490 note 11, 1494 note 7 respectively post (definitions applied by the Radioactive Substances Act 1993 s 47(1)).

7 Ibid s 8(1). Notwithstanding exemption from registration under the Act a permit is required before a nuclear site may be used for the treatment of irradiated matter or uranium in a specified manner: see PARA 1489 post.

8 The statutory wording is 'the appropriate Agency'. 'The appropriate Agency' means, in relation to England and Wales, the Environment Agency: *ibid* s 47(1) (definition added by the Environment Act 1995 s 120, Sch 22 para 227(2), (7)). As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

9 *Ie* under the Radioactive Substances Act 1993 s 7 (as amended): see PARA 1442 post.

10 *Ie* conditions under *ibid* s 7(6)(b) (as amended) or s 7(6)(c): see PARA 1443 post at heads (b)-(c) in the text.

11 Ibid s 8(2) (s 8(2), (3) amended by the Environment Act 1995 Sch 22 paras 200, 203). The Environment Agency must furnish the licensee with a copy of any direction imposing such conditions: Radioactive Substances Act 1993 s 8(3) (as so amended). As to the responsibility of a licensee after revocation or surrender of his licence see PARA 1494 post.

12 As to the Secretary of State see PARA 601 note 1 ante.

13 For the meaning of 'undertaking' see PARA 1439 note 2 ante.

14 Radioactive Substances Act 1993 s 8(6). This power is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. In the exercise of this power the Secretary of State has made the following orders: (1) the Radioactive Substances (Hospitals) Exemption (Amendment) Order 1995, SI 1995/2395; (2) the Radioactive Substances (Natural Gas) Exemption Order 2002, SI 2002/1177; (3) the Radioactive Substances (Testing Instruments) (England and Wales) Exemption Order 2006, SI 2006/1500. In addition, by virtue of the Interpretation Act 1978 s 17(2)(b), a number of orders made under the Radioactive Substances Act 1960 s 2(6) (repealed and replaced by the Radioactive Substances Act 1993 ss 8(6), 50, Sch 6)) continue in force: see eg (a) the Radioactive Substances (Exhibitions) Exemption Order 1962, SI 1962/2645; (b) the Radioactive Substances (Phosphatic Substances, Rare Earths etc) Exemption Order 1962, SI 1962/2648; (c) the Radioactive Substances (Geological Specimens) Exemption Order 1962, SI 1962/ 2712; (d) the Radioactive Substances (Smoke Detectors) Exemption Order 1980, SI 1980/953 (as amended); (e) the Radioactive Substances (Hospitals) Exemption Order 1990, SI 1990/2512 (as amended). Heads (a)-(e) are by way of example only and do not constitute an exhaustive list.

15 Radioactive Substances Act 1993 s 8(7). As to the application of s 8 (as amended) to Northern Ireland see s 8(8).

UPDATE

1440 Exemptions from registration of premises

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1441. Crown exemption.

1441. Crown exemption.

The statutory provisions for regulating the keeping and use of radioactive material etc and the disposal and accumulation of radioactive waste¹ bind the Crown except that they do not apply in relation to premises² occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence³, or occupied by or for the purposes of a visiting force⁴. No contravention by the Crown of any such statutory provision makes the Crown criminally liable; but on the application of any authority charged with enforcing that provision, the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention⁵. The statutory provisions apply, however, to persons in the public service of the Crown as they apply to other persons⁶.

Nothing in these provisions is to be taken as in any way affecting Her Majesty in her private capacity⁷.

¹ I.e. the provisions of the Radioactive Substances Act 1993: see in particular para 1439 ante, PARAS 1445, 1450, 1452 post.

² For the meaning of 'premises' see PARA 1439 note 1 ante.

³ I.e. the Ministry of Defence.

⁴ Radioactive Substances Act 1993 s 42(1), (2). 'Visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952: Radioactive Substances Act 1993 s 42(8); and see ARMED FORCES. As to the disposal of radioactive waste from exempted premises occupied by the Crown, a government department or visiting forces see s 42(6) (as amended); and PARAS 1455, 1462 post. Under the Nuclear Installations Act 1965, government departments are liable for the emission of ionising radiations, but are otherwise exempt from the provisions of that Act: see s 7 (as amended), s 9; and PARA 1495 the text and note 12 post.

⁵ Radioactive Substances Act 1993 s 42(3).

⁶ Ibid s 42(4).

⁷ Ibid s 42(7). Section 42(7) is to be construed as if the Crown Proceedings Act 1947 s 38(3) (interpretation of references to Her Majesty in her private capacity) were contained in the Radioactive Substances Act 1993: s 42(7). As to the application of s 42 to Northern Ireland see s 42(9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1442. Applications for registration of premises.

1442. Applications for registration of premises.

An application for registration¹ in respect of premises² and the keeping and use thereon of radioactive material³ must be made to the Environment Agency ('the Agency')⁴ specifying:

- 3880 (1) the premises to which the application relates;
- 3881 (2) the undertaking⁵ for the purposes of which those premises are used;
- 3882 (3) the description or descriptions of radioactive material proposed to be kept or used on the premises, and the maximum quantity of such material of each such description likely to be kept or used there at any one time; and
- 3883 (4) the manner, if any, in which radioactive material is proposed to be used on the premises⁶.

The application must contain such other information as may be prescribed⁷ and must be accompanied by the charge prescribed⁸ for the purpose⁹.

The Agency must send a copy of the application to each local authority¹⁰ in whose area the premises are situated, but this is subject to any direction¹¹ that knowledge of any particular application should be restricted on grounds of national security¹². There is a right of public access to local authority records relating to documents sent to the authority in connection with applications for registration¹³.

1 le under the Radioactive Substances Act 1993 s 7 (as amended): see the text and notes 2-12 *infra*. As to the requirement of registration see PARA 1439 *ante*.

2 For the meaning of 'premises' see PARA 1439 note 1 *ante*.

3 For the meaning of 'radioactive material' see PARA 1439 *ante*; and as to its keeping and use on premises see PARA 1439 note 3 *ante*.

4 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 *ante*. As to the Environment Agency see PARA 1390 *ante*; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 *et seq*; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 7 (as amended) with regard to high-activity and other sealed sources see PARA 1464 *post*.

5 For the meaning of 'undertaking' see PARA 1439 note 2 *ante*.

6 Radioactive Substances Act 1993 s 7(1)(a), (2) (s 7(1), (3) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 202(1)).

7 Radioactive Substances Act 1993 s 7(1)(b). For the meaning of 'prescribed' in this context see PARA 1439 note 19 *ante*. At the date at which this title states the law, no regulations had been made prescribing information under s 7(1) (as amended). As to the making of such regulations see PARA 1361 the text and note 4 *ante*.

8 le prescribed for the purpose by a charging scheme under the Environment Act 1995 s 41 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 97. 'Prescribed', in relation to such a charging scheme, has the same meaning as in s 41 (as amended): Radioactive Substances Act 1993 s 47(1) (definition substituted by the Energy Act 2004 s 75, Sch 15 paras 1, 13).

9 Radioactive Substances Act 1993 s 7(1)(c) (as amended: see note 6 supra).

10 'Local authority' (except where the reference is to a public or local authority: see PARA 1439 note 2 ante) means (1) in England, the council of a county, district or London borough or the Common Council of the City of London or an authority established by the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620); (2) in Wales, the council of a county or county borough; and (3) in Northern Ireland, a district council: Radioactive Substances Act 1993 s 47(1) (definition amended for these purposes by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 102, Sch 18).

11 le subject to any direction under the Radioactive Substances Act 1993 s 25 (as amended): see PARA 1572 post.

12 Ibid s 7(3) (as amended: see note 6 supra); and see s 25(3) (as amended); and PARA 1572 post.

13 See ibid s 39 (as amended); and PARA 1567 post.

UPDATE

1442-1444 Applications for registration of premises ... Certificate of registration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1443. Environment Agency's powers as to registration of premises.

1443. Environment Agency's powers as to registration of premises.

Where an application is made to the Environment Agency ('the Agency')¹ for registration² in respect of any premises³, the Agency may either:

- 3884 (1) register the applicant in respect of those premises and the keeping and use thereon of radioactive material⁴ of the description to which the application relates⁵; or
- 3885 (2) if the application relates to two or more descriptions of radioactive material, register the applicant in respect of the premises and the keeping and use thereon of such one or more of those descriptions of radioactive material as may be specified in the registration⁶; or
- 3886 (3) refuse the application⁷.

Registration may be effected subject to such limitations and conditions as the Agency thinks fit⁸; and in particular may be effected subject to conditions:

- 3887 (a) imposing requirements, including, if the Agency thinks fit, requirements involving structural or other alterations, in respect of any part of the premises, or in respect of any apparatus, equipment or appliance used or to be used on any part of the premises for the purposes of any use of radioactive material from which radioactive waste⁹ is likely to arise¹⁰;
- 3888 (b) requiring the person to whom the registration relates, at such times and in such manner as may be specified in the registration, to furnish the Agency with information as to the removal of radioactive material from those premises to any other premises¹¹; and
- 3889 (c) prohibiting radioactive material from being sold or otherwise supplied from those premises unless it, or the container in which it is supplied, bears a label or other mark indicating that it is radioactive material, or, if the conditions so require, indicating the description of radioactive material to which it belongs, and in either case complying with any relevant requirements specified in the conditions¹².

In the exercise of any power so conferred on it, the Agency must have regard exclusively to the amount and character of the radioactive waste likely to arise from the keeping or use of radioactive material on the premises in question¹³; but this does not apply:

- 3890 (i) in relation to high-activity sources¹⁴ and to other sealed sources which, in the opinion of the Agency, are of a similar level of potential hazard to high-activity sources; or
- 3891 (ii) in determining whether to impose any conditions falling within head (b) or head (c) above¹⁵.

1 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 7 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

2 le under *ibid* s 7 (as amended): see PARA 1442 ante; and the text and notes 3-15 *infra*.

3 For the meaning of 'premises' see PARA 1439 note 1 ante.

4 For the meaning of 'radioactive material' see PARA 1439 ante; and as to its keeping and use on premises see PARA 1439 note 3 ante.

5 Radioactive Substances Act 1993 s 7(4)(a) (s 7(4)-(7) amended by the Environment Act 1995 s 120, Sch 22 para 200).

6 Radioactive Substances Act 1993 s 7(4)(b) (as amended: see note 5 *supra*).

7 *Ibid* s 7(4)(c) (as amended: see note 5 *supra*). Where the Agency refuses an application the applicant may appeal to the Secretary of State or, in relation to Wales, to the Welsh Ministers: see s 26(1) (as amended); and PARA 1471 post. An application for registration under s 7 (as amended) which is duly made to the Agency may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations or such longer period as may be agreed with the applicant: s 7(5) (as so amended). 'The prescribed period for determinations', in relation to any application under the Radioactive Substances Act 1993, means, subject to s 47(2), the period of four months beginning with the day on which the application was received: 47(1). The Secretary of State or, in relation to Wales, the Welsh Ministers may by order substitute for the period for the time being so specified such other period as he considers or they consider appropriate: see s 47(2). At the date at which this title states the law, no such order had been made. As to the Secretary of State and the Welsh Ministers, and the transfer of functions in relation to Wales, see PARA 601 note 1 ante.

8 *Ibid* s 7(6) (as amended: see note 5 *supra*). The applicant has a right of appeal to the Secretary of State or the Welsh Ministers against the attachment of any limitations or conditions: see s 26(1) (as amended); and PARA 1471 post. To facilitate the exercise of any power under the Radioactive Substances Act 1993 to grant registrations subject to limitations or conditions, the Secretary of State or, in relation to Wales, the Welsh Ministers, may make regulations by statutory instrument setting out general limitations or conditions applicable to specified classes of cases; and any limitations or conditions so specified are deemed to be attached to any registration falling within the class to which they are expressed to be applicable, subject to any exceptions or modifications specified in the registration see: s 44(2), (3). At the date at which this title states the law, no such regulations had been made. As to the making of regulations see PARA 1361 the text and note 4 ante.

9 For the meaning of 'radioactive waste' see PARA 1450 note 3 post.

10 Radioactive Substances Act 1993 s 7(6)(a) (as amended: see note 5 *supra*).

11 *Ibid* s 7(6)(b) (as amended: see note 5 *supra*).

12 *Ibid* s 7(6)(c).

13 *Ibid* s 7(7) (as amended (see note 5 *supra*); also amended by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 9(a)).

14 For the meaning of 'high-activity source' see PARA 1439 note 3 ante.

15 Radioactive Substances Act 1993 s 7(7A) (added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 9(b)).

UPDATE

1442-1444 Applications for registration of premises ... Certificate of registration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1444. Certificate of registration.

1444. Certificate of registration.

On registering a person¹ in respect of any premises² the Environment Agency ('the Agency')³ must furnish him with a certificate which contains all material particulars of the registration or gives sufficient information as to the particulars to enable them to be ascertained⁴. Subject to any direction to the Agency that knowledge of the registration should be restricted for reasons of national security⁵, the Agency must also send a copy of the certificate to each local authority⁶ in whose area the premises are situated⁷. The person to whom the registration relates must at all times cause copies of the certificate to be kept posted on the premises in such characters and in such positions as to be conveniently read by persons having duties on those premises which are or may be affected by the matters set out in the certificate⁸.

1 Ie under the Radioactive Substances Act 1993 s 7 (as amended): see PARAS 1442-1443 ante.

2 For the meaning of 'premises' see PARA 1439 note 1 ante.

3 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 7 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

4 Ibid s 7(8)(a) (substituted by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 9(c)).

5 Ie subject to any direction under the Radioactive Substances Act 1993 s 25 (as amended): see PARA 1572 post.

6 For the meaning of 'local authority' see PARA 1442 note 10 ante.

7 Radioactive Substances Act 1993 s 7(8)(b) (amended by the Environment Act 1995 s 120, Sch 22 para 200).

8 Ibid s 19. Contravention of this provision is an offence: s 33(1). As to the prosecution of the offence see PARA 1586 post; and as to the penalties see PARAS 1584, 1588 post.

UPDATE

1442-1444 Applications for registration of premises ... Certificate of registration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1445. Prohibition on keeping etc of unregistered mobile radioactive apparatus.

1445. Prohibition on keeping etc of unregistered mobile radioactive apparatus.

No person may keep, use, lend or let on hire, or cause or permit to be kept, used, lent or let on hire, mobile radioactive apparatus¹ of any description for the purpose of activities involving the use of the apparatus concerned for:

- 3892 (1) testing, measuring or otherwise investigating any of the characteristics of substances² or articles³; or
- 3893 (2) releasing quantities of radioactive material into the environment or introducing such material into organisms,

unless he is either registered in respect of that apparatus or exempted from registration⁴ in respect of mobile radioactive apparatus of that description⁵.

1 'Mobile radioactive apparatus' means any apparatus, equipment, appliance or other thing which is radioactive material and is (1) constructed or adapted for being transported from place to place; or (2) is portable and designed or intended to be used for releasing radioactive material into the environment or introducing it into organisms: Radioactive Substances Act 1993 s 3. For the meaning of 'radioactive material' see PARA 1439 ante.

2 For the meaning of 'substance' see PARA 1439 note 11 ante.

3 For the meaning of 'article' see PARA 1439 note 12 ante.

4 As registration see the Radioactive Substances Act 1993 s 10; and PARAS 1447-1448 post; and as to exemption see s 11; and PARA 1440 post.

5 Ibid s 9(1), (2). Contravention of s 9 is an offence: s 32(1)(a). As to penalties see s 32(2) (as amended); and PARA 1584 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1446. Exemptions from registration in respect of mobile radioactive apparatus.

1446. Exemptions from registration in respect of mobile radioactive apparatus.

The Secretary of State¹ may by order² grant exemption from registration in respect of mobile radioactive apparatus³, by reference to such classes of persons, and such descriptions of mobile radioactive apparatus, as may be specified in the order⁴. Any exemption granted by such an order may be granted subject to such limitations or conditions as may be specified in the order⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of orders see PARA 1361 the text and note 4 ante.

3 The exemption from registration under the Radioactive Substances Act 1993 s 10 (as amended): see PARAS 1447-1448 post. For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

4 Ibid s 11(1). This power is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. In the exercise of this power, the Secretary of State has made the Radioactive Substances (Testing Instruments) (England and Wales) Exemption Order 2006, SI 2006/1500. In addition, by virtue of the Interpretation Act 1978 s 17(2)(b), the Radioactive Substances (Electronic Valves) Exemption Order 1967, SI 1967/1797, which was made under the Radioactive Substances Act 1960 s 2(6) (repealed and replaced by the Radioactive Substances Act 1993 ss 8(6), 50, Sch 6)) continues in force.

5 Radioactive Substances Act 1993 s 11(2). As to the application of s 11 to Northern Ireland see s 11(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1447. Applications for registration of mobile radioactive apparatus.

1447. Applications for registration of mobile radioactive apparatus.

An application for the registration of mobile radioactive apparatus¹ must be made to the Environment Agency ('the Agency')² specifying the apparatus to which the application relates and the manner in which it is proposed to use the apparatus³ and containing such other information as may be prescribed⁴. It must be accompanied by the charge prescribed⁵ for the purpose⁶. Subject to any direction to the Agency that knowledge of the registration should be restricted for reasons of national security⁷, the Agency must send a copy of the application to each local authority⁸ in whose area it appears to the Agency that the apparatus will be kept or will be used for releasing radioactive material into the environment⁹.

1 For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

2 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 10 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

3 Ibid s 10(1)(a) (s 10(1), (3) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 204).

4 Radioactive Substances Act 1993 s 10(1)(b) (as amended: see note 3 supra). For the meaning of 'prescribed' in this context see PARA 1439 note 19 ante. At the date at which this title states the law, no information had been so prescribed.

5 I.e. prescribed for the purpose by a charging scheme under the Environment Act 1995 s 41 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 97. For the meaning of 'prescribed' in this context see PARA 1442 note 8 ante.

6 Radioactive Substances Act 1993 s 10(1)(c) (as amended: see note 3 supra).

7 I.e. subject to any direction under the Radioactive Substances Act 1993 s 25 (as amended): see PARA 1572 post.

8 For the meaning of 'local authority' see PARA 1442 note 10 ante.

9 Radioactive Substances Act 1993 s 10(3).

UPDATE

1447-1449 Applications for registration of mobile radioactive apparatus ... Cancellation and variation of registration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1448. Environment Agency's powers as to registration of mobile radioactive apparatus; certificate of registration.

1448. Environment Agency's powers as to registration of mobile radioactive apparatus; certificate of registration.

Where an application is made to the Environment Agency ('the Agency')¹ for registration in respect of any mobile radioactive apparatus², the Agency may register the applicant in respect of that apparatus either unconditionally, or subject to such limitations or conditions as it thinks fit, or it may refuse the application³. If the Agency registers the applicant, it must furnish him with a certificate which contains all material particulars of the registration or gives sufficient information as to the particulars to enable them to be ascertained⁴. Subject to any direction to the Agency that knowledge of the registration should be restricted for reasons of national security⁵, the Agency must also send a copy of the certificate to each local authority⁶ in whose area it appears to the Agency that the apparatus will be kept or will be used for releasing radioactive material into the environment⁷.

1 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 10 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

2 *Ie* under *ibid* s 10 (as amended): see PARA 1447 ante. For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

3 *Ibid* s 10(2) (s 10(2), (4), (5) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 204(2)). An application for registration which is duly made to the Agency may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations or within such longer period as may be agreed with the applicant: Radioactive Substances Act 1993 s 10(4) (as so amended). For the meaning of 'the prescribed period for determinations', and as to the Secretary of State's or the Welsh Ministers' powers to vary this period, see PARA 1443 note 7 ante. As to rights of appeal to the Secretary of State or the Welsh Ministers if the Agency refuses an application, or registers the applicant in respect of the apparatus subject to limitations or conditions, see PARA 1471 post; and as to the Secretary of State and the Welsh Ministers see PARA 601 note 1 ante.

4 *Ibid* s 10(5)(a) (substituted by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 10).

5 *Ie* subject to any direction under the Radioactive Substances Act 2003 s 25 (as amended): see PARA 1572 post.

6 For the meaning of 'local authority' see PARA 1442 note 10 ante.

7 Radioactive Substances Act 1993 s 10(5)(b) (as amended: see note 3 supra).

UPDATE

1447-1449 Applications for registration of mobile radioactive apparatus ... Cancellation and variation of registration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/A. REGULATION OF KEEPING AND USE ETC OF RADIOACTIVE MATERIAL AND MOBILE RADIOACTIVE APPARATUS/1449. Cancellation and variation of registration; in general.

1449. Cancellation and variation of registration; in general.

Where any person is for the time being registered in respect of premises or mobile radioactive apparatus¹, the Environment Agency ('the Agency')² may at any time cancel the registration or may vary it:

- 3894 (1) where the registration has effect without limitations or conditions, by attaching limitations or conditions to it³; or
- 3895 (2) where the registration has effect subject to limitations or conditions, by revoking or varying any of those limitations or conditions or by or attaching further limitations or conditions to the registration⁴.

These powers are exercisable with or without the making of an application by the person holding the registration⁵.

On so cancelling or varying a registration the Agency must give notice of the cancellation or variation to the person to whom the registration relates and, if a copy of the certificate of registration was sent to a local authority⁶, the Agency must send a copy of the notice of cancellation or variation to that local authority⁷.

Where a person holds a registration⁸ in respect of any high-activity source⁹ and either:

- 3896 (a) intends to keep or use a high-activity source, other than an existing high-activity source¹⁰, on or after 1 January 2006; or
- 3897 (b) intends to keep or use an existing high-activity source on or after 1 January 2008;

that person must apply to the Environment Agency under the above provisions to vary his registration to enable the Agency to ensure that the registration complies with the relevant provisions of the Euratom Directive on the control of high-sealed radioactive sources and orphan sources¹¹ and that person must make that application in accordance¹² with the prescribed time limits¹³. If a person fails to make an application in accordance with those time limits, his registration must be cancelled by the Agency so far as it relates to the high-activity source in question¹⁴. The Agency may, however notify a person to whom head (a) or head (b) above applies:

- 3898 (i) that he is not required to make such an application; or
- 3899 (ii) if the Agency is satisfied that in its opinion exceptional circumstances apply to that person, that such person may make an application within a period shorter than that provided for under the prescribed time limits¹⁵.

¹ le registered under the Radioactive Substances Act 1993 s 7 (as amended) (see PARAS 1442-1444 ante) or s 10 (as amended) (see PARAS 1447-1448 ante). For the meaning of 'premises' see PARA 1439 note 1 ante; and for the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

2 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 12 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

3 Ibid s 12(1)(a) (s 12(1), (2) amended by the Environment Act 1995 s 120(1), Sch 22 para 200). As to the limitations and conditions which may be imposed see PARAS 1443, 1448 ante.

4 Radioactive Substances Act 1993 s 12(1)(b) (as amended: see note 3 supra). Where the Agency varies a registration otherwise than by revoking a limitation or condition, or cancels a registration, the person directly concerned may appeal to the Secretary of State or the Welsh Ministers: see PARA 1471 post.

5 Ibid s 12(1A) (added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, SI 2005/2686, reg 11).

6 Ie in accordance with the Radioactive Substances Act 1993 s 7(8) (as amended) or s 10(5) (as amended): see PARAS 1444, 1448 ante. For the meaning of 'local authority' see PARA 1442 note 10 ante.

7 Ibid s 12(2) (as amended: see note 3 supra).

8 Ie under ibid s 7 (as amended) or s 10 (as amended): see PARAS 1442-1444, 1447-1448 ante.

9 For these purposes, 'high-activity source' has the same meaning as it has in Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed radioactive sources and orphan sources ('the HASS Directive') (ie a sealed source containing a radionuclide whose activity at the time of manufacture or, if this is not known, of the first placing on the market is equal to or exceeds the relevant activity level specified in Annex I: see art 2(b)); but excluding any such source once its activity level has fallen below the exemption levels specified in Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1), Annex I, Table A col 2: High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(1). For the meaning of 'sealed source' for these purposes see PARA 1439 note 3 ante.

10 'Existing high-activity source' means a high-activity source first placed on the market on or before 31 December 2005: ibid reg 2(1).

11 Ie the HASS Directive: see note 9 supra.

12 Ie in accordance with the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 3(3): see note 13 infra.

13 Ibid reg 3(1). Except where notification is given under reg 3(2)(b) (see head (ii) in the text), the application must be made (1) at least four months before the date the source is intended to be kept or used; or (2) in the case of a high-activity source (other than an existing high-activity source) which is intended to be kept or used within four months of 20 October 2005 (ie the date when the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, came into force: see reg 1(2)), as soon as practicable and in any event at least two months before the date of intended keeping or use of the source: reg 3(3).

14 Ibid reg 3(4).

15 Ibid reg 3(2).

UPDATE

1447-1449 Applications for registration of mobile radioactive apparatus ... Cancellation and variation of registration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1450. Restrictions on the disposal of radioactive waste.

B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE

1450. Restrictions on the disposal of radioactive waste.

Except in accordance with an authorisation under the Radioactive Substances Act 1993¹, no person may:

- 3900 (1) dispose of² any radioactive waste³ on or from any premises⁴ which are used for the purposes of any undertaking⁵ carried on by him, or cause or permit any radioactive waste to be so disposed of, if in any such case he knows or has reasonable grounds for believing it to be radioactive waste⁶; or
- 3901 (2) dispose of any such waste arising from any mobile radioactive apparatus⁷ kept by him for the purpose of its being used in certain activities⁸, or cause or permit any such radioactive waste to be disposed of⁹; or
- 3902 (3) dispose of any such waste received by him in the course of carrying on an undertaking for the purpose of its being disposed of by him, or cause or permit it to be disposed of knowing or having reasonable grounds for believing it to be radioactive waste, unless it is waste which falls within the provisions of an authorisation granted in respect of a disposal referred to in head (1) or head (2) above and it is disposed of in accordance with an authorisation so granted¹⁰.

With certain qualifications, the restrictions specified in heads (1) and (3) above do not apply to the disposal of radioactive waste arising from clocks and watches from any premises in the specified circumstances¹¹; and the Secretary of State¹² may by order¹³ exclude particular descriptions of radioactive waste from any of the above provisions either absolutely or subject to limitations or conditions¹⁴.

The merits or demerits of government defence policy are not justiciable; thus the Environment Agency was entitled to grant authorisations permitting the discharge of nuclear waste by contractors to the Ministry of Defence from two nuclear sites, both of which were military installations at which Trident nuclear warheads were manufactured¹⁵.

1 As to authorisations see PARAS 1453-1459 post; as to the transfer and review of authorisations see PARAS 1457-1458 post; and as to the exercise by the Environment Agency of its functions relating to authorisations with regard to high-activity and other sealed sources see PARA 1464 post. The issue of justification in terms of net benefit under Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) art 6 (replacing Euratom Council Directive 80/836 (OJ L246, 17.9.80, p 1) art 6 (repealed)) is to be considered prior to the grant of any authorisation for the discharge of radioactive waste, notwithstanding that domestic legislation is silent on the matter of prior justification: *R v Secretary of State for the Environment, ex p Greenpeace Ltd* [1994] 4 All ER 352, [1994] 3 CMLR 737.

2 'Disposal', in relation to waste, includes its removal, deposit or destruction, its discharge whether into water, air, a sewer or drain or otherwise, or its burial, whether underground or otherwise, and 'dispose of' is to be construed accordingly: Radioactive Substances Act 1993 s 47(1). 'Waste' includes any substance which constitutes scrap material or an effluent or other unwanted surplus substance arising from the application of any process, and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoilt: s 47(1). Any substance or article which, in the course of the carrying on of

any undertaking, is discharged, discarded or otherwise dealt with as if it were waste is presumed to be waste unless the contrary is proved: s 47(4). For the meaning of 'substance' see PARA 1439 note 11 ante; for the meaning of 'article' see PARA 1439 note 12 ante; and for the meaning of 'contamination' see PARA 1439 note 18 ante.

3 'Radioactive waste' means waste which consists wholly or partly of a substance or article which, if it were not waste, would be radioactive material, or which has been contaminated in the course of the production, keeping or use of radioactive material or by contact with or proximity to other waste falling within this definition: Radioactive Substances Act 1993 s 2. For the meaning of 'radioactive material' see PARA 1439 ante.

4 For the meaning of 'premises' see PARA 1439 note 1 ante; see also note 6 infra.

5 For the meaning of 'undertaking' see PARA 1439 note 2 ante.

6 Radioactive Substances Act 1993 s 13(1). Contravention of this provision is an offence: s 32(1)(a). As to prosecutions and penalties see PARAS 1584, 1586, 1588 post. In relation to any premises which (1) are situated on a nuclear site; but (2) have ceased to be used for the purposes of an undertaking carried on by the licensee, the provisions of s 13(1) apply to those premises, subject to the provisions of s 15 (as amended) (see the text and notes 11-14 infra), as if they were used for the purposes of an undertaking carried on by the licensee: s 13(5). 'Nuclear site' means (a) any site in respect of which a nuclear site licence is for the time being in force; or (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end: s 47(1). For the meaning of 'nuclear site licence' see PARA 1487 note 1 post; for the meaning of 'licensee' see PARA 1490 note 11 post; and for the meaning of 'period of responsibility' see PARA 1494 note 7 post (definitions applied by s 47(1)).

For these purposes, so far as relating to authorisations required under s 13(1) for the disposal of radioactive waste, a site used by a contractor for the purposes of any activity which would, if the Nuclear Installations Act 1965 s 1 (as amended) (see PARA 1487 post) applied to the site, require a nuclear site licence (a 'relevant site') in designated premises is treated as a site in respect of which a nuclear site licence is for the time being in force: Atomic Weapons Establishment Act 1991 s 3(1), Schedule para 10A (added by the Radioactive Substances Act 1993 s 49(1), Sch 4 para 10). For the meaning of 'contractor' and 'designated premises' see PARA 1387 notes 2, 11 ante.

7 For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

8 The activities to which the Radioactive Substances Act 1993 s 9 applies: see PARA 1445 ante.

9 Ibid s 13(2). Contravention of this provision is an offence: s 32(1)(a). As to offences generally see PARA 1584 post.

10 Ibid s 13(3), (4). Contravention of this provision is an offence: s 32(1)(a).

11 See ibid s 15(1) (amended in relation to England and Wales by the Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001, SI 2001/4005, reg 2(1), (2)). Heads (1) and (3) in the text do not apply to such disposal on or from any premises in the circumstances described in the Radioactive Substances Act 1993 s 15(1A) (as added): s 15(1) (as so amended). Those circumstances are that (1) no radionuclide other than tritium, promethium 147 or radium 226 is present in any clock or watch on the premises (whether or not any radioactive waste arises from it); (2) no such clock or watch contains more than one of those radionuclides; and (3) either s 15(1B) (as added) or s 15(1C) (as added) is satisfied: s 15(1A) (s 15(1A)-(1C) added in relation to England and Wales by the Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001, SI 2001/4005, reg 2(1), (3)).

The Radioactive Substances Act 1993 s 15(1B) (as so added) is satisfied if the total quantity of tritium divided by 109, plus the total quantity of promethium 147 divided by 107, plus the total quantity of radium 226 divided by 104, in all such clocks and watches does not exceed 1 (quantity in each case being measured in becquerels): s 15(1B) (as so added). Section 15(1C) (as added) is satisfied if (a) all such clocks and watches fall within a description specified in the first column of the Table set out therein; (b) radioactive waste arises from no more than five of them; and (c) none of them gives rise to a quantity of radioactive waste exceeding the figure in the third column of the Table corresponding to the relevant radionuclide listed in the second column: s 15(1C) (as so added).

Section 15(1) (as amended) does not, however, affect the operation of s 13(1) (see head (1) in the text) in relation to the disposal of radioactive waste arising from clocks or watches on or from premises which, by virtue of s 8(5), are excluded from the operation of s 8(4) (ie premises on which clocks or watches are manufactured or repaired by processes involving the use of luminous material: see PARA 1440 ante): s 15(1).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 As to the making of orders see PARA 1361 text and note 4 ante. See also note 14 infra.

14 Radioactive Substances Act 1993 s 15(2). This power is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the application of s 15 to Northern Ireland see s 15(3). Any of the provisions of s 13 or s 14 (see PARA 1452 post) specified in such an order does not, accordingly, apply to a disposal of radioactive waste of a description specified in such an order, provided that, where the exclusion is subject to limitations and conditions, those limitations or conditions are complied with: s 15(2). In the exercise of this power, the Secretary of State has made the following orders: (1) the Radioactive Substances (Hospitals) Exemption (Amendment) Order 1995, SI 1995/2395; (2) the Radioactive Substances (Natural Gas) Exemption Order 2002, SI 2002/1177; (3) the Radioactive Substances (Testing Instruments) (England and Wales) Exemption Order 2006, SI 2006/1500; (4) the Radioactive Substances (Emergency Exemption) (England and Wales) Order 2006, SI 2006/3169 (which gives an exemption for radioactive waste relating to the death of Alexander Litvinenko). In addition, by virtue of the Radioactive Substances Act 1993 s 49(2), Sch 5 paras 1, 4 and the Interpretation Act 1978 s 17(2)(b), a number of orders have effect as if so made: see eg (a) the Radioactive Substances (Storage in Transit) Exemption Order 1962, SI 1962/2646; (b) the Radioactive Substances (Prepared Uranium and Thorium Compounds) Exemption Order 1962, SI 1962/2711; (c) the Radioactive Substances (Schools etc) Exemption Order 1963, SI 1963/1832; (d) the Radioactive Substances (Smoke Detectors) Exemption Order 1980, SI 1980/953 (as amended); (e) the Radioactive Substances (Hospitals) Exemption Order 1990, SI 1990/2512 (as amended). Heads (a)-(e) are by way of illustration only and do not constitute an exhaustive list.

For the application to radioactive substances of the Environmental Protection Act 1990 Pt II (ss 29-78) (as amended) and other statutory provisions relating to the disposal of waste see PARA 1368 ante, PARA 1451 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH. As to the control of the pollution of the seas by radioactive substances see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq.

15 See *R (on the application of Marchiori) v Environment Agency* [2001] EWCA Civ 03, [2002] All ER (D) 220 (Jan).

UPDATE

1450-1451 Restrictions on the disposal of radioactive waste, Control of pollution and contaminated land

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1451. Control of pollution and contaminated land.

1451. Control of pollution and contaminated land.

Except as provided by regulations made by the Secretary of State or the Welsh Ministers¹, nothing in Part II of the Environmental Protection Act 1990² or Part III of the Water Resources Act 1991³ applies to radioactive waste⁴; but regulations may:

- 3903 (1) provide for prescribed provisions of those Parts of those Acts to have effect with such modifications as he considers, or they consider, appropriate for the purposes of dealing with such radioactive waste; and
- 3904 (2) make such modifications of the Radioactive Substances Act 1993 and any other Act, in relation to such waste, as he considers, or they consider, appropriate⁵.

Similarly, except as provided by regulations so made, nothing in Part IIA of the Environmental Protection Act 1990⁶ (which relates to contaminated land) applies in relation to harm⁷, or pollution of controlled waters⁸, so far as attributable to any radioactivity possessed by any substance; but regulations may:

- 3905 (a) provide for prescribed provisions of that Part of that Act to have effect with such modifications as the Secretary of State or the Welsh Ministers considers or consider appropriate for the purpose of dealing with harm, or pollution of controlled waters, so far as attributable to any radioactivity possessed by any substances; or
- 3906 (b) make such modifications of the Radioactive Substances Act 1993 or any other Act as he considers, or they consider, appropriate⁹.

1 Ie regulations made by the Secretary of State or the Welsh Ministers under the Environmental Protection Act 1990 s 78 (amended by the Radioactive Substances Act 1993 s 49(1), Sch 4 para 7) or the Water Resources Act 1991 s 98 (amended by the Radioactive Substances Act 1993 Sch 4 para 11). As to the Secretary of State and the Welsh Ministers, and the transfer of functions in relation to Wales under the Environmental Protection Act 1990 and the Water Resources Act 1991, see PARA 601 note 1 ante.

2 Ie the Environmental Protection Act 1990 Pt II (ss 29-78) (as amended) (waste on land): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620 et seq.

3 Ie the Water Resources Act 1991 Pt III (ss 82-104) (as amended) (water pollution): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 288 et seq.

4 Ie radioactive waste within the meaning of the Radioactive Substances Act 1993 (see PARA 1450 note 3 ante): Environmental Protection Act 1990 s 78 (as amended: see note 1 supra); Water Resources Act 1991 s 98(1) (as amended: see note 1 supra).

5 Environmental Protection Act 1990 s 78 (as amended: see note 1 supra); Water Resources Act 1991 s 98 (as amended: see note 1 supra). At the date at which this title states the law, no such regulations had been made, but, by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 para 1(1), (2), the Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158, have effect as if made under the Water Resources Act 1991 s 98 (as so amended). Those regulations, which came into force on 1 September 1989 (see reg 1, Schedule), specified certain provisions of the Water Act 1989 Pt III Ch I (repealed) which were to have effect, without modification, in relation to any radioactive waste as they had effect in relation to any effluent or other matter or substance which was not radioactive waste (see the Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158, reg 3) and provided that the Radioactive Substances Act 1960 s 9(1)

(repealed: see now the Radioactive Substances Act 1993 s 40(1)) was to apply in relation to the provisions so specified (see the Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158, reg 4 (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 3, Sch 3 Pt II). The Control of Pollution (Radioactive Waste) Regulations 1989, SI 1989/1158, reg 3 must now be read as referring to the corresponding provisions of the Water Resources Act 1991 (ie ss 82, 84-86, s 87(1), 88(2), 92, 99, 161(11)-(14), 190(1), (2), 202(1)-(4), 203 (as amended): see WATER AND WATERWAYS). See also the Radioactive Substances Act 1993 s 40(1), Sch 3 Pt I (as amended): and PARA 1463 post.

6 le the Environmental Protection Act 1990 Pt IIA (ss 78A-78YC) (as added and amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 761 et seq.

7 For the meaning of 'harm' for these purposes see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 761 note 4.

8 For the meaning of 'pollution of controlled waters' for these purposes see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 761 note 6.

9 Environmental Protection Act 1990 s 78YC (added by the Environment Act 1995 s 57). As to the exercise of these powers to lay down basic safety standards in relation to land contaminated by reason of radioactive substances see the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005, SI 2005/3467; the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379; and the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006, SI 2006/2988. See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 761 et seq.

UPDATE

1450-1451 Restrictions on the disposal of radioactive waste, Control of pollution and contaminated land

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1451 Control of pollution and contaminated land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1451 Control of pollution and contaminated land

NOTE 9--SI 2006/1379 amended: SI 2007/3245, SI 2008/520. SI 2006/2988 amended: SI 2007/3250, SI 2008/521.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1452. Restrictions on the accumulation of radioactive waste.

1452. Restrictions on the accumulation of radioactive waste.

Except in accordance with an authorisation under the Radioactive Substances Act 1993¹, no person may accumulate, with a view to its subsequent disposal², any radioactive waste³ on any premises used for the purposes of an undertaking⁴ carried on by him, or cause or permit any radioactive waste to be so accumulated, if in any such case he knows or has reasonable grounds for believing it to be radioactive waste⁵. This restriction does not, however, apply to the accumulation of radioactive waste on any premises situated on a nuclear site⁶.

No authorisation is required under this provision if an authorisation relating to the disposal of radioactive waste⁷ has been granted which requires or permits it to be accumulated with a view to its subsequent disposal in accordance with that authorisation⁸. The provisions relating to the disposal of radioactive waste, so far as they concern the exemption for certain radioactive waste arising from clocks and watches⁹ and enable the Secretary of State to make orders excluding particular descriptions of such waste¹⁰, apply in relation to the accumulation of radioactive waste as they apply to the disposal of it¹¹.

1 As to authorisations see PARAS 1453-1459 post; as to the transfer and review of authorisations see PARAS 1457-1458 post; and as to the exercise by the Environment Agency of its functions relating to authorisations with regard to high-activity and other sealed sources see PARA 1464 post.

2 For the meaning of 'disposal' see PARA 1450 note 2 ante.

3 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante. Where radioactive material is produced, kept or used on any premises, and any substance arising from the production, keeping or use of that material is accumulated in a part of the premises appropriated for the purpose and retained there for a period of not less than three months, that substance is presumed, unless the contrary is proved, both to be radioactive waste and to be accumulated on the premises with a view to its subsequent disposal: Radioactive Substances Act 1993 s 14(4). For the meaning of 'premises' see PARA 1439 note 1 ante; for the meaning of 'radioactive material' see PARA 1439 ante; and for the meaning of references to keeping or using such material see PARA 1439 note 3 ante.

4 For the meaning of 'undertaking' see PARA 1439 note 2 ante.

5 Radioactive Substances Act 1993 s 14(1). Contravention of this provision is an offence: s 32(1)(a). As to prosecutions and penalties see PARAS 1584, 1586, 1588 post.

6 Ibid s 14(3). For the meaning of 'nuclear site' see PARA 1450 note 6 ante.

7 Ie an authorisation given under ibid s 13: see PARA 1450 ante. See also PARAS 1453-1459 post.

8 Ibid s 14(2).

9 See ibid s 15(1) (as amended); and PARA 1450 the text and note 11 ante.

10 See ibid s 15(2); and PARA 1450 the text and note 14 ante. This power is not transferred to the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Secretary of State and the Welsh Ministers see PARA 601 note 1 ante.

11 Ibid s 15(1), (2) (s 15(1) amended in relation to England and Wales by the Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001, SI 2001/4005, reg 2(1), (2)). As to the exemption orders made, or having effect as if made, under the Radioactive Substances Act 1993 s 15(2) see PARA 1450 note 14 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1453. Power to authorise the disposal or accumulation of radioactive waste; consultation requirements.

1453. Power to authorise the disposal or accumulation of radioactive waste; consultation requirements.

The power to grant authorisations¹ to dispose of² or accumulate radioactive waste³ is exercisable by the Environment Agency ('the Agency')⁴. In the case of the disposal of such waste on or from any premises⁵ situated on a nuclear site⁶:

- 3907 (1) before granting an authorisation the Agency must consult with such local authorities⁷, relevant water bodies⁸ or other public or local authorities⁹ as appear to the Agency to be proper to be consulted by it¹⁰;
- 3908 (2) without prejudice to the generality of head (1) above, on any application for an authorisation in respect of such disposal, the Agency:
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519. (a) must consult the Food Standards Agency¹¹ and the Health and Safety Executive¹² before deciding whether to grant an authorisation on that application and, if so, subject to what limitations or conditions; and
520. (b) must consult the Food Standards Agency concerning the terms of the authorisation, for which purpose the Environment Agency must, before granting any authorisation on that application, send the Food Standards Agency a copy of any authorisation which it proposes so to grant¹³.
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1 The authorisations under the Radioactive Substances Act 1993 s 13 (see PARA 1450 ante) or s 14 (see PARA 1452 ante): s 16(1).

2 For the meaning of 'dispose of' see PARA 1450 note 2 ante.

3 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

4 Radioactive Substances Act 1993 s 16(2) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 205(2), Sch 24). The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its powers and functions in relation to high-activity and other sealed sources see PARA 1464 post.

5 For the meaning of 'premises' see PARA 1439 note 1 ante.

6 For the meaning of 'nuclear site' see PARA 1450 note 6 ante.

7 For the meaning of 'local authority' see PARA 1442 note 10 ante.

8 'Relevant water body' means, in England and Wales, a water undertaker, a sewerage undertaker or a local fisheries committee: Radioactive Substances Act 1993 s 47(1) (definition amended by the Environment Act 1995 Sch 22 para 227(6), Sch 24). As to water undertakers and the services provided by them see WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq; and as to sewerage undertakers and the services provided by them see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq. As to fisheries committees see AGRICULTURE AND FISHERIES.

9 For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

10 Radioactive Substances Act 1993 s 16(5) (amended by the Environment Act 1995 Sch 22 paras 200, 205(6)).

11 As to the Food Standards Agency see FOOD vol 18(2) (Reissue) PARA 225 et seq.

12 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

13 Radioactive Substances Act 1993 s 16(4A) (added by the Environment Act 1995 Sch 22 para 205(5); amended by the Food Standards Act 1999 s 40(1), Sch 5 para 43(1), (2)).

UPDATE

1453-1457 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements ... Transfer of authorisations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1453 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements

NOTE 8--Definition of 'relevant water body' amended: Radioactive Substances Act 1993 s 47(1) (amended by Marine and Coastal Access Act 2009 Sch 14 para 17 (not yet in force), Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1454. Application for authorisation.

1454. Application for authorisation.

An application for authorisation to dispose of or accumulate radioactive waste¹ must be made to the Environment Agency ('the Agency')² and must be accompanied by the charge prescribed³ for the purpose⁴. On receipt of an application, the Agency must send a copy to each local authority⁵ in whose area radioactive waste⁶ is to be disposed of⁷ or accumulated in accordance with the authorisation applied for, subject to any direction to the Agency⁸ that knowledge of the application or authorisation should be restricted in the interests of national security⁹.

An application for an authorisation which is duly made to the Agency and which is not an application for an authorisation in respect of the disposal of radioactive waste¹⁰ on or from any premises situated on a nuclear site¹¹ may be treated by the applicant as having been refused if it is not determined within the prescribed period for determinations¹² or such longer period as may be agreed with the applicant¹³.

¹ Ie an authorisation under the Radioactive Substances Act 1993 s 13 (see PARA 1450 ante) or s 14 (see PARA 1452 ante): s 16(1). For the meanings of 'dispose of' and 'radioactive waste' see PARA 1450 notes 2-3 ante.

² See PARA 1453 ante. The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its powers and functions in relation to high-activity and other sealed sources see PARA 1464 post.

³ Ie prescribed for the purpose by a charging scheme under the Environment Act 1995 s 41 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 97. For the meaning of 'prescribed' in this context see PARA 1442 note 8 ante.

⁴ Radioactive Substances Act 1993 s 16(4) (amended by the Environment Act 1995 s 120, Sch 22 para 205(4)).

⁵ For the meaning of 'local authority' see PARA 1442 note 10 ante.

⁶ For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

⁷ For the meaning of 'disposed of' see PARA 1450 note 2 ante.

⁸ Ie subject to any direction under the Radioactive Substances Act 1993 s 25 (as amended): see PARA 1572 post.

⁹ Ibid s 16(6) (amended by the Environment Act 1995 Sch 22 para 200; the Energy Act 2004 s 75, Sch 15 paras 1, 2).

¹⁰ Ie an application under the Radioactive Substances Act 1993 s 13(1): see PARA 1450 ante at head (1) in the text.

¹¹ For the meaning of 'nuclear site' see PARA 1450 note 6 ante.

¹² For the meaning of 'the prescribed period for determinations', and as to the Secretary of State's or the Welsh Ministers' power to alter that period, see PARA 1443 note 7 ante.

¹³ Radioactive Substances Act 1993 s 16(7) (amended by the Environment Act 1995 Sch 22 paras 200, 205(7)).

UPDATE

1453-1457 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements ... Transfer of authorisations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1455. Granting of authorisations.

1455. Granting of authorisations.

An authorisation¹ to dispose of² or accumulate radioactive waste³ may be granted in respect of radioactive waste generally or in respect of one or more descriptions of it as specified in the authorisation, and subject to such limitations and conditions⁴ as the Environment Agency ('the Agency')⁵ thinks fit⁶.

If, in considering an application for an authorisation to dispose of radioactive waste, it appears to the Agency that the disposal of radioactive waste to which the application relates is likely to involve the need for special precautions to be taken by a local authority⁷, relevant water body⁸ or other public or local authority⁹, the Agency must consult with that authority before granting the authorisation¹⁰. Where a public or local authority takes any special precautions in respect of radioactive waste disposed of in accordance with an authorisation which has been granted¹¹, and those precautions are taken:

- 3909 (1) in compliance with the conditions subject to which the authorisation was granted; or
- 3910 (2) with the prior approval of the Agency as being precautions which in the circumstances ought to be taken by that public or local authority,

the public or local authority has power to make such charges, in respect of the taking of those precautions, as may be agreed between that authority and the person to whom the authorisation was granted, or as, in default of such agreement, may be determined by the Agency, and to recover the charges so agreed or determined from that person¹².

¹ ie an authorisation under the Radioactive Substances Act 1993 s 13 (see PARA 1450 ante) or s 14 (see PARA 1452 ante): s 16(1).

² For the meaning of 'dispose of' see PARA 1450 note 2 ante.

³ For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

⁴ To facilitate the exercise of any power under the Radioactive Substances Act 1993 to grant authorisations subject to limitations or conditions, the Secretary of State or, in relation to Wales, the Welsh Ministers may make regulations by statutory instrument setting out general limitations or conditions applicable to specified classes of cases; and any limitations or conditions so specified are deemed to be attached to any authorisation falling within the class to which they are expressed to be applicable, subject to any exceptions or modifications specified in the authorisation: see s 44(2), (3). At the date at which this title states the law, no such regulations had been made. As to the making of regulations see PARA 1361 the text and note 4 ante; and as to the Secretary of State and the Welsh Ministers and the transfer of functions under the 1993 Act in relation to Wales see PARA 601 note 1 ante.

⁵ The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions with regard to high-activity and other sealed source see PARA 1464 post.

⁶ Radioactive Substances Act 1993 s 16(8) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 205(8)). There is a legal obligation to justify the authorisation in terms of net benefit in accordance with

European Community law: see *R v Secretary of State for the Environment, ex p Greenpeace Ltd* [1994] 4 All ER 352, [1994] 3 CMLR 737.

An authorisation has effect from the date specified in it, and when copies of the certificate of authorisation are required to be sent as mentioned in the Radioactive Substances Act 1993 s 16(9)(b) (see PARA 1456 post), the Agency must, in fixing that date, have regard to the time at which those copies may be expected to be sent, and must fix a date which appears to it to allow an interval of not less than 28 days after that time before the authorisation has effect, unless in the Agency's opinion it is necessary that the authorisation should come into operation immediately or should otherwise be expedited: s 16(10) (amended by the Environment Act 1995 Sch 22 paras 200, 205(9), Sch 24).

7 For the meaning of 'local authority' see PARA 1442 note 10 ante.

8 For the meaning of 'relevant water body' see PARA 1453 note 8 ante.

9 For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

10 Radioactive Substances Act 1993 s 18(1) (s 18(1), (2) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 207, Sch 24). Where, in the case of any such premises as are mentioned in the Radioactive Substances Act 1993 s 42(2) (ie premises occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or occupied by or for the purposes of a visiting force: see PARA 1441 ante): (1) arrangements are made whereby radioactive waste is not to be disposed of from those premises except with the approval of the Environment Agency; and (2) in pursuance of those arrangements the Agency proposes to approve, or approves, the removal of radioactive waste from those premises to a place provided by a local authority as a place for the deposit of refuse, the provisions of s 18(1), (2) (as amended) apply as if the proposal to approve the removal of the waste were an application for an authorisation under s 13 to remove it, or (as the case may be) the approval were such an authorisation: s 42(6) (amended by the Environment Act 1995 s 120, Sch 22 para 200).

11 Ie under *ibid* s 13: see PARA 1450 ante.

12 *Ibid* s 18(2) (as amended: see note 11 *supra*).

UPDATE

1453-1457 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements ... Transfer of authorisations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1456. Certificate of authorisation.

1456. Certificate of authorisation.

When any authorisation to dispose of or accumulate radioactive waste¹ is granted, the Environment Agency ('the Agency')² must furnish the person to whom the authorisation is granted with a certificate which contains all material particulars of the authorisation or gives sufficient information as to the particulars to enable them to be ascertained³. Subject to any directions restricting knowledge of the authorisation in the interests of national security⁴, the Agency must also send a copy of the certificate to each local authority⁵ in whose area radioactive waste⁶ is to be disposed⁷ of or accumulated in accordance with the authorisation and to any other public or local authority⁸ consulted pursuant to the obligation imposed⁹ on the Agency¹⁰. At all times while an authorisation is in force in respect of the disposal or accumulation of waste from or on any premises¹¹ the person who holds the authorisation must cause copies of the certificate of authorisation to be kept posted on the premises, in such characters and in such positions as to be conveniently read by persons having duties on those premises which are or may be affected by the matters set out in the certificate¹².

1 Ie any authorisation under the Radioactive Substances Act 1993 s 13 (see PARA 1450 ante) or s 14 (see PARA 1452 ante): s 16(1).

2 The statutory wording is 'the appropriate Agency'. The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions with regard to high-activity and other sealed sources see PARA 1464 post.

3 Radioactive Substances Act 1993 s 16(9)(a) (substituted by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 12).

4 Ie subject to any directions under the Radioactive Substances Act 1993 s 25 (as amended): see PARA 1572 post.

5 For the meaning of 'local authority' see PARA 1442 note 10 ante.

6 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

7 For the meaning of 'disposed of' see PARA 1450 note 2 ante.

8 For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

9 Ie by the Radioactive Substances Act 1993 s 16(5) (as amended): see PARA 1453 ante.

10 Ibid s 16(9)(b) (amended by the Environment Act 1995 s 120, Sch 22 para 200).

11 In this context the authorisation must be under the Radioactive Substances Act 1993 s 13(1) (disposal: see PARA 1450 ante), or s 14 (accumulation: see PARA 1240 ante): s 19(b). For the meaning of 'premises' see PARA 1439 note 1 ante.

12 Ibid s 19 (amended by the Energy Act 2004 s 75, Sch 15 paras 1, 3).

UPDATE

1453-1457 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements ... Transfer of authorisations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1457. Transfer of authorisations.

1457. Transfer of authorisations.

Where a person ('the transferor') holds an authorisation¹ in respect of the disposal² of radioactive waste³ on or from premises⁴ situated on a nuclear site⁵, and an application is made for a transfer⁶, in whole or in part, of that authorisation to another person ('the transferee'), then the Environment Agency ('the Agency')⁷ must⁸, on receipt of the application (but subject to directions restricting knowledge of the application in the interests of national security⁹) send a copy of the application to every local authority¹⁰ in whose area radioactive waste may be disposed of under the authorisation to which the application relates¹¹.

Before granting the application, the Agency must¹² consult everyone whom it would have been required to consult before granting the authorisation¹³ if:

- 3911 (1) the transferee had applied for the grant of the authorisation that he would hold were the application to be granted; and
- 3912 (2) in the case of a partial transfer, the transferor had applied for the grant, in place of his existing authorisation, of the authorisation he would hold in those circumstances¹⁴.

The Agency may, however, proceed with the application without sending a copy of the application to a local authority mentioned above¹⁵, or without consulting an authority or body mentioned above¹⁶ about the proposed transfer, if it appears to the Agency that arrangements for the disposal of radioactive waste are unlikely to be changed, as a result of the transfer, in a way that would be of interest to that authority or body¹⁷.

The Agency may grant the application if, and only if, it is satisfied:

- 3913 (a) that the transferee has or will have operational control over the disposals to which the transferred authorisation will relate;
- 3914 (b) that he is able and willing to ensure compliance with the limitations and conditions of the authorisation that he will hold if the application is granted; and
- 3915 (c) that no other grounds exist on which it would be reasonable to refuse to grant the application¹⁸.

Where the Agency grants the application, it must:

- 3916 (i) fix the date from which the transfer applied for is to have effect;
- 3917 (ii) furnish the transferee with a certificate which contains all material particulars of the authorisation he holds as a result of the transfer or gives sufficient information as to the particulars to enable them to be ascertained;
- 3918 (iii) in the case of a partial transfer, furnish the transferor with a similar certificate as respects the authorisation he holds as a result of the transfer; and
- 3919 (iv) subject to directions restricting knowledge of the application in the interests of national security¹⁹, send a copy of the certificate furnished to the transferee, and of any certificate furnished to the transferor:

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521. (A) to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the certificate relates; and

522. (B) to every person consulted²⁰ about the transfer²¹.

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The time fixed as the time from which the transfer is to have effect must be not less than 28 days after the day, if any, on which the Agency, when it fixes that time, expects copies of the certificates mentioned in head (iv) above to be sent out in accordance with that provision²²; but this does not apply if, in the opinion of the Agency, it is necessary for the transfer to have immediate effect or otherwise to be expedited²³.

1 Ie an authorisation granted under the Radioactive Substances Act 1993 s 13: see PARA 1450 ante.

2 For the meaning of 'disposal' see PARA 1450 note 2 ante.

3 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

4 For the meaning of 'premises' see PARA 1439 note 1 ante.

5 For the meaning of 'nuclear site' see PARA 1450 note 6 ante.

6 Ie an application under the Radioactive Substances Act 1993 s 16A (as added and amended). Such an application is one which (1) is made to the authorising authority (see note 7 infra) jointly by the transferor and the transferee; (2) is accompanied by the appropriate amount; and (3) in the case of an application for a transfer relating to part only of the premises, identifies the part in question: s 16A(2) (s 16A added by the Energy Act 2004 s 72). The appropriate amount for these purposes is the amount of the charge (if any) that is prescribed for the purpose by a charging scheme under the Environment Act 1995 s 41 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 97): see the Radioactive Substances Act 1993 s 16A(3)(a) (as so added). For the meaning of 'prescribed' in this context see PARA 1442 note 8 ante.

7 The statutory wording is 'the authorising authority'; and for these purposes 'authorising authority', in relation to an authorisation having effect in Great Britain, means the appropriate Agency: *ibid* s 16A(11)(a) (as added: see note 6 supra). The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

8 Ie subject to *ibid* s 16A(6) (as added): see the text and notes 15-17 infra.

9 Ie subject to any directions under *ibid* s 25 (as amended): see PARA 1572 post.

10 For the meaning of 'local authority' see PARA 1442 note 10 ante.

11 Radioactive Substances Act 1993 s 16A(1), (4) (as added: see note 6 supra). See also note 7 supra.

12 See note 8 supra.

13 Ie everyone whom it would have been required to consult under the Radioactive Substances Act 1993 s 16(4A) (as added and amended) or s 16(5) (as amended): see PARA 1453 ante.

14 *Ibid* s 16A(5) (as added: see note 6 supra). See also note 7 supra.

15 Ie mentioned in *ibid* s 16A(4) (as added): see the text and notes 12-13 supra.

16 Ie mentioned in *ibid* s 16A(5) (as added): see the text and note 14 supra.

17 *Ibid* s 16A(6) (as added: see note 6 supra). See also note 7 supra.

18 *Ibid* s 16A(7) (as added: see note 6 supra). See also note 7 supra.

19 See note 9 supra.

20 le to every person consulted about the transfer under so much of the Radioactive Substances Act 1993 s 16A(5) (as added) as requires consultation in accordance with s 16(5) (as amended): s 16A(8)(d)(ii) (as added: see note 6 supra).

21 Ibid s 18A(8) (as added (see note 6 supra); amended by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 13). See also note 7 supra.

22 Radioactive Substances Act 1993 s 16A(9) (as added: see note 6 supra). See also note 7 supra.

23 Ibid s 16A(10) (as added: see note 6 supra). See also note 7 supra.

UPDATE

1453-1457 Power to authorise the disposal or accumulation of radioactive waste; consultation requirements ... Transfer of authorisations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1458. Review of authorisations.

1458. Review of authorisations.

The Environment Agency¹:

3920 (1) must carry out periodic reviews² of the limitations and conditions attached to each authorisation³; and

3921 (2) may, at any other time, carry out any such additional review of the limitations and conditions attached to an authorisation⁴ as it thinks fit⁵.

1 The statutory wording is 'the authorising authority'; and for these purposes, 'the authorising authority', in relation to an authorisation having effect in Great Britain, means the appropriate Agency: Radioactive Substances Act 1993 s 17A(2) (s 17A added by the Energy Act 2004 s 74). The Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 For these purposes, 'periodic reviews', in relation to an authorisation, means reviews at such regular intervals as the authorising authority thinks fit in the case of that authorisation: Radioactive Substances Act 1993 s 17A(2) (as added: see note 1 supra).

3 I.e. each authorisation under *ibid* s 13 or s 14: see PARAS 1450, 1452 ante. As to the power to grant authorisations subject to limitations or conditions see PARA 1455 ante.

4 I.e. an authorisation under either *ibid* s 13 or s 14.

5 *Ibid* s 17A(1) (as added: see note 1 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1459. Variation or revocation of authorisation.

1459. Variation or revocation of authorisation.

The Environment Agency ('the Agency')¹ may at any time:

- 3922 (1) revoke an authorisation²; or
- 3923 (2) where the authorisation has effect without limitations or conditions, vary it by attaching limitations or conditions to it³; or
- 3924 (3) where the authorisation has effect subject to limitations or conditions, vary it by revoking or varying them or attaching further limitations or conditions to the authorisation⁴.

The powers of the Agency under these provisions are exercisable with or without the making of an application by the person holding the authorisation⁵; but where an application for the variation of an authorisation is made by that person, it must be accompanied by the charge, if any, that is prescribed⁶ for the purpose⁷.

On any proposal to vary an authorisation granted⁸ in respect of the disposal⁹ of radioactive waste¹⁰ on or from any premises¹¹ situated on a nuclear site¹², the Agency:

- 3925 (a) must consult the Food Standards Agency¹³ and the Health and Safety Executive¹⁴ before deciding whether to vary the authorisation and, if so, whether by attaching, revoking or varying any limitations or conditions or by attaching further limitations or conditions; and
- 3926 (b) must consult the Food Standards Agency concerning the terms of any variation, for which purpose the Environment Agency must, before varying the authorisation, send the Food Standards Agency a copy of any variations which it proposes to make¹⁵.

Where any authorisation¹⁶ is revoked or varied, the Environment Agency must give notice of the revocation or variation to the person to whom the authorisation was granted, and must, if a copy of the certificate of authorisation was sent to a public or local authority¹⁷, send a copy of the notice to that authority¹⁸.

Where a person holds an authorisation¹⁹ in respect of any high-activity source²⁰ and either:

- 3927 (i) intends to dispose of or accumulate a high-activity source, other than an existing high-activity source²¹, on or after 1 January 2006; or
- 3928 (ii) intends to dispose of or accumulate an existing high-activity source on or after 1 January 2008;

that person must apply to the Agency under the above provisions to vary his authorisation to enable the Agency to ensure that the authorisation complies with the relevant provisions of the Euratom Directive on the control of high-sealed radioactive sources and orphan sources²² and that person must make that application in accordance²³ with the prescribed time limits²⁴. If a

person fails to make an application in accordance with those time limits, his authorisation must be revoked by the Agency so far as it relates to the high-activity source in question²⁵. The Agency may, however, notify a person to whom head (i) or head (ii) above applies:

- 3929 (A) that he is not required to make such an application; or
 3930 (B) if the Agency is satisfied that in its opinion exceptional circumstances apply to that person, that he may make an application within a period shorter than that provided for under the prescribed time limits²⁶.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to the exercise of its functions under the Radioactive Substances Act 1993 s 17 (as amended) with regard to high-activity and other sealed sources see PARA 1464 post.

2 Ie an authorisation granted under the Radioactive Substances Act 1993 ss 13 or 14: see PARAS 1450, 1452 ante: s 17(1) (s 17(1), (2), (3) amended by the Environment Act 1995 s 120, Sch 22 para 200). When an authorisation is revoked or varied, the person to whom it was granted may appeal to the Secretary of State or the Welsh Ministers: see PARA 1471 post. As to the Secretary of State and the Welsh Ministers see PARA 601 note 1 ante.

3 Radioactive Substances Act 1993 s 17(2)(a) (as amended: see note 2 supra). As to the power to grant authorisations subject to limitations or conditions see PARA 1455 ante.

4 Ibid s 17(2)(b) (as amended: see note 2 supra). Where judicial review of a variation is sought, a stay of the variation pending a full hearing of the application will not necessarily be granted: see *R v Inspectorate of Pollution, ex p Greenpeace Ltd* [1994] 4 All ER 321, [1994] 1 WLR 570, CA. As to the validity of variations of an existing authorisation to allow a testing process which if successful would require a new authorisation for its operation see *R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2)* [1994] 4 All ER 329, [1994] 2 CMLR 548.

5 Radioactive Substances Act 1993 s 17(2ZA) (s 17(2ZA), (2ZB) added by the Energy Act 2004 s 73).

6 Ie prescribed for the purpose by a charging scheme under the Environment Act 1995 s 41 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 97): see the Radioactive Substances Act 1993 s 17(2ZB)(a) (as added: see note 5 supra). For the meaning of 'prescribed' in this context see PARA 1442 note 8 ante.

7 Ibid s 17(2ZB)(a) (as added: see note 5 supra).

8 Ie under ibid s 13(1): see PARA 1450 ante.

9 For the meaning of 'disposal' see PARA 1450 note 2 ante.

10 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

11 For the meaning of 'premises' see PARA 1439 note 1 ante.

12 For the meaning of 'nuclear site' see PARA 1450 note 6 ante.

13 As to the Food Standards Agency see FOOD vol 18(2) (Reissue) PARA 225 et seq.

14 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

15 Radioactive Substances Act 1993 s 17(2A) (added by the Environment Act 1995 Sch 22 para 206(1); amended by the Food Standards Act 1999 s 40(1), Sch 5 para 43(1), (3)).

16 See note 2 supra.

17 Ie in accordance with the Radioactive Substances Act 1993 s 16(9)(b) (as amended): see PARA 1456 ante. For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

18 Ibid s 17(3) (as amended: see note 2 supra).

19 See note 2 supra.

20 For the meaning of 'high-activity source' see PARA 1449 note 9 ante.

21 For the meaning of 'existing high-activity source' see PARA 1449 note 10 ante.

22 Ie Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed radioactive sources and orphan sources ('the HASS Directive').

23 Ie in accordance with the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 4(3): see note 24 infra.

24 Ibid reg 4(1). Except where notification is given under reg 4(2)(b) (see head (b) in the text), the application must be made (1) at least four months before the date the source is intended to be disposed of or accumulated; or (2) in the case of a high-activity source (other than an existing high-activity source) which is intended to be disposed of or accumulated within four months of 20 October 2005 (ie the date when the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, came into force: see reg 1(2)), as soon as practicable and in any event at least two months before the date of intended disposal or accumulation of the source: reg 4(3).

25 Ibid reg 4(4).

26 Ibid reg 4(2).

UPDATE

1459 Variation or revocation of authorisation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1460. Provision of facilities for disposal or accumulation of radioactive waste.

1460. Provision of facilities for disposal or accumulation of radioactive waste.

If it appears to the Secretary of State or, in relation to Wales, to the Welsh Ministers¹ that adequate facilities are not available for the safe disposal² or accumulation of radioactive waste³, he or they may either provide such facilities, or may arrange for their provision by such persons as he or they may think fit⁴. If he proposes, or they propose, to provide, or to arrange for the provision of, a place for the disposal or accumulation of that waste he or they must, before carrying out the proposal, consult with any local authority⁵ in whose area that place would be situated, and with such other public or local authorities⁶, if any, as appear to him or to them to be proper to be consulted by him or by them⁷.

The Secretary of State or the Welsh Ministers may make reasonable charges for the use of any facilities provided by him or by them or in accordance with arrangements made by him or by them, and when those facilities are not provided by him or by them, he or they may direct that reasonable charges may be made by the person providing them in accordance with any such arrangements⁸.

1 As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante; and as to the application of the Radioactive Substances Act 1993 s 29 to Northern Ireland see s 29(4).

2 For the meaning of 'disposal' see PARA 1450 note 2 ante.

3 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

4 Radioactive Substances Act 1993 s 29(1).

5 For the meaning of 'local authority' see PARA 1442 note 10 ante.

6 For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

7 Radioactive Substances Act 1993 s 29(2).

8 Ibid s 29(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1461. Environment Agency's power to dispose of radioactive waste.

1461. Environment Agency's power to dispose of radioactive waste.

If there is radioactive waste¹ on any premises² and the Environment Agency ('the Agency')³ is satisfied that it ought to be disposed of⁴, but, by reason that the premises are unoccupied or the occupier is absent or insolvent or for any other reason, it is unlikely that it will be otherwise lawfully disposed of, the Agency has power to dispose of that radioactive waste as it may think fit⁵. The Agency may recover from the occupier, or, if the premises are unoccupied, from the owner⁶, any expenses reasonably incurred by it in disposing of that waste⁷.

1 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

2 For the meaning of 'premises' see PARA 1439 note 1 ante.

3 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to the Agency's power to recover and dispose of orphan sources see PARA 1467 post.

4 For the meaning of 'dispose of' see PARA 1450 note 2 ante.

5 Radioactive Substances Act 1993 s 30(1) (s 30(1), (3) amended by the Environment Act 1995, s 120, Sch 22 para 217).

6 For these purposes, 'owner' has the same meaning as in the Public Health Act 1936 s 343(1) (ie the person for the time being receiving the rack rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive it if those premises were let at a rack rent): Radioactive Substances Act 1993 s 30(3). The provisions of the Public Health Act 1936 s 294, limiting the liability of owners who are only agents or trustees, also apply with the substitution for reference to a council of references to the Environment Agency: Radioactive Substances Act 1993 s 30(3)(a) (as amended: see note 5 supra). See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 123.

7 Ibid s 30(1).

UPDATE

1461-1463 Environment Agency's power to dispose of radioactive waste ... Functions of public and local authorities; disregard of radioactivity

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1462. Removal of radioactive waste by local authorities.

1462. Removal of radioactive waste by local authorities.

Where an authorisation¹ requires or permits radioactive waste² to be removed to a place provided by a local authority³ as a place for the deposit of refuse, it is the duty of that authority to accept any such waste removed to that place in accordance with the authorisation and to deal with it after its removal to that place in the manner, if any, indicated in the authorisation⁴.

1 Ie an authorisation under the Radioactive Substances Act 1993 s 13: see PARA 1450 ante.

2 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

3 For the meaning of 'local authority' see PARA 1442 note 10 ante.

4 Radioactive Substances Act 1993 s 18(3). Where, in the case of any such premises as are mentioned in s 42(2) (ie premises occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or occupied by or for the purposes of a visiting force): (1) arrangements are made whereby radioactive waste is not to be disposed of from those premises except with the approval of the Environment Agency; and (2) in pursuance of those arrangements the Agency proposes to approve, or approves, the removal of radioactive waste from those premises to a place provided by a local authority as a place for the deposit of refuse, the provisions of s 18(3) apply as if the proposal to approve the removal of the waste were an application for an authorisation under s 13 to remove it, or (as the case may be) the approval were such an authorisation: s 42(6) (amended by the Environment Act 1995 s 120, Sch 22 para 200). The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to the exemption of certain premises occupied by the Crown from all the provisions of the Radioactive Substances Act 1993 see s 42(2), (7); and PARA 1441 ante. For the meaning of 'visiting force' see PARA 1441 note 4 ante.

UPDATE

1461-1463 Environment Agency's power to dispose of radioactive waste ... Functions of public and local authorities; disregard of radioactivity

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/B. DISPOSAL AND ACCUMULATION OF RADIOACTIVE WASTE/1463. Functions of public and local authorities; disregard of radioactivity.

1463. Functions of public and local authorities; disregard of radioactivity.

For the purposes of the operation of certain statutory provisions¹ and the exercise or performance of any power or duty conferred or imposed by, or for the enforcement of, any such statutory provision, no account must be taken of any radioactivity possessed by any substance² or article³ or by any part of any premises⁴. The statutory provisions concerned are contained in, or have effect by virtue of, various specified public general Acts⁵ (or any enactment amending, extending or superseding them⁶) and local enactments⁷ in whatever terms the latter are expressed provided they relate to specified matters⁸.

1 'Statutory provision' in relation to Great Britain means a provision, whether of a general or a special nature, contained in, or in any document made or issued under, any Act, whether of a general or a special nature: Radioactive Substances Act 1993 s 40(3)(a). As to its meaning in relation to Northern Ireland see s 40(3)(b). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

2 For the meaning of 'substance' see PARA 1439 note 11 ante.

3 For the meaning of 'article' see PARA 1439 note 12 ante.

4 Radioactive Substances Act 1993 s 40(1). For the meaning of 'premises' see PARA 1439 note 1 ante.

5 The specified in *ibid* s 40(2)(a), Sch 3 Pt I. The specified enactments are (1) the Public Health Act 1936 ss 48, 81, 82, 141, 259, 261 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH); (2) the Clean Air Act 1993 s 16 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 234); (3) the Sea Fisheries Regulation Act 1966 s 5 (as amended) (see AGRICULTURE AND FISHERIES); (4) the Salmon and Freshwater Fisheries Act 1975 s 4 (as amended) (see AGRICULTURE AND FISHERIES, WATER); (5) the Building Act 1984 s 59 (as amended) (see BUILDING vol 4(2) (2002 Reissue) PARA 382); (6) the Planning (Hazardous Substances) Act 1990 (see TOWN AND COUNTRY PLANNING); (7) the Environmental Protection Act 1990 Pt III (ss 79-84) (as amended) (see NUISANCE vol 78 (2010) PARA 155 et seq); (8) the Water Industry Act 1991 ss 72, 111, 113(6), Pt IV Ch III (ss 118-141) and s 140, Sch 8 paras 2-4 (as amended) (so far as they re-enact provisions of the Control of Pollution Act 1974 ss 43, 44) (see WATER); (9) the Water Resources Act 1991 ss 82, 84, 85, 86, 87(1), 88(2), 92, 93, 99, 161, 190, 202, 203, Sch 25 para 6 (as amended) (see WATER); and (10) the Water Act 1945 s 18, so far as it continues to have effect by virtue of the Water Consolidation (Consequential Provisions) Act 1991 s 2(2), Sch 2 or by virtue of its repeal by the Control of Pollution Act 1974 s 108, Sch 4 not having been brought into force (see WATER): Radioactive Substances Act 1993 Sch 3 Pt I (amended by the Clean Air Act 1993 s 67(1), Sch 4 para 6; the Environment Act 1995 s 120(1), Sch 22 para 230(1)). The references to provisions of the Water Resources Act 1991 have effect subject to the power conferred by s 98 (as amended) (see PARA 1451 ante): Radioactive Substances Act 1993 s 40(4). For transitional modifications of Sch 3 (as so amended) see s 49(2), Sch 5 Pt II (paras 9-12) (amended by the Statute Law (Repeals) Act 2004).

6 Radioactive Substances Act 1993 s 40(2)(a).

7 'Local enactment' means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure: *ibid* s 40(3). As to the special parliamentary procedure for orders see PARLIAMENT vol 34 (Reissue) PARA 914 et seq.

8 *Ibid* s 40(2)(b). The matters specified are (1) the prohibition or restriction of the disposal or accumulation of waste or any description of waste, or of any substance which is a nuisance, or so as to be a nuisance, or of any substance which is, or so as to be, prejudicial to health, noxious, polluting or of any similar description (s 40(2)(b)(i)); or (2) any power or duty thereby conferred or imposed on the Environment Agency or any local authority, relevant water body or other public or local authority or any officer thereof to take any action for preventing, restricting or abating the disposals or accumulations mentioned in head (1) *supra* (s 40(2)(b)(ii) (amended by the Environment Act 1995 s 120, Sch 22 para 224)). In this context 'disposal' means discharging

or depositing a substance or allowing a substance to escape or to enter a stream or other place as may be mentioned in the statutory provision concerned: Radioactive Substances Act 1993 s 40(3). For the meaning of 'waste' see PARA 1450 note 2 ante; for the meaning of 'local authority' see PARA 1442 note 10 ante; for the meaning of 'relevant water body' see PARA 1453 note 8 ante; and for the meaning of 'public or local authority' see PARA 1439 note 2 ante.

UPDATE

1461-1463 Environment Agency's power to dispose of radioactive waste ... Functions of public and local authorities; disregard of radioactivity

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1463 Functions of public and local authorities; disregard of radioactivity

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 5--Radioactive Substances Act 1993 Sch 3 Pt 1 partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Radioactive Substances Act 1993 Sch 3 Pt 1 further amended: Marine and Coastal Access Act 2009 Sch 14 para 18 (not yet in force).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/C. HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES AND ORPHAN SOURCES; ADDITIONAL PROVISIONS/1464. Exercise of statutory powers and functions by the Environment Agency.

C. HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES AND ORPHAN SOURCES; ADDITIONAL PROVISIONS

1464. Exercise of statutory powers and functions by the Environment Agency.

The Environment Agency ('the Agency')¹ may exercise its powers under any enactment in relation to matters concerning the prevention of unauthorised access to, or loss or theft of, high-activity sources², or other sealed sources³ which, in the opinion of the Agency, are of a similar level of potential hazard to high-activity sources, including matters relating to the security of sites where such material is held, notwithstanding that the control of pollution is not the primary or only purpose for which the powers are exercised⁴.

In performing its statutory functions with regard to registrations and authorisations⁵, where high-activity sources or other sealed sources which, in the opinion of the Agency are of a similar level of potential hazard to high-activity sources, is, or will be, kept, used⁶, disposed of⁷ or accumulated on any premises, the Agency must⁸:

- 3931 (1) in considering if the measures taken, or to be taken, by the applicant or person granted the registration or authorisation ensure the adequate security of any premises, and where it considers it appropriate:
- 357
- 523. (a) inspect those premises⁹; and
- 524. (b) consult with the police and such other persons as the Agency considers appropriate concerning the measures¹⁰;
- 358
- 3932 (2) have regard to any advice the Agency receives from the police or other persons within such time as the Agency believes is reasonable before:
- 359
- 525. (a) determining the registration or authorisation or effecting any variation or cancellation of the registration or authorisation; or
- 526. (b) imposing any limitations and conditions on the registration or authorisation¹¹;
- 360

but this does not apply where the premises are, or are part of, a nuclear site¹². An applicant or person holding a registration or authorisation must permit the Agency and any accompanying person reasonable access to any premises it wishes to inspect under head (1) above¹³. If an applicant or person holding a registration or authorisation fails to comply with this requirement, the Agency may refuse the application or cancel the registration or revoke the authorisation in so far as it relates to the sources referred to above¹⁴.

¹ The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante (definition applied by the High-activity Sealed

Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(2)). As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 For the meaning of 'high-activity source' see PARA 1449 note 9 ante.

3 For the meaning of 'sealed source' see PARA 1439 note 3 ante (definition applied by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(2)).

4 Ibid reg 5(1), (2).

5 Its functions under the Radioactive Substances Act 1993 s 7 (as amended) (see PARAS 1442-1444 ante), s 10 (as amended) (see PARAS 1447-1448 ante), s 12 (as amended) (see PARA 1449 ante), s 13 (see PARA 1450 ante), s 14 (see PARA 1452 ante) or s 17 (as amended) (see PARA 1459 ante).

6 For the meaning of 'kept or used' see PARA 1439 note 3 ante (definition applied by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(2)).

7 For the meaning of 'disposed of' see PARA 1450 note 2 ante (definition applied by ibid reg 2(2)).

8 For the meaning of 'premises' see PARA 1439 note 1 ante (definition applied by ibid reg 2(2)).

9 Where the Environment Agency so inspects any premises it may be accompanied by such other persons as are appropriate to assist it in assessing the measures: ibid reg 6(5).

10 Ibid reg 6(1), (3).

11 Ibid reg 6(1), (4).

12 Ibid reg 6(2). For the meaning of 'nuclear site' see PARA 1450 note 6 ante (definition applied by reg 2(2)).

13 Ibid reg 6(6).

14 Ibid reg 6(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/C. HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES AND ORPHAN SOURCES; ADDITIONAL PROVISIONS/1465. Records and inspections.

1465. Records and inspections.

The Environment Agency¹ must keep records of the required matters² and of the matters notified to it under the relevant provision³ of the Euratom Directive on the control of high-activity sealed radioactive sources and orphan sources⁴. It must also establish or maintain a system of inspections to enforce the provisions of that Directive⁵ which must be complied with by persons holding registrations⁶ or authorisations⁷ under the Radioactive Substances Act 1993⁸.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante (definition applied by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(2)). As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 Ie the matters required by Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) on the control of high-activity sealed radioactive sources and orphan sources ('the HASS Directive') art 5(3), (4).

3 Ie under ibid art 6.

4 High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 7(a). For the meaning of 'orphan source' see PARA 1466 note 2 post.

5 Ie the provisions of Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) arts 3, 4, 5 and 6, and 7 (subject to art 16(1)(b)).

6 Ie under the Radioactive Substances Act 1993 s 7 (as amended) (see PARAS 1442-1444 ante) or s 10 (as amended) (see PARAS 1447-1448 ante).

7 Ie under ibid s 13 (see PARA 1450 ante) or s 14 (see PARA 1452 ante).

8 High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, regs 2(1), 7(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/C. HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES AND ORPHAN SOURCES; ADDITIONAL PROVISIONS/1466. Advice and assistance in respect of orphan sources.

1466. Advice and assistance in respect of orphan sources.

The relevant person¹ must ensure that:

- 3933 (1) in relation to the public and workers, specialised technical advice and assistance is promptly made available to such persons who are not normally involved in operations subject to radiation protection requirements and who suspect the presence of an orphan source²; and
- 3934 (2) the primary aim of such advice and assistance is:
- 361
- 527. (a) the safety of the source; and
- 528. (b) the protection of the public and workers from radiation³.
- 362

1 For these purposes: (1) in relation to England and Wales and the protection of workers and in relation to England and the protection of the public (except workers), the relevant person means the Secretary of State; (2) in relation to Wales and the protection of the public (except workers), the relevant person means the Welsh Ministers: see the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 8(2)(a), (b). As to the Secretary of State and the Welsh Ministers see PARA 601 note 1 ante.

2 'Orphan source' means a sealed source, the activity level of which, at the time of its discovery, is above the exemption level referred to in Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) art 3(2)(a) and which is not under regulatory control, either because it has never been under regulatory control or because it has been abandoned, lost, misplaced, stolen or transferred, without proper notification of the competent authority, to a new holder or without informing the recipient: Euratom Council Directive 2003/122 (OJ L346, 31.12.2003, p 57) art 2(a) (definition applied by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 2(2)). For the meaning of 'sealed source' see PARA 1439 note 3 ante (definition so applied).

3 High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 8(1).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/C. HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES AND ORPHAN SOURCES; ADDITIONAL PROVISIONS/1467. Recovery and disposal of orphan sources.

1467. Recovery and disposal of orphan sources.

The Environment Agency ('the Agency')¹ must be prepared or have made provision, including assignment of responsibilities, to recover any orphan source² and must have drawn up appropriate response plans and measures³. The Agency has the power to recover any expenses reasonably incurred by it, or by a person on its behalf, in the recovery and disposal of an orphan source from the holder⁴ of that source or from the occupier or owner of the premises⁵ where the source is located⁶.

If the relevant person⁷ thinks fit, that person may make available to the Agency a sum or sums of money in respect of costs and expenses incurred or to be incurred by the Agency, or by a person on its behalf, in relation to the recovery and disposal of orphan sources where:

- 3935 (1) the amount of such costs and expenses exceeds or is expected to exceed any reasonable provision for such costs and expenses made by the Agency; and
- 3936 (2) the making available of such sum or sums is necessary to enable the recovery and disposal of any orphan source⁸.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 For the meaning of 'orphan source' see PARA 1466 note 2 ante (definition applied by the Radioactive Substances Act 1993 s 47(1); amended for this purpose by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 17(1)(b)).

3 Radioactive Substances Act 1993 s 30A(1) (s 30A added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, 2005/2686, reg 16).

4 For these purposes, 'holder' means the person who is or is required to be registered or authorised under the Radioactive Substances Act 1993 in relation to that orphan source: s 30A(3) (as added: see note 3 supra).

5 For the meaning of 'premises' see PARA 1439 note 1 ante.

6 Radioactive Substances Act 1993 s 30A(2) (as added: see note 3 supra).

7 For these purposes, 'relevant person' means (1) in relation to England, the Secretary of State; (2) in relation to Wales, the Welsh Ministers: see *ibid* s 30A(5)(a), (b) (as added: see note 3 supra). As to the Secretary of State and the Welsh Ministers see PARA 601 note 1 ante.

8 *Ibid* s 30A(4) (as added: see note 3 supra).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/D. SECRETARY OF STATE'S OR WELSH MINISTERS' POWERS IN RELATION TO APPLICATIONS ETC/1468. Powers to give directions to the Environment Agency in relation to radioactive materials and waste.

D. SECRETARY OF STATE'S OR WELSH MINISTERS' POWERS IN RELATION TO APPLICATIONS ETC

1468. Powers to give directions to the Environment Agency in relation to radioactive materials and waste.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may, if he thinks fit or they think fit, in relation to:

- 3937 (1) an application for registration²;
- 3938 (2) an application for an authorisation³ or for the transfer, in whole or in part, or variation of an authorisation⁴; or
- 3939 (3) any such registration or authorisation,

give directions to the Environment Agency⁵ requiring it to take any of the following steps in accordance with the directions⁶:

- 3940 (a) so to exercise its powers under the Radioactive Substances Act 1993 as:
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 - 529. (i) to refuse an application for registration or authorisation or for the transfer, in whole or in part, or variation of an authorisation⁷; or
 - 530. (ii) to effect or grant a registration or authorisation, attaching such limitations or conditions, if any, as may be specified in the direction⁸; or
 - 531. (iii) to vary a registration or authorisation as may be so specified⁹; or
 - 532. (iv) to grant an application for the transfer, in whole or in part, of an authorisation¹⁰; or
 - 533. (v) to carry out a review¹¹ of authorisations¹²; or
 - 534. (vi) to cancel or revoke (or not to cancel or revoke) a registration or authorisation¹³;
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- 3941 (b) to serve an enforcement or prohibition notice¹⁴ as respects any registration or authorisation in such terms as may be specified in the directions¹⁵;
- 3942 (c) to send such written particulars relating to, or to activities carried on in pursuance of, registrations effected or authorisations granted¹⁶ as may be specified in the directions to such local authorities¹⁷ as may be so specified¹⁸.

1 As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante.

2 Ie for registration under the Radioactive Substances Act 1993 ss 7, 10 (as amended): see PARAS 1442-1448 ante.

3 Ie for authorisation under ibid ss 13, 14: see PARAS 1450, 1452 ante.

- 4 As to transfers of authorisations see PARA 1457 ante; and as to variations of authorisations see PARA 1459 ante.
- 5 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 6 Radioactive Substances Act 1993 s 23(1) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 211(1)(a); the Energy Act 2004 s 75, Sch 15 paras 1, 7(1)). As to the application of the Radioactive Substances Act 1993 s 23 (as amended) to Northern Ireland see s 23(5), (6) (s 23(6) added by High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, 2005/2686, SI 2005/2686, reg 15).
- 7 Radioactive Substances Act 1993 s 23(2)(a) (s 23(2) amended by the Environment Act 1995 Sch 22 paras 200, 211(b); the Radioactive Substances Act 1993 s 23(2)(a) also amended by the Energy Act 2004 Sch 15 paras 1, 7(2)).
- 8 Radioactive Substances Act 1993 s 23(2)(b) (as amended: see note 7 supra).
- 9 Ibid s 23(2)(c) (as amended: see note 7 supra).
- 10 Ibid s 23(2)(ca) (s 23(2)(ca), (cb) added by the Energy Act 2004 Sch 15 paras 1, 7(3)).
- 11 Ie under the Radioactive Substances Act 1993 s 17A (as added): see PARA 1458 ante.
- 12 Ibid s 23(2)(cb) (as added: see note 10 supra).
- 13 Ibid s 23(2)(d) (as amended: see note 7 supra).
- 14 Ie a notice under ibid ss 21 or 22 (as amended): see PARA 1470 post. As to the service of notices see PARA 1590 post.
- 15 Ibid s 23(3) (amended by the Environment Act 1995 Sch 22 paras 200, 211(c)).
- 16 Ie under any provision of the Radioactive Substances Act 1993.
- 17 For the meaning of 'local authority' see PARA 1442 note 10 ante.
- 18 Radioactive Substances Act 1993 s 23(4) (amended by the Environment Act 1995 Sch 22 para 200).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/D. SECRETARY OF STATE'S OR WELSH MINISTERS' POWERS IN RELATION TO APPLICATIONS ETC/1469. Power to require certain applications to be determined by the Secretary of State or the Welsh Ministers.

1469. Power to require certain applications to be determined by the Secretary of State or the Welsh Ministers.

The Secretary of State or, in relation to Wales, the Welsh Ministers¹ may give general directions to the Environment Agency ('the Agency')² requiring it to refer applications³ for registrations, authorisations, transfers or variations of any description specified in the directions to the Secretary of State or to those ministers for his or their determination⁴. He or they may also give directions to the Agency in respect of any particular application requiring it to refer the application to the Secretary of State or the Welsh Ministers for determination⁵. Where an application is referred to the Secretary of State or to those ministers in pursuance of such directions he or they may cause a local inquiry to be held in relation to the application⁶.

After determining any application so referred, the Secretary of State or the Welsh Ministers may give the Agency directions⁷ as to the steps to be taken by it in respect of the application⁸.

¹ As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales see PARA 601 note 1 ante.

² The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

³ le under the Radioactive Substances Act 1993: see PARAS 1442, 1447, 1449, 1454, 1457, 1459 ante.

⁴ Ibid s 24(1)(a) (s 24(1), (4) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 212(1); the Radioactive Substances Act 1993 s 24(1)(a) also amended by the Energy Act 2004 s 75, Sch 15 paras 1, 8).

⁵ Radioactive Substances Act 1993 s 24(1)(b) (as amended: see note 4 supra).

⁶ Ibid s 24(2). The Local Government Act 1972 s 250(2)-(5) (as amended) (supplementary provisions about local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to such an inquiry with the omission in s 250(4) (as amended) of the words 'such local authority or': Radioactive Substances Act 1993 s 24(3)(a). For provisions relating to Northern Ireland see s 24(3)(c), (5).

As to the exercise of the Secretary of State's discretion in deciding whether or not to direct a local inquiry see *R v Secretary of State for the Environment, ex p Greenpeace Ltd* [1994] 4 All ER 352, [1994] 3 CMLR 737.

⁷ le directions under the Radioactive Substances Act 1993 s 23 (as amended): see PARA 1468 ante.

⁸ Ibid s 24(4) (as amended: see note 4 supra).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1469 Power to require certain applications to be determined by the Secretary of State or the Welsh Ministers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/E. ENFORCEMENT AND PROHIBITION NOTICES/1470. Enforcement and prohibition notices under the Radioactive Substances Act 1993.

E. ENFORCEMENT AND PROHIBITION NOTICES

1470. Enforcement and prohibition notices under the Radioactive Substances Act 1993.

If the Environment Agency ('the Agency')¹ is of the opinion that a person to whom a registration² under the Radioactive Substances Act 1993 relates or who holds an authorisation³ under that Act is failing, or is likely to fail, to comply with any limitation or condition subject to which the registration or authorisation has effect, the Agency may serve a notice on that person⁴. The notice must:

- 3943 (1) state that the Agency is of that opinion;
- 3944 (2) specify the matters constituting the failure to comply with the limitations or conditions in question or the matters making it likely that such a failure will occur, as the case may be; and
- 3945 (3) specify the steps that must be taken to remedy those matters and the period within which those steps must be taken⁵.

If the Agency is of the opinion, as respects the keeping or use of radioactive material⁶ or of mobile radioactive apparatus⁷, or the disposal⁸ or accumulation of radioactive waste⁹, by a person in pursuance of a registration or authorisation under the Radioactive Substances Act 1993, that continuing to carry on that activity, or continuing to do so in a particular manner, involves an imminent risk of pollution of the environment or of harm to human health, the Agency may serve a notice on that person¹⁰. The notice must:

- 3946 (a) state the Agency's opinion;
- 3947 (b) specify the matters giving rise to the risk involved in the activity, the steps that must be taken to remove the risk and the period during which they must be taken; and
- 3948 (c) direct that the registration or authorisation will, until the notice is withdrawn, cease to have effect, either wholly or to the extent specified in the notice¹¹.

Such a notice may be served whether or not the carrying on of the activity in question complies with any limitations or conditions to which the registration or authorisation in question is subject¹². The Agency must by notice to the recipient withdraw such a notice when it is satisfied that the risk specified in it has been removed¹³.

When any such notice as is mentioned above is served by the Agency, the Agency must send a copy of the notice (i) to a local authority¹⁴ to which a certificate relating to registration was sent¹⁵; or (ii) to a public or local authority to which a copy of an authorisation was sent¹⁶, as appropriate¹⁷.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 Ie a registration under the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended): see PARAS 1442-1448 ante.

3 Ie an authorisation under ibid s 13 or s 14: see PARAS 1450, 1452 ante.

4 Ibid s 21(1) (s 12(1), (2) amended by the Environment Act 1995 s 120, Sch 22 para 200; the Radioactive Substances Act 1993 s 21(1) also amended by the Energy Act 2004 s 75, Sch 15 paras 1, 5(1)). As to the service of notices see PARA 1590 post.

5 Radioactive Substances Act 1993 s 21(2) (as amended: see note 4 supra). As to appeals against enforcement notices see PARA 1471 post.

6 For the meaning of 'radioactive material' see PARA 1439 ante; and for the meaning of 'kept or used' see PARA 1439 note 3 ante.

7 For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

8 For the meaning of 'disposal' see PARA 1450 note 2 ante.

9 For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

10 Radioactive Substances Act 1993 s 22(1) (s 22(1), (3) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 210(1)).

11 Radioactive Substances Act 1993 s 22(3) (as amended: see note 10 supra). Where the registration or authorisation is not wholly suspended by the direction so given, the direction may specify limitations or conditions to which the registration or authorisation is to be subject until the notice is withdrawn: s 22(4). As to appeals and representations against prohibition notices see PARA 1471 post.

12 Ibid s 22(2).

13 Ibid s 22(7) (amended by the Environment Act 1995 Sch 22 paras 200, 210(3), (4), Sch 24). On so doing, the Agency must send a copy of the withdrawal notice to any public or local authority to which a copy of the original notice was sent (see heads (i)-(ii) in the text): Radioactive Substances Act 1993 s 22(7) (as so amended). For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

14 For the meaning of 'local authority' see PARA 1442 note 10 ante.

15 Ie in the case of a registration if a certificate relating to registration was sent to a local authority under the Radioactive Substances Act 1993 s 7(8) (as amended) or s 10(5) (as amended): see PARAS 1444, 1448 ante.

16 Ie in the case of an authorisation if a copy of the authorisation was sent to a local authority under ibid s 16(9)(b) (as amended) or s 16A(8)(d) (as added): see PARAS 1456-1457 ante.

17 Ibid s 21(4) (amended by the Environment Act 1995 Sch 22 paras 200, 209(1), (3), Sch 24; the Energy Act 2004 Sch 15 paras 1, 5(2)); Radioactive Substances Act 1993 s 22(6) (amended by the Environment Act 1995 Sch 22 paras 200, 210(3), (4), Sch 24; the Energy Act 2004 s 75, Sch 15 paras 1, 6).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/F. APPEALS/1471. Right of appeal in respect of registrations, authorisations and enforcement and prohibition notices.

F. APPEALS

1471. Right of appeal in respect of registrations, authorisations and enforcement and prohibition notices.

Where the Environment Agency ('the Agency')¹:

- 3949 (1) refuses an application for registration under the Radioactive Substances Act 1993², or refuses an application for an authorisation under that Act³;
- 3950 (2) refuses an application⁴ for the transfer, in whole or in part, or variation of such an authorisation;
- 3951 (3) attaches any limitations or conditions to such a registration or to such an authorisation⁵; or
- 3952 (4) varies such a registration or such an authorisation, otherwise than by revoking a limitation or condition subject to which it has effect⁶; or
- 3953 (5) cancels such a registration or revokes such an authorisation⁷,

the person directly concerned⁸ may appeal to the Secretary of State or, in relation to Wales, to the Welsh Ministers⁹; and a person on whom an enforcement notice¹⁰ or a prohibition notice¹¹ is served may appeal to him or to them against the notice¹². No appeal lies, however, in respect of any decision taken by the Agency in pursuance of a direction¹³ of the Secretary of State or the Welsh Ministers¹⁴.

The Secretary of State or the Welsh Ministers may refer any matter involved in an appeal from a decision of the Agency to a person appointed by him or by them for the purpose¹⁵; and may by regulations make provision with respect to appeals from decisions of the Agency, including in particular provision as to the period within which appeals are to be brought¹⁶.

The bringing of an appeal against a cancellation or revocation of a registration or authorisation has the effect, unless the Secretary of State otherwise directs, or the Welsh Ministers otherwise direct, of suspending the operation of the cancellation or revocation pending the determination of the appeal¹⁷; but otherwise the bringing of an appeal does not, unless the Secretary of State so directs, or the Welsh Ministers so direct, affect the validity of the decision or notice in question during that period¹⁸.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 Ie under the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended): see PARAS 1442-1448 ante. As to refusal of an application in respect of premises see s 7(4)(c) (as amended); and PARA 1443 ante; and as to refusal of an application in respect of mobile radioactive apparatus see s 10(2) (as amended); and PARA 1448 ante. As to when an application may be treated by the applicant as having been refused see s 7(5) (as amended); and PARA 1443 ante; s 10(4) (as amended); and PARA 1448 ante.

3 Ie under ibid s 13 or s 14: see PARAS 1450, 1452 ante. As to the grant of authorisations see s 16 (as amended); and PARAS 1453-1455 ante; and as to when an application for an authorisation (other than an

application for authorisation under s 13(1) in respect of the disposal of radioactive waste on or from premises situated on a nuclear site) may be treated by the applicant as having been refused see s 16(7) (as amended); and PARA 1454 ante.

4 le an application under ibid s 16A (as added and amended) (transfer of authorisations: see PARA 1457 ante) or s 17 (as amended) (variation of authorisations: see PARA 1459 ante).

5 For these purposes, any reference to attaching limitations or conditions to a registration or authorisation is a reference to attaching limitations or conditions to it either in effecting or granting it or in the exercise of any power to vary it: ibid s 26(5).

6 As to variation of registrations see PARA 1449 ante; and as to variation of authorisations see PARA 1459 ante.

7 As to cancellation of registrations see PARA 1449 ante; and as to revocation of authorisations see PARA 1459 ante.

8 'The person directly concerned' means: (1) in relation to a registration under the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended), the person applying for the registration or to whom the registration relates; (2) in relation to an authorisation under s 13 or s 14, the person applying for the authorisation or to whom it was granted; (3) in relation to an application under s 16A (as added and amended) for the transfer of an authorisation, either or both of the persons making the application; (4) in relation to an application for a variation under s 17 (as amended), the person applying for the variation: s 26(5)(a)-(d) (amended by the Energy Act 2004 s 75, Sch 15 paras 1, 10(2)).

9 Radioactive Substances Act 1993 s 26(1) (amended by the Environment Act 1995 s 120, Sch 22 para 200; the Energy Act 2004 Sch 15 paras 1, 10(1)). As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante; and as to the application of the Radioactive Substances Act 1993 ss 26-27 (as amended) to Northern Ireland see ss 26(6), 27(8).

10 le a notice under ibid s 21 (as amended): see PARA 1470 ante.

11 le a notice under ibid s 22 (as amended): see PARA 1470 ante.

12 Ibid s 26(2).

13 le a direction under ibid s 23 (as amended) or s 24 (as amended): see PARAS 1468-1469 post.

14 Ibid s 26(3)(b) (amended by the Environment Act 1995 Sch 22, PARA 200).

15 Radioactive Substances Act 1993 s 27(1) (amended by the Environment Act 1995 Sch 22 para 215(2)).

16 Radioactive Substances Act 1993 s 27(7). At the date at which this title states the law, no such regulations had been made, but the Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, made under the Radioactive Substances Act 1960 s 11D(6), (11) (repealed) have effect as if so made by virtue of the Radioactive Substances Act 1993 s 49(2), Sch 5 paras 1, 4; and the Interpretation Act 1978 s 17(2)(b). See PARA 1472 post.

17 As to determination of the appeal see PARA 1473 post.

18 Radioactive Substances Act 1993 s 27(6).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/F. APPEALS/1472. Procedure on appeal.

1472. Procedure on appeal.

A person who wishes to appeal to the Secretary of State or, in relation to Wales, to the Welsh Ministers¹ must give written notice of the appeal to him or to them². The notice must be accompanied by the specified documents³ and must, subject to the following provision, be given before the expiry of the period of two months beginning with the date on which a copy of the decision or notice which is the subject matter of the appeal is sent to the appellant or the application is treated as having been refused⁴, or before the expiry of such longer period as may be allowed by the Secretary of State or by those ministers⁵. Where, however, the appeal is against the decision of the Environment Agency ('the Agency')⁶ to cancel a registration or to revoke an authorisation, notice of appeal must be given before the expiry of the period of 28 days beginning with the date on which notice of the decision is given to the appellant or before the expiry of such longer period as may be allowed by the Secretary of State or the Welsh Ministers⁷.

If and to the extent that regulations⁸ so require, an appeal must be advertised in such manner as may be prescribed⁹.

Upon receipt of a notice of appeal accompanied by the specified documents, the Secretary of State or the Welsh Ministers must send to the Agency a copy of the notice of appeal, the appellant's statement of case and the appellant's statement indicating whether he wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations¹⁰. Where the appeal is against a decision in respect of an application for an authorisation on which the Agency consulted any local authority¹¹, relevant water body¹² or other public or local authority¹³, the Agency must notify the Secretary of State or the Welsh Ministers of the names of the authorities consulted¹⁴. The Secretary of State or the Welsh Ministers must send to any authority whose name is so notified to him or to them a notice stating that an appeal has been lodged and that within a period of 21 days beginning with the date of service of that notice the authority may make representations to him or to them with respect to the subject matter of the appeal¹⁵. The Secretary of State or the Welsh Ministers must send to the appellant and the Agency a copy of any representations made to him or to them by those authorities and must allow the appellant and the Agency a period of not less than 14 days in which to make representations on them¹⁶.

If either party to the appeal so requests, an appeal must be in the form of a hearing which may, if the person hearing the appeal so decides, be held, or held to any extent, in private¹⁷.

Where the appellant informs the Secretary of State or the Welsh Ministers that he wishes the appeal to be disposed of on the basis of written representations, the Agency may submit written representations to the Secretary of State or the Welsh Ministers not later than 28 days after receiving a copy of the appellant's statements¹⁸. The appellant may make further representations by way of reply to any representations from the Agency not later than 17 days after the date of submission of those representations by the Agency¹⁹. Any representations made by the Agency or the appellant must be dated and submitted to the Secretary of State or the Welsh Ministers on the date they bear²⁰ and a party so submitting representations must at the same time send a copy to the other party²¹.

The Secretary of State or the Welsh Ministers must give the appellant and the Agency at least 28 days' written notice of the date, time and place for the holding of any hearing unless they agree to a shorter period of notice²². In the case of a hearing which is to be held wholly or partly in public, the Secretary of State or the Welsh Ministers must, at least 21 days before the date fixed for the hearing, publish a copy of the notice in at least one newspaper circulating in the locality in which the activity which is the subject matter of the appeal is or would be carried on²³. He or they may vary the date fixed for the holding of any hearing, in which case these provisions as to notice and publicity apply to the variation of a date as they applied to the date originally fixed²⁴. He or they may also vary the time or place for the holding of a hearing but must give such notice of any such variation as appears to him or to them to be reasonable²⁵.

After the conclusion of the hearing the person appointed to conduct the hearing must make a report in writing to the Secretary of State or the Welsh Ministers which must include his conclusions together with his recommendations or his reasons for not making any recommendations²⁶.

1 le under the Radioactive Substances Act 1993 s 26 (as amended): see PARA 1471 ante. As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante. As to the application of these provisions to Northern Ireland see PARA 1471 note 9 ante.

2 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 2(1); Radioactive Substances Act 1993 s 49(2), Sch 5 paras 1, 2, 4; Interpretation Act 1978 s 17(2)(a), (b); and see PARA 1471 note 16 ante.

3 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 2(2). The documents so specified are: (1) a full statement of the appellant's case; (2) a copy of any relevant application; (3) a copy of any relevant certificate of registration; (4) a copy of any relevant correspondence between the appellant and the Environment Agency; (5) a copy of any decision or notice which is the subject matter of the appeal; and (6) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations: reg 2(2) (amended by virtue of the Environment Act 1995 s 120, Sch 22 para 200). Any request by the appellant that an appeal be withdrawn must be made to the Secretary of State or to the Welsh Ministers in writing: Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 2(3).

4 As to when an application may be treated by the applicant as having been refused see the Radioactive Substances Act 1993 s 7(5) (as amended); and PARA 1443 ante; s 10(4) (as amended); and PARA 1448 ante.

5 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 3(1).

6 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

7 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 3(2).

8 le regulations under the Radioactive Substances Act 1993 s 27(7): see PARA 1471 the text and note 16 ante.

9 Ibid s 27(2). See further the text and notes 23-24 infra.

10 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 4(1).

11 For the meaning of 'local authority' see PARA 1442 note 10 ante.

12 For the meaning of 'relevant water body' see PARA 1453 note 8 ante.

13 For the meaning of 'public or local authority' see PARA 1439 note 2 ante.

14 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 4(2); Radioactive Substances Act 1993 Sch 5 paras 1, 2, 4; Interpretation Act 1978 s 17(2)(a), (b).

15 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 4(3).

16 Ibid reg 5(5).

- 17 Radioactive Substances Act 1993 s 27(3).
- 18 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 5(1). The Secretary of State or the Welsh Ministers may in a particular case set later time limits than those mentioned in reg 5: reg 5(6).
- 19 Ibid reg 5(2). See also note 18 supra.
- 20 Ibid reg 5(3).
- 21 Ibid reg 5(4).
- 22 Ibid reg 6(1).
- 23 Ibid reg 6(2)(a). In a case where the Secretary of State or the Welsh Ministers is or are informed under reg 4(2) that the Agency has consulted any authority, he or they must serve a copy of the notice on every authority which was consulted: reg 6(2)(b).
- 24 Ibid reg 6(3).
- 25 Ibid reg 6(4).
- 26 Ibid reg 6(5).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(ii) Control of Keeping, Use, Disposal and Accumulation/F. APPEALS/1473. Determination of appeal.

1473. Determination of appeal.

On determining an appeal from a decision of the Environment Agency ('the Agency')¹ relating to a registration, an authorisation or an enforcement or prohibition notice², the Secretary of State or, in relation to Wales, the Welsh Ministers³ may:

- 3954 (1) affirm the decision;
- 3955 (2) where that decision was the refusal of an application, direct the Agency to grant the application;
- 3956 (3) where that decision involved limitations or conditions attached to a registration, quash those limitations or conditions wholly or in part; or
- 3957 (4) where that decision was a cancellation or revocation of a registration, quash the decision⁴.

Where the Secretary of State does, or the Welsh Ministers do, any of the things mentioned in heads (2) to (4) above, he or they may give directions to the Agency as to the limitations and conditions to be attached to the registration or authorisation in question⁵. On the determination of an appeal in respect of an enforcement notice or a prohibition notice⁶, the Secretary of State or the Welsh Ministers may either cancel or affirm the notice and, if he affirms or they affirm it, may do so either in its original form or with such modifications as he or they may think fit⁷.

The Secretary of State or the Welsh Ministers must notify the appellant in writing of his or their determination of the appeal and of his or their reasons for it and, if a hearing is held⁸, must at the same time provide the appellant with a copy of the report of the person who conducted the hearing⁹. He or they must at the same time send a copy of those documents to the Agency and to any authority to which he or they was or were required¹⁰ to give notice of the appeal¹¹.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 I.e. an appeal under the Radioactive Substances Act 1993 s 26 (as amended): see PARAS 1471-1472 ante.

3 As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante.

4 Radioactive Substances Act 1993 s 27(4)(a)-(d) (amended by the Environment Act 1995 s 120, Sch 22 para 200).

5 Radioactive Substances Act 1993 s 27(4) (as amended: see note 4 supra).

6 I.e. an appeal under *ibid* s 26(2): see PARA 1471 ante.

7 *Ibid* s 27(5).

8 As to the procedure at a hearing see PARA 1472 ante.

9 Radioactive Substances (Appeals) Regulations 1990, SI 1990/2504, reg 7(1).

10 I.e. under *ibid* reg 4(3): see PARA 1472 ante.

11 Ibid reg 7(2).

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(iii) Safety Regulations; in general/1474. Safety regulations generally.

(iii) Safety Regulations; in general

1474. Safety regulations generally.

The Secretary of State¹ is empowered to make health and safety regulations² prohibiting or imposing requirements in connection with the emission of any ionising or other radiations and imposing requirements with respect to the monitoring of any such emission³. In the exercise of this power, the Secretary of State has made the Ionising Radiations Regulations 1999⁴ and the Radiation (Emergency Preparedness and Public Information) Regulations 2001⁵, which are discussed elsewhere in this work⁶, and the Nuclear Industries Security Regulations 2003⁷, which are discussed below⁸.

Euratom Council Directives lay down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation⁹ and measures on health protection of individuals against the dangers of ionising radiation in relation to medical exposure¹⁰. These Directives are implemented in the United Kingdom by the Justification of Practices Involving Ionising Radiation Regulations 2004¹¹ and the Ionising Radiation (Medical Exposure) Regulations 2000¹². In addition, the Health and Safety at Work Act 1974¹³, the Food Safety Act 1990¹⁴, the Environment Act 1995¹⁵, the Food and Environment Protection Act 1985¹⁶, the Radioactive Substances Act 1993¹⁷, the Ionising Radiations Regulations 1999, the Radiation (Emergency Preparedness and Public Information) Regulations 2001, the Nuclear Industries Security Regulations 2003, and a number of other regulations contain provisions implementing the first-mentioned Directive¹⁸.

The medical uses of radioactive materials are also controlled by orders and regulations either made under, applying or disapplying provisions of the Medicines Act 1968¹⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. regulations under the Health and Safety at Work etc Act 1974 s 15 (as amended): see s 15(1) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424.

3 Ibid s 15(2), Sch 3 para 13(2), (3).

4 I.e. the Ionising Radiations Regulations 1999, SI 1999/3232: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 647 et seq.

5 I.e. the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 668-673.

6 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 668-673 et seq.

7 I.e. the Nuclear Industries Security Regulations 2003, SI 2003/403: see PARA 1545 et seq post.

8 See PARA 1545 et seq post. The Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056 (see PARA 1487 et seq post); the Ionising Radiations Regulations 1985, SI 1985/1333 (revoked except in relation to any employer subject to reg 26 (special hazard assessments and reports)); the Nuclear Installations Act 1965 (Repeal and Modifications) Regulations 1990, SI 1990/1918 (see PARA 1487 et seq post); and the Public Information for Radiation Emergencies Regulations 1992, SI 1992/2997 (revoked, except in so far as reg 3 applies in relation to the transport of radioactive substances by road, inland waterway, sea or air, by SI 2001/2975) are also made under this power.

- 9 See Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1).
- 10 See Euratom Council Directive 97/43 (OJ L180, 9.7.97, p 22).
- 11 In the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769: see HEALTH AND SAFETY AT WORK.
- 12 In the Ionising Radiation (Medical Exposure) Regulations 2000, SI 2000/1059 (as amended). Those regulations were made under the European Communities Act 1972 s 2 but are expressed to be enforceable as if they were health and safety regulations made under the Health and Safety at Work etc Act 1974: see the Ionising Radiation (Medical Exposure) Regulations 2000, SI 2000/1059, reg 12. See further MEDICINAL PRODUCTS AND DRUGS.
- 13 See generally HEALTH AND SAFETY AT WORK.
- 14 See generally FOOD.
- 15 See generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.
- 16 See generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; FOOD.
- 17 See PARA 1439 et seq ante.
- 18 See eg the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892; and PARA 1614 et seq post; the Air Navigation (Cosmic Radiation) (Keeping of Records) Regulations 2000/1380; and AIR LAW vol 2 (2008) PARA 485; and the Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001, SI 2001/2005; and PARA 1450 ante.
- 19 See the Medicines (Radioactive Substances) Order 1978, SI 1978/1004; the Medicines (Administration of Radioactive Substances) Regulations 1978, SI 1978/1006; the Medicines Act 1968 (Application to Radiopharmaceutical-associated Products) Regulations 1992, SI 1992/605; and the Medicines (Exemption from Licensing) (Radiopharmaceuticals) Order 1992, SI 1992/2844. See further MEDICINAL PRODUCTS AND DRUGS.

UPDATE

1468-1474 Powers to give directions to the Environment Agency in relation to radioactive materials and waste ... Safety regulations generally

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1474 Safety regulations generally

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(iii) Safety Regulations; in general/1475. Regulations relating to road transport.

1475. Regulations relating to road transport.

Under the Radioactive Material (Road Transport) Act 1991 the Secretary of State¹ may make such regulations as appear to him to be necessary or expedient (1) to prevent any injury to health, or any damage to property or to the environment, being caused by, or by any incident arising out of, the transport of radioactive material²; and (2) to give effect to such international regulations for the safe transport of radioactive material as may from time to time be published by the International Atomic Energy Agency³. The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007⁴ are partly made in the exercise of this power. The carriage of radioactive material by road is also controlled by the relevant provisions of the Nuclear Industries Security Regulations 2003⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 'Transport' for these purposes means transport by road: Radioactive Material (Road Transport) Act 1991 s 1(2). 'Radioactive material' means any material having a specific activity in excess of 70 kilobecquerels per kilogram or such lesser specific activity as may be specified in an order made by the Secretary of State: s 1(1).

3 Ibid s 2(1). As to the International Atomic Energy Agency see PARA 1354 ante. As to the provision that may be made by such regulations see s 2(2), (3) (prospectively amended by the Road Safety Act 2006 s 57(1)-(3), as from a day to be appointed under s 61(1); at the date at which this title states the law, no such day had been appointed). See further ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1661 et seq.

4 Ie the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573. With certain exceptions, radioactive material falls within the definition of 'Class 7 goods' for the purposes of those regulations: see reg 2(1). See particularly reg 57.

5 See the Nuclear Industries Security Regulations 2003, SI 2003/403, regs 13-21; and PARAS 1552-1557 post.

UPDATE

1475 Regulations relating to road transport

NOTE 4--SI 2007/1573 replaced: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/(iii) Safety Regulations; in general/1476. Carriage of radioactive substances by rail, sea and air.

1476. Carriage of radioactive substances by rail, sea and air.

The carriage of radioactive material by rail is controlled by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007¹, and by the relevant provisions of the Nuclear Industries Security Regulations 2003². The railway is not liable under the Convention concerning International Carriage by Rail³ for loss or damage caused by a nuclear incident when, pursuant to the laws and prescriptions of a state governing liability in the field of nuclear energy⁴, the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage⁵. The Convention also incorporates rules concerning the international carriage of dangerous goods by rail⁶. The Convention has the force of law in the United Kingdom, and judicial notice is to be taken of it⁷.

The carriage of radioactive material by sea is controlled by the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997⁸, the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000⁹, the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995¹⁰ and the relevant provisions of the Nuclear Industries Security Regulations 2003¹¹.

The transfrontier shipment of radioactive waste is discussed in detail below¹².

The carriage of radioactive material by air is controlled by the Air Navigation (Dangerous Goods) Regulations 2002¹³. The provisions of the Nuclear Industries Security Regulations 2003 relating to carriers¹⁴ do not apply to transport by air¹⁵.

1 Ie the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573. With certain exceptions, radioactive material falls within the definition of 'Class 7 goods' for the purposes of those regulations: see reg 2(1). See particularly reg 57.

2 See the Nuclear Industries Security Regulations 2003, SI 2003/403, regs 13-21; and PARAS 1552-1557 post.

3 The Convention concerning International Carriage by Rail (commonly called 'COTIF') was signed at Berne in 1980 and first given the force of law in the United Kingdom by the International Transport Conventions Act 1983: see CARRIAGE AND CARRIERS vol 7 (2008) PARA 683 et seq; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 27. The COTIF Convention was presented to Parliament in 1982 in Cmnd 8535. A new version of the COTIF Convention was agreed in 1999 (by the signature of the Protocol of Vilnius on 3 June 1999 (Cm 4863) (2000)), and is now implemented into United Kingdom law by the Railways (Convention on International Carriage by Rail) Regulations 2005, SI 2005/2092, made under the Railways and Transport Safety Act 2003 s 103, Sch 6.

4 Ie in the United Kingdom, the Nuclear Installations Act 1965: see PARA 1487 et seq post.

5 COTIF Convention Appendix A art 50: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 27.

6 COTIF Convention Appendix C contains uniform rules concerning the contract for the international carriage of goods by rail (commonly called 'RID').

7 See the Railways (Convention on International Carriage by Rail) Regulations 2005, SI 2005/2092, reg 3(1); and CARRIAGE AND CARRIERS vol 7 (2008) PARA 683; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 27.

8 le the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 660.

9 le the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc) (INF Code) Regulations 2000, SI 2000/3216: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq.

10 le the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, SI 1995/2498: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 657.

11 See note 2 supra. See also the Nuclear Industries Security Regulations 2003, SI 2003/403, regs 27, 28 (application of those regulations to transport by ship or hovercraft); and PARA 1552 note 1 post.

12 See the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031; and PARA 1477 et seq post.

13 le the Air Navigation (Dangerous Goods) Regulations 2002, SI 2002/2786 (as amended): see CARRIAGE AND CARRIERS vol 7 (2008) PARA 193 et seq.

14 See note 2 supra.

15 See PARA 1552 note 1 post.

UPDATE

1476 Carriage of radioactive substances by rail, sea and air

TEXT AND NOTE 1--SI 2007/1573 replaced: Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/A. IN GENERAL/1477. Control of radioactive waste shipments.

(iv) Transfrontier Shipment of Radioactive Waste

A. IN GENERAL

1477. Control of radioactive waste shipments.

Shipments of radioactive waste¹ from, to or in transit through the United Kingdom² are subject to a system of authorisation and approval under regulations³ which implement in the United Kingdom a Euratom Council Directive⁴ on the supervision and control of shipments of radioactive waste between member states and into and out of the European Atomic Energy Community ('Euratom')⁵.

The regulations apply to shipments of radioactive waste between member states and into and out of the Community, with certain exceptions⁶. Shipments falling within Part III of the Transfrontier Shipment of Radioactive Waste Regulations 1993⁷ are prohibited in the United Kingdom unless carried out under, and in accordance with the conditions and requirements contained in, an authorisation granted by the competent authorities of the member state entitled to grant such authorisation⁸ and an approval given by the appropriate Agency⁹. Shipments falling within Part II of those regulations¹⁰ are prohibited in the United Kingdom unless carried out under, and in accordance with the conditions and requirements contained in, an authorisation granted by that Agency¹¹. The shipments for which authorisation by the Agency suffices are:

- 3958 (1) shipments of radioactive waste from a place of origin in the United Kingdom to a place of destination in another country, whether another member state or a third country¹²;
- 3959 (2) shipments whereby such waste is to be imported into the Community from a third country and the country of destination is the United Kingdom¹³; and
- 3960 (3) shipments whereby such waste is to enter the Community from a third country and the country of destination is not a member state and the United Kingdom is the member state in whose territory the waste is first to enter the Community¹⁴.

Transport operations necessary for any shipment to which the regulations apply must comply with Community and national provisions and with international agreements on the transport of radioactive material¹⁵.

The regulations bind the Crown¹⁶ save that no contravention by the Crown of any provision of the regulations is to make the Crown criminally liable, but the High Court may, on the application of the Agency, declare unlawful any act or omission of the Crown which constitutes such a contravention¹⁷. The regulations apply to persons in the public service of the Crown as they apply to other persons¹⁸. The requirements of the regulations do not have effect to the extent that in any particular case they would, in the opinion of the Secretary of State for Defence, be against the interests of national security¹⁹.

1 'Shipment' means transport operations from the place of origin to the place of destination, including loading and unloading, of radioactive waste: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1). 'Radioactive waste' for this purpose means any material which contains or is contaminated by radionuclides and for which no use is foreseen: *ibid* reg 2(1).

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 *Ie* the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031: see the text and notes 4-17 *infra*; and PARA 1479 *et seq post*.

4 *Ie* Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) (prospectively repealed with effect from 25 December 2008 and replaced by Euratom Council Directive 2006/117 (OJ L337, 5.12.2006, p 21) on the supervision and control of shipments of radioactive waste and spent fuel: see art 23(1)). The latter Directive must be transposed into United Kingdom law by 24 December 2008: see art 22(1). As to the European Atomic Energy Community ('Euratom') see PARAS 1337-1339 ante. See also Euratom Council Regulation 1493/93 (OJ L148, 19.6.93, p 1) on shipments of radioactive substances between member states.

5 See the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1). The regulations were made by the Secretary of State in the exercise of powers conferred on him as the designated minister for the purposes of the European Communities Act 1972 s 2(2), and came into force on 1 January 1994: see reg 1.

6 The regulations do not apply to shipments where the quantities and concentration of the radioactive waste do not exceed the levels laid down in EC Council Directive 80/836 (OJ L246, 17.9.80, p 1) art 4(a), (b) (repealed and replaced by Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation: see now art 4(3)), or to shipments where a sealed source (other than one containing fissile material) is returned by its user to the supplier of the source in another country: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 3(1).

7 *Ie* shipments to which *ibid* Pt III (regs 10-11) applies.

8 *Ibid* reg 10(a). 'Authorisation' for these purposes, and for the purposes of regs 13(2)(b)(iii) and 15(1) (see PARAS 1484-1485 *post*), means authorisation for a shipment granted by a member state under Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) arts 7 or 12(2) (prospectively repealed: see note 4 *supra*), or under art 7 (prospectively repealed) as applied by any other provision of that Directive: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1).

9 See *ibid* reg 10(b). The statutory wording is 'given by the chief inspector', and 'chief inspector' is defined as the chief inspector appointed under the Radioactive Substances Act 1993 in the case of a shipment taking place within England and Wales, Scotland or Northern Ireland and, in the case of a shipment taking place in two or more of the territories of England and Wales, Scotland or Northern Ireland, the proper authority determined in accordance with reg 2(2) (see reg 2(1)); but the functions formerly exercised under that Act by the chief inspector are now exercised in relation to England and Wales by the Environment Agency as the 'appropriate Agency': see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 *et seq*. In relation to Scotland, the appropriate Agency is the Scottish Environment Protection Agency: see the Radioactive Substances Act 1993 s 47(1) (amended for these purposes by the Environment Act 1995 s 120, Sch 22 paras 227(2), (7)). There is still a chief inspector for Northern Ireland, appointed under the Radioactive Substances Act 1993 s 4(7) (otherwise repealed). Where a shipment takes place in more than one of the territories of England and Wales, Scotland or Northern Ireland, the proper authority is (1) in the case of a shipment to a place of destination in the United Kingdom, the appropriate Agency or the chief inspector for Northern Ireland; (2) in the case of a shipment from a place of origin in the United Kingdom, the appropriate Agency or the chief inspector for the territory in which the place of origin is situated; and (3) in the case of a shipment where the United Kingdom is a country of transit, the appropriate Agency or the chief inspector for the territory in which the point of entry into the United Kingdom is situated: see the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(2). 'Place of origin' and 'place of destination' mean places situated in two different countries, either member states or third countries, and these countries are respectively called 'the country of origin' and 'the country of destination'; and 'country of transit' means a country, whether a member state or a third country, other than the country of origin and the country of destination, through which a shipment of radioactive waste is, or is to be, transported: reg 2(1). 'Third country' means a country which is not a member of Euratom: reg 2(1).

10 *Ie* shipments to which *ibid* Pt II (regs 5-9) applies.

11 *Ibid* reg 6. As to authorisation see reg 7(5); and PARA 1480 *post*.

12 *Ibid* reg 5(a).

- 13 Ibid reg 5(b).
- 14 Ibid reg 5(c).
- 15 Ibid reg 3(2).
- 16 Ibid reg 4(1). As to the application of this provision to Northern Ireland see reg 4(4).
- 17 Ibid reg 4(2).
- 18 Ibid reg 4(3).
- 19 Ibid reg 4(5).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

1477 Control of radioactive waste shipments

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/A. IN GENERAL/1478. Directions relating to the transfrontier shipment of nuclear waste.

1478. Directions relating to the transfrontier shipment of nuclear waste.

The Secretary of State¹ may, if he thinks fit in relation to any application for either an authorisation² or an approval³ in relation to the transfrontier shipment of radioactive waste⁴, give to the appropriate Agency⁵ directions as to (1) whether the application is to be granted or refused⁶; or (2) the conditions and requirements to which the authorisation or approval, if granted, is to be subject⁷, and it is the duty of the Agency to give effect to the directions⁸. Such a direction is of no effect in so far as it requires the Agency to determine an application in a manner which is either contrary to, or not within the powers conferred on it by, any of the provisions of the relevant regulations⁹ apart from that conferring the power to give directions¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie an authorisation under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, Pt II (regs 5-9): see PARA 1477 ante, PARA 1479 et seq post.

3 Ie an approval under ibid reg 11: see PARA 1483 post.

4 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

5 See PARA 1477 note 9 ante.

6 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 16(1)(a).

7 Ibid reg 16(1)(b).

8 Ibid reg 16(1).

9 Ie the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031: see PARA 1477 ante, PARA 1479 et seq post.

10 Ibid reg 16(2).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/B. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN THE UNITED KINGDOM/1479. Authorisation for transfrontier shipments of radioactive waste.

B. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN THE UNITED KINGDOM

1479. Authorisation for transfrontier shipments of radioactive waste.

An application for authorisation under Part II of the Transfrontier Shipment of Radioactive Waste Regulations 1993¹ for a transfrontier shipment² of radioactive waste³ must be submitted, using the appropriate standard document⁴, to the appropriate Agency⁵:

- 3961 (1) in the case of a shipment from a place of origin⁶ in the United Kingdom⁷ to a place of destination⁸ in another country⁹, by the holder¹⁰ who intends to carry out the shipment or to arrange for it to be carried out¹¹;
- 3962 (2) in the case of a shipment whereby such waste is to be imported into the European Atomic Energy Community ('Euratom')¹² from a country which is not a member of the Community and the country of destination is the United Kingdom¹³, by the intended consignee¹⁴; and
- 3963 (3) in the case of a shipment whereby such waste is to enter the Community from a third country¹⁵, the country of destination is not a member state, and the United Kingdom is the member state in whose territory the waste is first to enter the Community¹⁶, by the person who has the responsibility for managing the shipment within the United Kingdom¹⁷.

An application may be submitted in respect of more than one shipment if:

- 3964 (a) the radioactive waste to which it relates essentially has the same physical, chemical and radioactive characteristics;
- 3965 (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities; and
- 3966 (c) in the case of shipments which involve third countries, the transit is via the same frontier post of entry to or exit from the Community, and via the same frontier post of the third country or countries concerned (unless otherwise agreed between the competent authorities concerned)¹⁸.

1. I.e. under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, Pt II (regs 5-9). For these purposes, 'authorisation' means an authorisation under reg 7(5) (see PARA 1480 post): reg 2(1).

2. For the meaning of 'shipment' see PARA 1477 note 1 ante.

3. For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

4. 'Appropriate standard document' means the standard document prepared for that purpose in accordance with the procedure laid down in Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 19 (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1).

5. See PARA 1477 note 9 ante.

- 6 For the meaning of 'place of origin' see PARA 1477 note 9 ante.
- 7 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 8 For the meaning of 'place of destination' see PARA 1477 note 9 ante.
- 9 Ie a shipment to which the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1003/3031, Pt II (regs 5-9) applies by virtue of reg 5(a): see PARA 1477 ante.
- 10 'Holder' means any person who, before carrying out a shipment, has the legal responsibility for the radioactive waste to be shipped and intends to carry out or arrange for shipment to a consignee: ibid reg 2(1). 'Consignee' means a person to whom radioactive waste is shipped: reg 2(1).
- 11 Ibid reg 7(1)(a).
- 12 As to the European Atomic Energy Community ('Euratom') see PARAS 1337-1339 ante.
- 13 Ie a shipment to which the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, Pt II applies by virtue of reg 5(b): see PARA 1477 ante.
- 14 Ibid reg 7(1)(b).
- 15 For the meaning of 'third country' see PARA 1477 note 9 ante.
- 16 Ie a shipment to which the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, Pt II applies by virtue of reg 5(c): see PARA 1477 ante.
- 17 Ibid reg 7(1)(c).
- 18 Ibid reg 7(2).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/B. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN THE UNITED KINGDOM/1480. Granting of authorisation by the appropriate Agency.

1480. Granting of authorisation by the appropriate Agency.

On receipt of an application for authorisation¹ the appropriate Agency² must send the application for approval to the competent authorities of each country, other than the United Kingdom³, which, in relation to the proposed shipment⁴, is either the country of origin⁵ or destination⁶, or a country of transit⁷, using the appropriate standard document⁸. The sending of the application for approval does not affect the subsequent decision of the Agency whether to grant the authorisation⁹.

When the application is for authorisation for a shipment from the United Kingdom to another country¹⁰ and the place of origin is within a nuclear site¹¹, or for a shipment from a country outside the European Atomic Energy Community and the place of destination is within a nuclear site in the United Kingdom¹², the appropriate Agency must, upon receipt of the application, consult the Health and Safety Executive¹³ by sending to the Executive a copy of the application; and before granting an authorisation it must consider any representations made to it about the application by the Executive during such period as may be specified by it when copying the application to the Executive or such other period as the Agency and the Executive may agree in writing¹⁴.

If all the approvals necessary for the shipment in question have been granted¹⁵ the Agency may grant an authorisation to ship the radioactive waste¹⁶ to the person who made the application and, using the appropriate standard document, the Agency must inform the competent authorities of each country which is either the country of origin or destination, or a country of transit¹⁷.

An authorisation is valid for such period not exceeding three years as is specified in it¹⁸. The granting of an authorisation does not in any way affect the responsibility of the holder¹⁹, the transporter²⁰, the consignee²¹ or any other person involved in the shipment²².

1 I.e. an application made under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(1): see PARA 1479 ante. For the meaning of 'authorisation' for these purposes see PARA 1479 note 1 ante.

2 See PARA 1477 note 9 ante.

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 For the meaning of 'shipment' see PARA 1477 note 1 ante.

5 For the meaning of 'country of origin' see PARA 1477 note 9 ante.

6 For the meaning of 'country of destination' see PARA 1477 note 9 ante.

7 For the meaning of 'country of transit' see PARA 1477 note 9 ante.

8 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(3). For the meaning of 'appropriate standard document' see PARA 1479 note 4 ante.

9 Ibid reg 7(3).

10 le an application to which *ibid* Pt II (regs 5-9) applies by virtue of reg 5(a): see PARA 1477 ante.

11 'Nuclear site' means (1) any site in respect of which a nuclear site licence is for the time being in force; or (2) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not come to an end: *ibid* reg 7(10). 'Nuclear site licence', 'licensee' and 'period of responsibility' have the same meanings as in the Nuclear Installations Act 1965 (see PARAS 1487 note 1, 1490 note 11, 1494 note 7 respectively post): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(10).

12 le an application to which *ibid* Pt II applies by virtue of reg 5(b): see PARA 1477 ante.

13 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

14 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(4).

15 For these purposes, and for the purposes of *ibid* regs 13(2)(b)(ii) and 15(1) (see PARAS 1484-1485 post), 'approval' means an approval under Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 6(1) (prospectively repealed and replaced: see PARA 1477 note 4 ante), or under art 6(1) as applied by any other provision of that Directive, and 'necessary', in relation to such an approval, means necessary by virtue of any provision of that Directive: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1). Such an approval is deemed to have been granted where no reply has been received from the competent authorities of a country, to whom an application for approval has been sent, prior to the expiry of the period of two months from their having received it or, where they have requested a further period of not more than one month for making their position known, prior to the expiry of that further period, unless they have informed the European Commission in accordance Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 17 (prospectively repealed and replaced) that they do not accept this automatic approval procedure in general: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, regs 2(1), 7(6).

16 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

17 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(5). Where the Agency grants an authorisation it must use the appropriate standard document and must attach to the document any additional requirements which apply in relation to the shipment: reg 7(7).

18 *Ibid* reg 7(8).

19 For the meaning of 'holder' see PARA 1479 note 10 ante.

20 For these purposes, 'transporter' has the meaning it has in Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 2(1).

21 For the meaning of 'consignee' see PARA 1479 note 10 ante.

22 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(9).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/B. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN THE UNITED KINGDOM/1481. Restrictions on shipments to certain destinations and requirements as to taking back certain shipments.

1481. Restrictions on shipments to certain destinations and requirements as to taking back certain shipments.

The appropriate Agency¹ must not grant an authorisation² for a shipment³ of radioactive waste⁴ either (1) to a latitude south of latitude 60° south⁵; or (2) to a state party to the Lomé Convention⁶ which is not a member of the European Atomic Energy Community ('Euratom')⁷; or (3) to a third country⁸ which, in the Agency's opinion, in accordance with the relevant criteria⁹, does not have the technical, legal or administrative resources to manage the radioactive waste safely¹⁰.

Where the Agency has granted an authorisation for a shipment from a place of origin¹¹ in the United Kingdom¹² to another country¹³, the holder¹⁴ is obliged to take the radioactive waste back if either (a) the shipment cannot be completed¹⁵; or (b) the conditions and requirements contained in the authorisation for the shipment are not complied with¹⁶.

The Agency may not grant an authorisation for radioactive waste to be imported into the Community where the United Kingdom is the country of destination¹⁷ unless it is satisfied that the consignee¹⁸ of the waste has negotiated a clause with the holder of the waste established in the country of origin, obliging that holder to take back the waste where a shipment cannot be completed¹⁹.

1 See PARA 1477 note 9 ante.

2 For the meaning of 'authorisation' for these purposes see PARA 1479 note 1 ante.

3 For the meaning of 'shipment' see PARA 1477 note 1 ante.

4 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

5 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 8(1)(a)(i).

6 I.e. the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989 (The Council, Mar-Apr 1990): Radioactive Substances Act 1993, SI 1993/3031, reg 8(1)(a)(ii).

7 Ibid reg 8(1)(a)(ii).

8 For the meaning of 'third country' see PARA 1477 note 9 ante.

9 I.e. the criteria referred to in Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 20 (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 8(1)(b).

10 Ibid reg 8(1)(b).

11 For the meaning of 'place of origin' see PARA 1477 note 9 ante.

12 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

13 I.e. an authorisation for a shipment to which the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, Pt II (regs 5-9) applies by virtue of reg 5(a): see PARA 1477 ante.

- 14 For the meaning of 'holder' see PARA 1479 note 10 ante.
- 15 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 8(2)(a).
- 16 Ibid reg 8(2)(b).
- 17 Is an authorisation for a shipment to which ibid Pt II applies by virtue of reg 5(b): see PARA 1477 ante.
- 18 For the meaning of 'the consignee' see PARA 1479 note 10 ante.
- 19 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 8(3).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/B. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN THE UNITED KINGDOM/1482. Receipt of shipment.

1482. Receipt of shipment.

Where, in the case of a shipment¹ from a place of origin² in the United Kingdom³ in respect of which the country of destination⁴ is a member state of the European Atomic Energy Community ('Euratom')⁵, the appropriate Agency⁶ receives from the competent authorities of the country of destination a copy of the acknowledgment of receipt of the shipment⁷, he must send a copy of that acknowledgment to the person who submitted the application⁸ for authorisation for that shipment⁹.

Where the country of destination of a shipment from a place of origin in the United Kingdom is a third country¹⁰, the person who submitted the application for authorisation for that shipment must, within two weeks of the date of its arrival, notify the Agency that the radioactive waste¹¹ has reached its destination in the third country, and must indicate the last customs post in the Community through which the shipment passed¹². The notification must be substantiated by a declaration or certification of the consignee¹³ of the waste stating that it has reached its proper destination and indicating the customs post of entry into the country of destination¹⁴.

1 For the meaning of 'shipment' see PARA 1477 note 1 ante. The Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 9(1), (2) (see the text and notes 2-13 infra) applies to shipments to which Pt II (regs 5-9) applies by virtue of reg 5(a) (see PARA 1477 ante): reg 9(1), (2).

2 For the meaning of 'place of origin' see PARA 1477 note 8 ante.

3 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 For the meaning of 'place of destination' see PARA 1477 note 8 ante.

5 As to Euratom see PARAS 1337-1339 ante.

6 See PARA 1477 note 8 ante.

7 Ie sent in accordance with Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 9(2) (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 9(1).

8 Ie the application for authorisation submitted under ibid reg 7(1): see PARA 1479 ante.

9 Ibid reg 9(1).

10 For the meaning of 'third country' see PARA 1477 note 8 ante.

11 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

12 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 9(2).

13 For the meaning of 'consignee' see PARA 1479 note 10 ante.

14 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 9(3).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/C. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN ANOTHER MEMBER STATE/1483. Approval for shipments of radioactive waste.

C. SHIPMENTS FOR WHICH AUTHORISATION IS GRANTED IN ANOTHER MEMBER STATE

1483. Approval for shipments of radioactive waste.

Where in relation to a shipment¹ the United Kingdom² is the country of destination³ or the country of transit⁴, the appropriate Agency⁵ must, using the appropriate standard document⁶, not later than two months after receipt of a duly completed application for approval from the competent authorities of the country responsible⁷ for sending the same, notify those authorities of its approval of the shipment, or of any conditions which the Agency requires to be attached to the approval, or of its refusal to grant approval⁸.

Any conditions required by the Agency to be attached to the approval must not be more stringent than those laid down for similar shipments wholly within the United Kingdom and must comply with existing international agreements⁹. The Agency must give reasons¹⁰ for attaching conditions to an approval, or for refusing an approval¹¹.

The Agency may request a further period of not more than one month, in addition to the period of two months referred to above, to make its position known, and if it so requests, the time for giving notification is extended by that further period¹². Where the Agency fails to reply within the set period to the competent authorities of a country who have sent it an application for approval it is deemed¹³ to have notified those authorities that it refuses to grant approval for the shipment in question¹⁴.

1 For the meaning of 'shipment' see PARA 1477 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'country of destination' see PARA 1477 note 9 ante.

4 For the meaning of 'country of transit' see PARA 1477 note 9 ante.

5 See PARA 1477 note 9 ante.

6 For the meaning of 'the appropriate standard document' see PARA 1479 note 4 ante.

7 Ie responsible under Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) arts 4 or 12(1) (prospectively repealed and replaced: see PARA 1477 note 4 ante), or under art 4 as applied by any other provision of that Directive: Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, regs 2(1), 11(1).

8 Ibid reg 11(1).

9 Ibid reg 11(2).

10 Ie in accordance with Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) art 3 (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, regs 2(1), 11(3).

11 Ibid reg 11(3).

12 Ibid reg 11(4).

13 le deemed for the purposes of ibid reg 17 (appeals): see PARA 1486 post.

14 Ibid reg 11(5).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/D. RESHIPMENT OPERATIONS/1484. Reshipment operations.

D. RESHIPMENT OPERATIONS

1484. Reshipment operations.

The regulations governing transfrontier shipments of radioactive waste¹ do not affect the right of a member state of the European Atomic Energy Community ('Euratom')², or an undertaking within a member state, to which radioactive waste³ has been exported for processing, to return the waste after treatment to its country of origin⁴. Similarly, when irradiated nuclear fuel has been exported to a member state or to an undertaking within it for reprocessing, the regulations do not affect the right of the member state or undertaking to return to its country of origin waste or other products of the reprocessing operation⁵.

Where radioactive waste was to be exported for reprocessing to a member state, or to an undertaking in a member state, and transit of the initial shipment⁶ was approved⁷ by the appropriate Agency⁸, it may not refuse to approve reshipment where that reshipment concerns the same material after treatment or reprocessing if all relevant legislation is respected⁹. The Agency is also not permitted to refuse approval for reshipment of radioactive waste to the holder¹⁰ of the waste in the member state of dispatch where the reshipment is undertaken on the same conditions, and with the same specifications, as the initial shipment, and:

- 3967 (1) the country of dispatch in relation to the shipment is a member state; and
- 3968 (2) either the shipment cannot be completed or the conditions and requirements contained in the authorisation¹¹ and necessary approvals¹² for the shipment are not complied with; and
- 3969 (3) transit of the initial shipment was approved¹³.

Likewise, approval may not be refused for reshipment of radioactive waste to the holder of the waste established in a third country¹⁴ where the reshipment is undertaken on the same conditions, and with the same specifications, as the initial shipment, and (a) a shipment from a third country to a country of destination¹⁵ which is a member state cannot be completed; and (b) transit of the initial shipment was approved¹⁶.

Where, in relation to a shipment, the holder of the radioactive waste becomes obliged to take back the waste¹⁷, the Agency¹⁸ must ensure that the radioactive waste in question is taken back by the holder¹⁹. Where a person has failed to comply with any obligation of his to take back radioactive waste, the Agency may take proceedings in the High Court for the purpose of securing compliance with the obligation²⁰.

1 le the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031: see PARA 1477 et seq ante, PARAS 1485-1486 post.

2 As to Euratom see PARAS 1337-1339 ante.

3 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

4 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 12(1).

- 5 Ibid reg 12(2).
- 6 For the meaning of 'shipment' see PARA 1477 note 1 ante.
- 7 Is approved under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 11: see PARA 1483 ante.
- 8 See PARA 1477 note 9 ante.
- 9 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 13(1).
- 10 For the meaning of 'holder' see PARA 1479 note 10 ante.
- 11 For the meaning of 'authorisation' for these purposes see PARA 1477 note 7 ante.
- 12 For the meaning of 'approval' and 'necessary' for these purposes see PARA 1480 note 15 ante.
- 13 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 13(2).
- 14 For the meaning of 'third country' see PARA 1477 note 9 ante.
- 15 For the meaning of 'country of destination' see PARA 1477 note 9 ante.
- 16 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 13(3).
- 17 Is obliged under ibid reg 8(2): see PARA 1481 ante.
- 18 Is the Agency which granted authorisation to the shipment under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 7(5) (see PARA 1480 ante): see reg 14(3).
- 19 Ibid reg 14(1).
- 20 Ibid reg 14(2).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(5) CONTROL IN RELATION TO RADIOACTIVE MATERIALS AND WASTE/ (iv) Transfrontier Shipment of Radioactive Waste/E. DOCUMENTS AND RECEIPTS/1485. Documents and receipts.

E. DOCUMENTS AND RECEIPTS

1485. Documents and receipts.

No person may carry out a transfrontier shipment of radioactive waste¹ within the United Kingdom² unless it is accompanied by the application made³ for authorisation⁴, the necessary approvals⁵ for the shipment and the authorisation or, where a shipment is made by rail, those documents are available to the appropriate Agency⁶. Where in relation to such a shipment the United Kingdom is the country of destination⁷, the consignee⁸ must within 15 days of receipt of the radioactive waste send the Agency an acknowledgment of receipt using the appropriate standard document⁹. Where the Agency receives such an acknowledgment of receipt it must send copies of it to the competent authorities of the other countries involved in the operation¹⁰.

1 Ie a shipment to which the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, apply: see PARA 1477 et seq ante. For the meaning of 'shipment' and 'radioactive waste' see PARA 1477 note 1 ante.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 Ie under Euratom Council Directive 92/3 (OJ L35, 12.2.92, p 24) (prospectively repealed and replaced: see PARA 1477 note 4 ante): Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 15(1).

4 For the meaning of 'authorisation' for these purposes see PARA 1477 note 7 ante.

5 For the meaning of 'approval' and 'necessary' for these purposes see PARA 1480 note 15 ante.

6 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 15(1). The provisions of reg 15 are without prejudice to any accompanying documents required under other relevant provisions: reg 15(1). As to the appropriate Agency see PARA 1477 note 9 ante.

7 For the meaning of 'country of destination' see PARA 1477 note 9 ante.

8 For the meaning of 'consignee' see PARA 1479 note 10 ante.

9 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 15(2). For the meaning of 'the appropriate standard document' see PARA 1479 note 4 ante.

10 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 15(3).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

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F. APPEALS

1486. Appeals.

Where, except in pursuance of a direction given by the Secretary of State¹, the appropriate Agency²:

- 3970 (1) refuses to grant an authorisation for a shipment³ of radioactive waste⁴ for which application has been made⁵; or
- 3971 (2) grants such an authorisation subject to conditions or requirements⁶; or
- 3972 (3) notifies⁷ the competent authorities of a country who have sent the Agency an application for approval⁸ for a shipment of radioactive waste either that it refuses to grant approval for the shipment in question or that it requires conditions to be attached to approval⁹; or
- 3973 (4) is deemed¹⁰ to have refused to grant approval for a shipment¹¹,

the person applying for authorisation for that shipment may appeal to the Secretary of State¹².

A person wishing to appeal must give written notice of appeal to the Secretary of State within the specified period¹³ or such longer period as the Secretary of State may at any time allow¹⁴. If the appellant wishes to withdraw an appeal he must do so by notifying the Secretary of State in writing¹⁵.

The appellant must send to the Secretary of State with the notice of appeal an additional copy of the notice and two copies of the specified documents¹⁶; and the Secretary of State must send one copy of the papers received by him to the Agency¹⁷.

When an appeal is made to the Secretary of State he may refer any matter involved in the appeal to a person appointed by him for that purpose¹⁸ and may afford the appellant the opportunity of appearing before and being heard by a person appointed by him for that purpose¹⁹. In the event of the appellant choosing to take advantage of any such opportunity the Secretary of State must afford the same opportunity to the Agency²⁰. Any such hearing may, if the person hearing the appeal so decides, be held, or held to any extent, in private²¹.

On determining an appeal the Secretary of State may:

- 3974 (a) affirm the decision or deemed decision of the Agency²²;
- 3975 (b) where the appeal is against the refusal or deemed refusal of the Agency to grant an authorisation or approval, direct the chief inspector to grant it²³; and
- 3976 (c) where the appeal is against the conditions or requirements subject to which the Agency granted an authorisation or the conditions attached to a grant of an approval, quash all or any of the conditions or requirements²⁴.

Where the Secretary of State exercises any of the powers in head (b) or head (c) above, he may give directions to the Agency as to the conditions or requirements to be attached to the authorisation or refusal, and the Agency must give effect to any such directions²⁵. No direction given by the Secretary of State on determination of an appeal may, however, require the

Agency to take any action which would be either contrary to, or not within the powers conferred upon it by, any of the provisions of the relevant regulations²⁶ apart from these provisions relating to appeals²⁷.

1 Ie under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 16: see PARA 1478 post. As to the Secretary of State see PARA 601 note 1 ante.

2 See PARA 1477 note 9 ante.

3 For the meaning of 'shipment' see PARA 1477 note 1 ante.

4 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

5 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 17(1)(a). The reference in the text to an application is to an application under reg 7(1): see PARA 1479 ante.

6 Ibid reg 17(1)(b).

7 Ie under ibid reg 11(1): see PARA 1483 ante.

8 Ie approval under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 11.

9 Ibid reg 17(1)(c).

10 Ie deemed to have refused to grant approval by virtue of ibid reg 11(5): see PARA 1483 ante.

11 Ibid reg 17(1)(d).

12 Ibid reg 17(1).

13 Ie the period specified in ibid reg 17(3). In the case of an appeal made by virtue of reg 17(1)(d), the period specified is six months; and in any other case the period is two months from the date on which the person entitled to make the appeal is notified that the authorisation or, as the case may be, the approval is refused or is granted subject to conditions: reg 17(3). Where by virtue of reg 11(5) the appropriate Agency is deemed to have notified the competent authorities of a country that it refuses to grant approval for a shipment, it is deemed, for the purposes of reg 17(3), to have notified the person entitled to make the appeal of that refusal on the seventh day after the expiry of the period set for reply by reg 11: reg 17(4).

14 Ibid reg 17(2).

15 Ibid reg 17(5).

16 The specified documents are: (1) a full statement of the appellant's case; (2) any relevant application; (3) any authorisation or decision which is the subject matter of the appeal; and (4) any correspondence or other documents relevant to the appeal: ibid reg 17(6)(a)-(d).

17 Ibid reg 17(6).

18 Ibid reg 17(7)(a).

19 Ibid reg 17(7)(b).

20 Ibid reg 17(7).

21 Ibid reg 17(8).

22 Ibid reg 17(9)(a).

23 Ibid reg 17(9)(b).

24 Ibid reg 17(9)(c).

25 Ibid reg 17(9).

26 le the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031: see PARA 1477 et seq ante, PARA 1585 post.

27 Ibid reg 17(10).

UPDATE

1477-1486 Transfrontier Shipment of Radioactive Waste

Replaced. See the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

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(6) CONTROL OF NUCLEAR INSTALLATIONS

(i) Nuclear Site Licensing

1487. Nuclear site licences.

Unless a nuclear site licence¹ has been granted in respect of the site by the Health and Safety Executive, or was granted before 1 January 1975 by the Secretary of State², and is for the time being in force, no person may use any site for the purpose of installing or operating a nuclear installation³, that is to say either:

- 3977 (1) any nuclear reactor⁴, other than such a reactor comprised in a means of transport, whether by land, water or air⁵; or
- 3978 (2) any other installation of a prescribed⁶ class or description, being an installation which is designed or adapted for:
- 365
- 535. (a) the production or use of atomic energy; or
- 536. (b) the carrying out of any process preparatory or ancillary to it which involves or is capable of causing the emission of ionising radiations; or
- 537. (c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter produced or irradiated in the course of the production or use of nuclear fuel⁷.
- 366

Contravention⁸ of these provisions is an offence⁹.

Certain grants, loans and guarantees may be available for expenditure incurred in connection with the cleaning up of a site with respect to which a nuclear site licence is, or is required to be, in force or the decommissioning of any installation for whose operation a nuclear site licence is so required¹⁰.

No nuclear transfer scheme under the Energy Act 2004¹¹ may provide for the transfer of a nuclear site licence¹².

1 'Nuclear site licence' means a licence, granted by the Health and Safety Executive and for the time being in force, to use a site for the purpose of installing or operating a nuclear installation: Nuclear Installations Act 1965 ss 1(1), 26(1) (s 1(1) amended for this purpose by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1). For the meaning of 'nuclear installation' see the text and notes 3-8 infra. As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 Licences, directions, consents, approvals, notices, certificates, determinations and other instruments granted, given or issued (1) for the purposes of or under a relevant provision of the Nuclear Installations Act 1965 (ie any provision of ss 1, 3-6, 22, 24A (as added), Sch 2 (now repealed except in relation to Northern Ireland): see the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 1(3), applying the Health and Safety at Work etc Act 1974 Sch 1 (amended for these purposes by the Atomic Energy Act 1989 s 6(3)); or (2) for the purposes of or under a nuclear site licence issued under the 1965 Act, and which were in force at 1 January 1975 continue in effect as if granted, given or issued in accordance with that Act as modified by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations

1974, SI 1974/2056, or under a licence granted under the Nuclear Installations Act 1965 as so modified: Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 3(3). As to the Secretary of State see PARA 601 note 1 ante.

3 Nuclear Installations Act 1965 s 1(1) (amended for these purposes by the Nuclear Installations Act 1965 (Repeal and Modifications) Regulations 1990, SI 1990/1918). 'Nuclear installation' means a nuclear reactor or an installation such as is mentioned in the Nuclear Installations Act 1965 s 1(1)(b) (see the text and notes 6-7 infra): s 26(1). For the meaning of 'nuclear reactor' see note 4 infra.

4 'Nuclear reactor' means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons: *ibid* s 26(1). For the meaning of 'atomic energy' see PARA 1357 note 1 ante (definition applied by s 26(1)); and as to its production see PARA 1366 note 3 ante.

5 *Ibid* s 1(1)(a). As to the fees payable to the Health and Safety Executive for assessing a design proposal for a nuclear reactor see PARA 1393 ante.

6 'Prescribed' means prescribed by regulations made by the Secretary of State, which must be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament: s 26(1) (definition amended by the Transfer of Functions (Nuclear Installations) Order 1999, SI 1999/2786, art 3(1)).

7 Nuclear Installations Act 1965 ss 1(1)(b), 26(1). Regulations made by virtue of this provision may exempt, or make provision for exempting, from the requirements of s 1(1) (as amended: see notes 1, 3 supra), either unconditionally or subject to prescribed conditions, any installation which the Secretary of State is satisfied is not, or if the prescribed conditions were complied with would not be, a relevant installation: s 1(2). 'Relevant installation' means an installation to which a relevant international agreement applies; and 'relevant international agreement' means an international agreement with respect to third-party liability in the field of nuclear energy to which the United Kingdom or Her Majesty's Government therein are party, other than an agreement relating to liability in respect of nuclear reactors comprised in means of transport: s 26(1). As to the prescribed installations see PARA 1488 post. Section 1 (as amended) does not apply to the Crown: see s 9; and PARA 1495 post. The functions of the Secretary of State under s 1(1)(b) and (2) are, in so far as they are exercisable in or as regards Scotland, only exercisable after consultation with the Scottish Ministers: Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

As to the fees payable to the Health and Safety Executive for assessing a design proposal for a nuclear installation within the meaning of the Nuclear Installations Act 1965 s 1(1)(b) see PARA 1393 ante.

8 'Contravention', in relation to any enactment or to any condition imposed or direction given under it, includes a failure to comply with that enactment, condition or direction, and cognate expressions are to be construed accordingly: *ibid* s 26(1).

9 *Ibid* s 1(3) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(a), Sch 1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or to both: see the Health and Safety at Work etc Act 1974 ss 33(3)(a), (4)(a), 53(1), Sch 1 (as amended); and HEALTH AND SAFETY AT WORK. As to fines on conviction on indictment of bodies corporate see PARA 1588 post. As to the prescribed sum see PARA 613 note 20 ante.

10 See the Electricity Act 1989 s 97, Sch 12 (as amended); and PARA 1275 ante.

11 As to nuclear transfer schemes see PARA 1402 et seq ante.

12 See the Energy Act 2004 s 38(2); and PARA 1402 ante.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1487 Nuclear site licences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-7--The Nuclear Installations Act 1965 s 1(1) is subject to the Energy Act 2008 s 47 (prohibition on use of site in absence of approved funded decommissioning programme): Nuclear Installations Act 1965 s 1(4) (added by Energy Act 2008 s 65).

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1488. Prescribed installations.

The following classes of installations¹ are prescribed installations requiring a nuclear site licence²:

- 3979 (1) any installation designed or adapted for the carrying out of any process involved in the manufacture from enriched uranium³, plutonium, or any alloy, chemical compound, mixture or combination containing enriched uranium or plutonium, of fuel elements to be used in the production of atomic energy⁴;
- 3980 (2) any installation designed or adapted for the carrying out of any process (other than a process carried out solely for the purposes of chemical or isotopic assay or metallographic investigation) involved in:
 - 367 538. (a) the production, from enriched uranium or from any alloy, chemical compound, mixture or combination containing enriched uranium, of any alloy, chemical compound, mixture or combination containing enriched uranium⁵; or
 - 539. (b) the production, from plutonium or from any alloy, chemical compound, mixture or combination containing plutonium, of any alloy, chemical compound, mixture or combination containing plutonium⁶; or
 - 540. (c) the production, from any alloy, chemical compound, mixture or combination containing enriched uranium, of enriched uranium or plutonium⁷; or
 - 541. (d) the production, from any alloy, chemical compound, mixture or combination containing plutonium, of plutonium⁸;
- 368 3981 (3) any installation designed or adapted for the incorporation of enriched uranium or plutonium or of any alloy, chemical compound, mixture or combination containing enriched uranium or plutonium, in any device designed either to form part of a nuclear assembly or for irradiation in a nuclear reactor⁹, other than a device designed solely for the purpose of measuring neutron flux¹⁰;
- 3982 (4) any installation comprising a nuclear assembly designed or adapted for the production of neutrons and containing enriched uranium or plutonium or any alloy, chemical compound, mixture or combination containing enriched uranium or plutonium, and in which a controlled chain reaction can be maintained with an additional source of neutrons¹¹;
- 3983 (5) any installation designed or adapted for the processing of irradiated nuclear fuel other than processing carried out solely for the purpose of chemical or isotopic assay or metallographic investigation of such nuclear fuel¹²;
- 3984 (6) any installation designed or adapted for storage of fuel elements referred to in head (1) above, irradiated nuclear fuel, or bulk quantities of any other radioactive matter which has been produced or irradiated in the course of the production or use of nuclear fuel, other than storage incidental to carriage and (in the case of irradiated nuclear fuel) other than storage incidental to any of the excepted processes referred to in head (5) above¹³;
- 3985 (7) any installation designed or adapted for any treatment of irradiated matter which involves the extraction from it of plutonium or uranium or for any treatment of uranium, whether enriched or not, such as to increase the proportion of the isotope 235 contained in it¹⁴; and

3986 (8) any installation designed or adapted for the carrying on of any process involved in the production from nuclear matter¹⁵, other than excepted matter¹⁶, of isotopes prepared for use for industrial, chemical, agricultural, medical or scientific purposes¹⁷.

The Secretary of State¹⁸ may by instrument in writing exempt from the relevant statutory requirements¹⁹ any installation described above which he is satisfied is not a relevant installation²⁰.

1 For the meaning of 'installation' see PARA 1487 note 3 ante.

2 le prescribed for the purposes of the Nuclear Installations Act 1965 s 1(1)(b) (see PARA 1487 ante): Nuclear Installations Regulations 1971, SI 1971/381, reg 3. For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

3 'Enriched uranium' means uranium enriched so as to contain more than 0.72% of the isotope 235: ibid reg 2(3).

4 Ibid reg 3(1). For the meaning of 'atomic energy' see PARA 1357 note 1 ante; as to the application of this definition see PARA 1487 note 4 ante; and as to the production of atomic energy see PARA 1366 note 3 ante.

5 Ibid reg 3(2)(a).

6 Ibid reg 3(2)(b).

7 Ibid reg 3(2)(c).

8 Ibid reg 3(2)(d).

9 For the meaning of 'nuclear reactor' see PARA 1487 note 4 ante.

10 Nuclear Installations Regulations 1971, SI 1971/381, reg 3(3).

11 Ibid reg 3(4).

12 Ibid reg 3(5).

13 Ibid reg 3(6).

14 Ibid reg 3(7).

15 'Nuclear matter' has the same meaning as in the Nuclear Installations Act 1965 s 26(1) (see PARA 1492 note 4 post): Nuclear Installations Regulations 1971, SI 1971/381, reg 2(2).

16 'Excepted matter' has the same meaning as in the Nuclear Installations Act 1965 s 26(1) (see PARA 1496 note 6 post): Nuclear Installations Regulations 1971, SI 1971/381, reg 2(2).

17 Ibid reg 3(8).

18 As to the Secretary of State see PARA 601 note 1 ante.

19 le the requirements of the Nuclear Installations Act 1965 s 1(1) (as amended): see PARA 1487 ante.

20 Nuclear Installations Regulations 1971, SI 1971/381, reg 4. For the meaning of 'relevant installation' see PARA 1487 note 7 ante.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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1489. Permits for treatment of irradiated matter or uranium.

Notwithstanding that a nuclear site licence¹ is for the time being in force or is not for the time being required, no person other than the United Kingdom Atomic Energy Authority ('the UKAEA')² may use any site for any treatment either of irradiated matter which involves the extraction from it of plutonium or uranium, or of uranium such as to increase the proportion of the isotope 235 contained in it, except under and in accordance with the terms of a permit in writing granted by the Authority or a government department which is for the time being in force, and any fissile material produced under such a permit may be disposed of only in a manner approved by the body by whom the permit was granted³. Unless the permit is granted by the Secretary of State, it must not authorise such use of a site otherwise than for purposes of research and development⁴.

Any person who contravenes⁵ this provision is guilty of an offence and is liable on summary conviction to a fine not exceeding the prescribed sum or imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or imprisonment for a term not exceeding five years, or to both⁶.

1 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 Nuclear Installations Act 1965 s 2(1) (amended by the Atomic Energy Authority Act 1971 s 17(1)). Any permit granted by the Authority or by the Secretary of State or any other government department may at any time be revoked by the Authority or by the Secretary of State or that department, as the case may be, or may be surrendered by the person to whom it was granted: Nuclear Installations Act 1965 s 2(1D) (s 2(1A)-(1D) added by the Atomic Energy Authority Act 1971 s 17(1)). As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 2 (as amended) are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

4 Nuclear Installations Act 1965 s 2(1A) (as added: see note 3 supra). Where a permit granted by the Secretary of State to a body corporate authorises such a use of a site for purposes other than, or not limited to, research and development, he may by order direct that the security provisions set out in s 2(1B) (as so added), Sch 1 (as added) (see PARA 1573 et seq post) are to have effect in relation to that body: s 2(1B) (as so added). The power to make such an order (1) includes power to vary or revoke the order by a subsequent order; and (2) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 2(1C) (as so added). As to such orders see eg the Nuclear Installations (Application of Security Provisions) Order 1971, SI 1971/569, in relation to British Nuclear Fuels Ltd (now BNFL); the Nuclear Installations (Application of Security Provisions) Order 1993, SI 1993/687 (in relation to Urenco (Capenhurst) Ltd). Where such an order is made, then (a) in relation to premises on a site in respect of which the permit is for the time being in force and in relation to any building operations or works of engineering construction undertaken by or on behalf of that body corporate on such a site, the Factories Act 1961 applies as it applies, by virtue of the Atomic Energy Authority Act 1954 s 6(4), Sch 3 (as amended) (see PARA 1363 ante), in the case of the United Kingdom Atomic Energy Authority, that is to say, as if the premises belonged to or were in the occupation of the Crown or, as the case may be, as if the operations or works were undertaken by or on behalf of the Crown (Atomic Energy Authority Act 1971 s 18(1)(a)); and (b) in relation to premises on such a site, the Offices, Shops and Railway Premises Act 1963 applies as it applies in relation to premises occupied by that Authority (Atomic Energy Authority Act 1971 s 18(1)(b)). As to the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 see HEALTH AND SAFETY AT WORK. As to the application of the Atomic Energy Authority Act 1971 to Northern Ireland see s 18(2).

5 For the meaning of 'contravention' see PARA 1487 note 8 ante.

6 Nuclear Installations Act 1965 s 2(2) (amended by the Atomic Energy Authority Act 1971 s 17(2); and by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante; and as to fines on conviction on indictment of bodies corporate see PARA 1588 post.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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1490. Grant and variation of nuclear site licences; recovery of expenses from licensees.

A nuclear site licence¹ must not be granted to any person other than a body corporate and is not transferable². The Health and Safety Executive³ must consult the appropriate Agency⁴ before granting a nuclear site licence in respect of a site in Great Britain⁵.

Two or more installations in the vicinity of one another may, if the Health and Safety Executive thinks fit, be treated for the purposes of the grant of a nuclear site licence as being on the same site⁶.

A nuclear site licence may include provision with respect to the time from which certain statutory requirements⁷ are to apply in relation to the licensed site⁸, and where such provision is thus included the requirements do not apply until that time or until the first occasion after the grant of the licence on which any person uses the site for the operation of a nuclear installation⁹, whichever is the earlier, although no such provision may be so included without the Secretary of State's consent¹⁰.

The Health and Safety Executive may from time to time vary any nuclear site licence by excluding from it any part of the licensed site which the licensee¹¹ no longer needs for any use requiring such a licence and with respect to which the Executive is satisfied that there is no danger from ionising radiations from anything on that part of the site¹². Before varying a nuclear site licence in respect of a site in Great Britain, the Executive must, if the variation relates to or affects the creation, accumulation or disposal of radioactive waste¹³, consult the appropriate Agency¹⁴.

The statutory provisions for appeals to the Secretary of State by persons aggrieved by certain decisions of an authority having power to issue licences¹⁵ do not apply with respect to nuclear site licences¹⁶.

Expenditure to comply with the terms of a nuclear site licence, and pre-trading expenditure on site preparation, may qualify for tax relief¹⁷.

In such cases and to such extent as it may appear to the Health and Safety Executive appropriate to do so, the Executive must (1) require a person who has applied for a nuclear site licence to repay to it so much of any relevant expenses¹⁸ as may appear to it to be attributable to dealing with the application¹⁹; and (2) require a person to whom a nuclear site licence has been granted to repay to it so much of any relevant expenses as may appear to it to be attributable to any nuclear installation in respect of which the licence has been granted, and so much of any such expenses which are not otherwise recoverable²⁰ as it thinks fit²¹. A person must comply with any requirement so made of him²². The Executive also has power, where it anticipates that a person who has applied for or has been granted a nuclear site licence will become subject to such a liability, to require him to make a payment or payments to it on account of the liability²³. If he does not then become subject to the liability, or if the amount of the liability to which he becomes subject is less than the amount of the payment which he has made on account of the anticipated liability, the Executive is liable to repay to him either the whole payment made or the difference between the payment and the liability²⁴.

- 1 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.
- 2 Nuclear Installations Act 1965 s 3(1).
- 3 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq; and as to the fees payable to the Health and Safety Executive for assessing a design proposal for a nuclear reactor or a nuclear installation see PARA 1393 ante.
- 4 'The appropriate Agency' means (1) in the case of a site in England or Wales, the Environment Agency; (2) in the case of a site in Scotland, the Scottish Environment Protection Agency: Nuclear Installations Act 1965 s 26(1) (definition added by the Environment Act 1995 s 120, Sch 22 para 10). As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 5 Nuclear Installations Act 1965 s 3(1A). (s 3(1A), (6A) added by the Environment Act 1995 Sch 22 para 7(1), (3)). For the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 6 Nuclear Installations Act 1965 s 3(2) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1).
- 7 Ie the requirements of the Nuclear Installations Act 1965 s 19(1) (as amended): see PARA 1510 post.
- 8 'Licensed site' means a site in respect of which a nuclear site licence has been granted, whether or not that licence remains in force: *ibid* s 26(1).
- 9 For the meaning of 'nuclear installation' see PARA 1487 note 3 ante.
- 10 Nuclear Installations Act 1965 s 3(5) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, Sch 2 para 2). As to the Secretary of State see PARA 601 note 1 ante.
- 11 'Licensee' means a person to whom a nuclear site licence has been granted, whether or not that licence remains in force: Nuclear Installations Act 1965 s 26(1).
- 12 *Ibid* s 3(6) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, Sch 2 para 1).
- 13 Ie within the meaning of the Radioactive Substances Act 1993. For the meaning of 'radioactive waste' see PARA 1450 note 3 ante; and for the meaning of 'disposal' in relation to such waste see PARA 1450 note 2 ante.
- 14 Nuclear Installations Act 1965 s 3(6A) (as added: see note 5 *supra*).
- 15 Ie the provisions of the Health and Safety at Work etc Act 1974 s 44 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 351.
- 16 *Ibid* s 44(1), (7), (8) (amended by the Employment Protection Act 1975 ss 116, 125(3), Sch 15 para 13, Sch 18).
- 17 See the Income and Corporation Taxes Act 1988 ss 91A(6)(c), 91B (as added); and INCOME TAXATION.
- 18 Ie expenses to which the Nuclear Installations Act 1965 s 24A (as added) applies: see s 24A(1), (2) (as added); and PARA 1392 ante.
- 19 See *ibid* s 24A(3) (as added); and PARA 1392 ante.
- 20 Ie under the Nuclear Installations Act 1965 s 24A (as added): see PARA 1392 ante.
- 21 See *ibid* s 24A(4) (as added); and PARA 1392 ante.
- 22 See *ibid* s 24A(5) (as added); and PARA 1392 ante.
- 23 See *ibid* s 24A(7) (as added); and PARA 1392 ante.
- 24 See *ibid* s 24A(8) (as added); and PARA 1392 ante.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1490-1492 Grant and variation of nuclear site licences; recovery of expenses from licensees ... Conditions attached to nuclear site licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1490 Grant and variation of nuclear site licences; recovery of expenses from licensees

NOTE 17--Income and Corporation Taxes Act 1988 ss 91A, 91B now Corporation Tax Act 2009 ss 142-145.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(6) CONTROL OF NUCLEAR INSTALLATIONS/(i) Nuclear Site Licensing/1491. Notices to local authorities or other bodies.

1491. Notices to local authorities or other bodies.

Where the Health and Safety Executive¹ considers it appropriate to do so in the case of any application for a nuclear site licence² in respect of any site, it may direct the applicant to serve on any local authority, any water undertaker³ or any local fisheries committee⁴ and any other body which is a public or local authority, notice that the application has been made, giving such particulars as may be specified by the Executive's direction with respect to the use proposed to be made of the site under the licence, and stating that representations with respect to it may be made to the Executive by the body upon whom the notice is served within three months of the date of service⁵. This does not, however, apply in relation to an application in respect of a site for a generating station where a consent under the relevant provision of the Electricity Act 1989⁶ is required for the operation of the station⁷.

Where such a direction has been given, the Executive must not grant the licence unless it is satisfied that three months have elapsed since the service of the last of the notices required by the direction nor until after it has considered any representations made in accordance with any of those notices⁸.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

3 As to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARA 134 et seq, 318 et seq.

4 As to local fisheries committees see AGRICULTURE AND FISHERIES.

5 Nuclear Installations Act 1965 s 3(3) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1; the Water Act 1989 s 190(1), Sch 25 para 33; the Environment Act 1995 s 120, Sch 22 para 7(2), Sch 24).

6 ie under the Electricity Act 1989 s 36 (as amended): see PARA 1249 ante.

7 Nuclear Installations Act 1965 s 3(4) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 11).

8 Nuclear Installations Act 1965 s 3(3) (as amended: see note 6 supra).

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1490-1492 Grant and variation of nuclear site licences; recovery of expenses from licensees ... Conditions attached to nuclear site licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1491 Notices to local authorities or other bodies

TEXT AND NOTE 5--Nuclear Installations Act 1965 s 3(3) further amended: Marine and Coastal Access Act 2009 Sch 14 para 6 (not yet in force).

Nuclear Installations Act 1965 s 3(3) repealed in part: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(6) CONTROL OF NUCLEAR INSTALLATIONS/(i) Nuclear Site Licensing/1492. Conditions attached to nuclear site licences.

1492. Conditions attached to nuclear site licences.

The Health and Safety Executive¹, by instrument in writing, must on granting a nuclear site licence², and may from time to time thereafter, attach to the licence conditions which appear to it to be necessary or desirable in the interests of safety whether in normal circumstances or in the event of any accident or other emergency on the site³. The Executive may also at any time by instrument in writing attach to a licence such conditions as it thinks fit with respect to the handling, treatment and disposal of nuclear matter⁴. The Executive may at any time by a further instrument in writing vary or revoke any condition⁵. The Executive must consult the appropriate Agency⁶ before attaching any condition to a nuclear site licence in respect of a site in Great Britain⁷, or before varying or revoking any condition attached to such a nuclear site licence, if the condition relates to or affects the creation, accumulation or disposal of radioactive waste⁸. While a licence remains in force in respect of any site, the Executive must consider any representations by any organisation representing persons having duties upon the site which may from time to time be made to it with a view to its exercising any of its powers under these provisions in relation to the site⁹.

At all times while a licence remains in force the licensee¹⁰ must cause copies of any conditions attached to the licence which are for the time being in force to be kept posted at the site and in particular on any part of it which an inspector¹¹ may direct, in such characters and in such positions as to be conveniently read by persons having duties upon the site which are or may be affected by those conditions¹².

In the event of any contravention¹³ of any condition attached to a nuclear site licence, the licensee and any person having duties upon the site in question by whom that contravention was committed is guilty of an offence¹⁴. Any person who contravenes the requirements relating to the posting of copies of any such conditions at the site is also guilty of an offence¹⁵, as is any person who without reasonable cause pulls down, injures or defaces any document so posted¹⁶.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

3 Nuclear Installations Act 1965 s 4(1) (s 4(1)-(3), (4) amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1). Those conditions may in particular include provision (1) for securing the maintenance of an efficient system for detecting and recording the presence and intensity of any ionising radiations from time to time emitted from anything on, or from anything discharged on or from, the site; (2) with respect to the design, siting, construction, installation, operation, modification and maintenance of any plant or other installation on, or to be installed on, the site; (3) with respect to preparations for dealing with, and measures to be taken on the happening of, any accident or other emergency on the site; and (4) without prejudice to the Radioactive Substances Act 1993 s 13 (see PARA 1450 ante) and s 16 (see PARAS 1453-1456 ante), with respect to the discharge of any substance on or from the site: Nuclear Installations Act 1965 s 4(1)(a)-(d) (amended by the Radioactive Substances Act 1993 s 49(1), Sch 4 para 2)).

Any conditions which, by virtue of the Nuclear Installations Act 1965 s 4 (as amended), are attached to a nuclear site licence granted in respect of a site in designated premises used by a contractor, do not apply to the extent that such conditions affect the design of a nuclear device or any other device (other than a nuclear reactor) intended to simulate the properties of a nuclear device: Atomic Weapons Establishment Act 1991 s 3, Schedule para 6(1) (substituted by the Atomic Weapons Establishment Act 1991 Amendment Order 1997, SI 1997/1396, art 2). For the meanings of 'contractor' and 'designated premises' see PARA 1387 notes 2, 11 ante.

4 Nuclear Installations Act 1965 s 4(2) (as amended: see note 3 supra). 'Nuclear matter' means (subject to any exceptions prescribed by regulations) (1) any fissile material in the form of uranium metal, alloy or chemical compound (including natural uranium), or of plutonium metal, alloy or chemical compound, and any other fissile material which may be so prescribed; and (2) any radioactive material produced in, or made radioactive by exposure to the radiation incidental to, the process of producing or utilising any such fissile material: s 26(1). The Secretary of State's power to make regulations for the purposes of this definition of 'nuclear matter' is only exercisable, in so far as it is exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3. At the date at which this title states the law, no exceptions had been so prescribed for the purposes of this definition.

5 Nuclear Installations Act 1965 s 4(3) (as amended: see note 3 supra).

6 le, in relation to England and Wales, the Environment Agency: see PARA 1490 note 4 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

7 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

8 Nuclear Installations Act 1965 s 4(3A) (added by the Environment Act 1995, s 120, Sch 22, PARA 8). For the meaning of 'disposal' and 'radioactive waste' see PARA 1450 notes 2-3 ante (definitions applied by the Nuclear Installations Act 1965 s 4(3A) (as so added)).

9 Ibid s 4(4) (as amended: see note 3 supra).

10 For the meaning of 'licensee' see PARA 1490 note 11 ante.

11 'Inspector', for these purposes and the purposes of the Nuclear Installations Act 1965 s 5(2) (as amended) (see PARA 1494 post), means an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19: Nuclear Installations Act 1965 s 26(1) (definition added by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, Sch 2 para 6). As to the powers of such inspectors see the Health and Safety at Work etc Act 1974 s 20 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376. As to inspectors appointed by the Secretary of State see PARA 1518 post. As to the Secretary of State see PARA 601 note 1 ante.

12 Nuclear Installations Act 1965 s 4(5).

13 For the meaning of 'contravention' see PARA 1487 note 8 ante.

14 Nuclear Installations Act 1965 s 4(6) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(a), Sch 1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or to both: Health and Safety at Work etc Act 1974 ss 33(3), (4)(b), 53(1), Sch 1 (as amended). As to fines on conviction on indictment of bodies corporate see PARA 1588 post. As to the prescribed sum see PARA 613 note 20 ante.

15 Nuclear Installations Act 1965 s 4(6) (as amended: see note 10 supra). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or, on conviction on indictment, to a fine: Health and Safety at Work etc Act 1974 ss 33(3), 53(1), Sch 1 (as amended).

16 Nuclear Installations Act 1965 s 4(6) (as amended: see note 10 supra). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 4(6) (as so amended; further amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 613 note 11 ante.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1490-1492 Grant and variation of nuclear site licences; recovery of expenses from licensees ... Conditions attached to nuclear site licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(6) CONTROL OF NUCLEAR INSTALLATIONS/(i) Nuclear Site Licensing/1493. Lists of nuclear sites.

1493. Lists of nuclear sites.

The Secretary of State¹ must:

- 3987 (1) maintain a list showing every site, including a map or maps showing the position and limits of each site, in respect of which a nuclear site licence² has been granted;
- 3988 (2) make arrangements for the list or a copy of it to be made available for public inspection; and
- 3989 (3) cause notice of the arrangements to be made public in such manner as may appear to him appropriate³.

The list is not required to show any site or part of a site in the case of which no nuclear site licence is for the time being in force and 30 years have elapsed since the last licensee's⁴ period of responsibility⁵ expired⁶.

These provisions do not apply relation to any site in designated premises⁷ used by a contractor⁸ in respect of which a nuclear site licence has been granted⁹.

1 As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 6 (as amended) are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

2 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

3 Nuclear Installations Act 1965 s 6(1) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(a), Sch 1).

4 For the meaning of 'licensee' see PARA 1490 note 11 ante.

5 For the meaning of 'period of responsibility' see the Nuclear Installations Act 1965 s 5(3) (as amended); and PARA 1494 note 7 post.

6 Ibid s 6(2).

7 For the meaning of 'designated premises' see PARA 1387 note 11 ante.

8 For the meaning of 'contractor' see PARA 1387 note 2 ante.

9 Atomic Weapons Establishment Act 1991 s 3, Schedule para 6(3) (substituted by the Atomic Weapons Establishment Act 1991 Amendment Order 1997, SI 1997/1396, art 2).

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(6) CONTROL OF NUCLEAR INSTALLATIONS/(i) Nuclear Site Licensing/1494. Revocation and surrender of nuclear site licences.

1494. Revocation and surrender of nuclear site licences.

A nuclear site licence¹ may at any time be revoked by the Health and Safety Executive² or surrendered by the licensee³. The Executive must consult the appropriate Agency⁴ before revoking a nuclear site licence in respect of a site in Great Britain⁵. Upon either revocation or surrender the licensee must, if so required by the Executive, deliver up or account for the licence to such person as the Executive may direct⁶. During the remainder of his period of responsibility⁷ the licensee must cause to be posted on the site such notices indicating its limits in such positions as may be directed by an inspector⁸; and the Executive may give such other directions to the licensee as it may think fit for preventing or giving warning of any risk of injury⁹ to any person or damage to any property by ionising radiations from anything remaining on the site¹⁰.

If the licensee contravenes¹¹ any direction for the time being in force under these provisions he is guilty of an offence¹², as is any person who without reasonable cause pulls down, injures or defaces any notice so posted¹³.

1 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

2 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

3 Nuclear Installations Act 1965 s 5(1) (s 5(1), (2), (3) amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1). For the meaning of 'licensee' see PARA 1490 note 11 ante.

4 I.e., in relation to England and Wales, the Environment Agency: see PARA 1490 note 4 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

5 Nuclear Installations Act 1965 s 5(1A) (added by the Environment Act 1995 s 120, Sch 22 para 9). For the meaning of 'Great Britain' see PARA 602 note 7 ante.

6 Nuclear Installations Act 1965 s 5(2) (as amended: see note 3 supra). As to directions in force at 1 January 1975 see PARA 1487 note 2 ante.

7 The 'period of responsibility', in relation to the licensee under a nuclear site licence, means, as respects the site in question or any part of it, the period beginning with the grant of the licence and ending with whichever of the following dates is the earlier, i.e. (1) the date when the Health and Safety Executive gives notice in writing to the licensee that in its opinion there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, on that part of it; (2) the date when a new nuclear site licence in respect of a site comprising the site in question or, as the case may be, that part of it is granted either to the same licensee or to some other person, except that it does not include any period during which *ibid* s 19(1) (as amended) (see PARA 1510 post) does not apply in relation to the site: ss 5(3), 26(1) (s 5(3) as amended: see note 3 supra).

If a nuclear site licence has been granted in respect of any site in designated premises used by a contractor, the provisions of the Nuclear Installations Act 1965 have effect as if any reference to the period of the licensee's responsibility were a reference to any period during which the contractor occupies that site: Atomic Weapons Establishment Act 1991 s 3, Schedule para 6(2) (substituted by the Atomic Weapons Establishment Act 1991 Amendment Order 1997, SI 1997/1396, art 2). For the meanings of 'contractor' and 'designated premises' see PARA 1387 notes 2, 11 ante.

8 Nuclear Installations Act 1965 s 5(2) (as amended: see note 3 supra). For the meaning of 'inspector' for these purposes see PARA 1492 note 11 ante. As to such inspectors see PARA 1518 post.

9 'Injury' means personal injury and includes loss of life: *ibid* s 26(1). For the avoidance of doubt, anything which affects a man in his ability to have a normal, healthy child, or affects a woman in that ability, or so affects her when she is pregnant that her child is born with disabilities which would not otherwise have been present, is an injury for the purpose of the Nuclear Installations Act 1965: Congenital Disabilities (Civil Liability) Act 1976 s 3(2).

10 Nuclear Installations Act 1965 s 5(2) (as amended: see note 3 supra). Such directions may be given on the revocation or surrender of the licence and from time to time thereafter until the expiration of the licensee's period of responsibility: s 5(2) (as so amended).

11 For the meaning of 'contravention' see PARA 1487 note 8 ante.

12 Nuclear Installations Act 1965 s 5(4) (amended for this purpose by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974 reg 2(1)(a), Sch 1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or, on conviction on indictment, to a fine: see the Health and Safety at Work etc Act 1974 ss 33(3), 53(1), Sch 1 (as amended); and HEALTH AND SAFETY AT WORK. As to fines on conviction on indictment of bodies corporate see PARA 1588 post. As to the prescribed sum see PARA 613 note 20 ante.

13 Nuclear Installations Act 1965 s 5(4) (as amended: see note 12 supra). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 5(4) (as so amended; also amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 613 note 11 ante.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1494 Revocation and surrender of nuclear site licences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(6) CONTROL OF NUCLEAR INSTALLATIONS/(i) Nuclear Site Licensing/1494A. Nuclear sites: funded decommissioning programmes.

1494A. Nuclear sites: funded decommissioning programmes.

1. Funded decommissioning programmes

The Energy Act 2008 s 45 applies where, on or after the day on which s 45 comes into force (ie 6 April 2009: see SI 2009/45), a person applies for a nuclear site licence in respect of a site to which the Energy Act 2008 s 45(2) applies: s 45(1). 'Nuclear site licence' has the meaning given by the Nuclear Installations Act 1965 s 26 (see PARA 1487): Energy Act 2008 s 68. Section 45(2) applies to (1) a site on which the person intends to construct a nuclear installation for a purpose for which a licence under the Electricity Act 1989 s 6(1)(a) (see PARA 1065), or the Electricity (Northern Ireland) Order 1992, SI 1992/231 art 10(1)(a) (generating licences) is required, and (2) a site to which the Energy Act 2008 s 45 previously applied by virtue of head (1) and on which the person intends to operate a nuclear installation which was constructed for such a purpose: s 45(2). 'Nuclear installation' has the meaning given by the Nuclear Installations Act 1965 s 26 (see PARA 1487): Energy Act 2008 s 68. The person must give written notice of the application to the Secretary of State, and prepare and submit to the Secretary of State a funded decommissioning programme: s 45(3). A funded decommissioning programme is a programme which (a) makes provision for the technical matters, and (b) specifies how the implementation of that provision, so far as it relates to the designated technical matters, is to be financed: s 45(4). The technical matters, in relation to a site, are (i) the treatment, storage, transportation and disposal of hazardous material (within the meaning of the Energy Act 2004 s 37 (see PARA 1592)) during the operation of a nuclear installation on the site, (ii) the decommissioning of any relevant nuclear installation and the cleaning-up of the site, and (iii) activities preparatory to the matters mentioned in head (ii); and for the purposes of head (i) a nuclear installation is not to be regarded as being operated at a time when it is being decommissioned: Energy Act 2008 s 45(5). 'Cleaning-up' and 'decommissioning', in relation to a site or installation, include the treatment, storage, transportation and disposal of hazardous material (within the meaning of the Energy Act 2004 s 37) and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes: Energy Act 2008 s 68. 'Relevant nuclear installation', in relation to a site, means a nuclear installation which is or is intended to be established on the site: Energy Act 2008 s 68. The designated technical matters, in relation to a site, are (A) such of the matters within head (i) or (iii) as are specified by the Secretary of State by order, and (B) the matters within head (ii): s 45(6). The funded decommissioning programme must, in particular, contain details of the steps to be taken under the programme in relation to the technical matters, estimates of the costs likely to be incurred in connection with the designated technical matters, and details of any security to be provided in connection with those costs: s 45(7). A person who submits a programme must pay to the Secretary of State such fee as may be determined in accordance with regulations under s 54 (see PARA 1494A.4), in respect of the costs mentioned in s 45(9), at a time determined in accordance with such regulations: s 45(8). The costs are those incurred by the Secretary of State in relation to the consideration of the programme, including, in particular, the costs of obtaining advice in relation to the programme, or information required in relation to the programme in accordance with s 52(4) (see PARA 1494A.3): s 45(9).

The Secretary of State may approve or reject a funded decommissioning programme submitted under s 45 in respect of a site; this may be with or without modifications, and unconditionally or subject to conditions: see Energy Act 2008 s 46. An offence is created where a person with a nuclear site licence for a site uses the site, or permits another person to use the site, by virtue of the licence without an approved funded decommissioning programme in place: see Energy Act 2008 s 47.

2. Modification of approved programmes

Where the Secretary of State has approved a funded decommissioning programme (see PARA 1494A.1) in respect of a site, a person mentioned in the Energy Act 2008 s 48(2) may (1) propose a modification of the programme, or (2) propose a modification of the conditions to which the approval of the programme is subject: Energy Act 2008 s 48(1). Those persons are (a) the Secretary of State, (b) the site operator, and (c) any other person who has obligations under the programme (provided that the site operator consents to the proposed modification): s 48(2). 'Site operator' means a person who holds a nuclear site licence (see PARA 1494A.1) in respect of a site: Energy Act 2008 s 68. A proposal under s 48(1) may, in particular, propose (i) that obligations, or additional obligations, be imposed on a body corporate associated with the site operator, or (ii) the removal of obligations imposed on a body corporate which is or was so associated: s 48(3). For the meaning of 'associated' see Energy Act 2008 s 67. In head (2) 'modification of the conditions' includes the imposition of conditions where the programme was approved unconditionally: s 48(4).

The procedure for making a modification to an approved funded programme is established: see Energy Act 2008 s 49. The Secretary may make regulations disapplying s 49 in relation to modifications proposed by a person other than the Secretary of State: see Energy Act 2008 s 50. Provision is made as to the time when a modification to a funded decommissioning programme takes effect: see Energy Act 2008 s 51.

3. Information

The Secretary of State's powers to obtain information from the site operator and other persons with obligations under a funded decommissioning programme (see PARA 1494A.1), and in certain circumstances, from bodies corporate associated with the site operator are set out: see Energy Act 2008 s 52. For the meaning of 'site operator' see PARA 1494A.2. For the meaning of 'associated' see Energy Act 2008 s 67. The Secretary of State has power to review an approved funded programme and, as part of this, to request information about the programme from the site operator or any other person who has obligations under the programme: see Energy Act 2008 s 53.

4. Regulations and guidance

The Secretary of State has power to make regulations about the preparation, content and implementation of a funded decommissioning programme (see PARA 1494A.1), and about the modification of such programmes; the Secretary of State may also publish guidance about the preparation, content, modification and implementation of such programmes: see Energy Act 2008 s 54. Regulations under s 54 may make provision enabling the Secretary of State to rely, in specified circumstances, on verification of financial matters by an independent third party: see Energy Act 2008 s 55.

5. Protection of decommissioning funds

The Energy Act 2008 s 56 applies where, in relation to a site to which s 45 (see PARA 1494A.1) applies, any security for the performance of obligations relating to the designated technical matters (see PARA 1494A.1) has been provided by a person ('the security provider') by way of a trust or other arrangements, in accordance with an approved funded decommissioning programme (see PARA 1494A.1): Energy Act 2008 s 56(1). In s 56 'security' includes (1) a charge over a bank account or any other asset; (2) a deposit of money; (3) a performance bond or guarantee; (4) an insurance policy; (5) a letter of credit: s 56(3). The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements: s 56(4). In s 56 a reference to 'the protected assets' is a reference to the security and any property or rights in which it consists: s 56(2). For the purposes of s 56(4), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19)) or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or (b) prevent or restrict their enforcement for the purposes of being so applied: s 56(5). 'Enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation: Energy Act 2008 s 68.

6. Enforcement

It is an offence for a site operator or a body corporate associated with a site operator (a 'relevant person') to fail to comply with an obligation imposed on the relevant person by an approved funded decommissioning programme (see PARA 1494A.1) in respect of the site: see Energy Act 2008 s 57. For the meaning of 'site operator' see PARA 1494A.2. For the meaning of 'associated' see Energy Act 2008 s 67.

The Secretary of State has the power to direct a person with obligations under an approved funded decommissioning programme to take action that the Secretary of State considers necessary or appropriate in the following circumstances, namely if it has been shown that the person has failed to comply with any obligations imposed by the programme, or if the person has been engaged in unlawful conduct which the Secretary of State considers may affect the programme: see Energy Act 2008 s 58.

A person who discloses information obtained by virtue of a notice under the Energy Act 2008 52(4) or 53(2) or (5) (see PARA 1494A.3), or regulations under s 54(2)(e) (see PARA 1494A.4), is guilty of an offence unless the disclosure is permitted by the Energy Act 2008 s 59; the disclosure is permitted if (1) it is made with the consent of the person by or on behalf of whom the information was provided; (2) it is made under s 63 (see PARA 1494A.7) or for the purposes of any other function of the Secretary of State under Pt 3 Ch 1 (ss 45-68); (3) it is a disclosure of information obtained under s 63 by the Health and Safety Executive and it is made by the Executive for the purposes of its functions under the Nuclear Installations Act 1965; (4) it is a disclosure of information obtained under the Energy Act 2008 s 63 by the Environment Agency or the Department of the Environment for Northern Ireland and it is made by the Agency or Department for the purposes of its functions under the Radioactive Substances Act 1993; (5) it is required by or under an enactment: see Energy Act 2008 s 59. For the meaning of 'enactment' see PARA 1494A.5.

It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to the Secretary of State in response to a requirement under the Energy Act 2008 Pt 3 Ch 1: see Energy Act 2008 s 60.

No proceedings for an offence under the Energy Act 2008 Pt 3 Ch 1 (including an offence created by regulations under s 54) may be instituted except by the Secretary of State or (a) in

England and Wales, the Director of Public Prosecutions, or (b) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland: Energy Act 2008 s 61.

7. Miscellaneous

The Secretary of State may, by order, modify the Energy Act 2008 s 45 (see PARA 1494A.1) so that it also applies where, on or after the day on which the order comes into force, a person applies for a nuclear site licence in respect of a site of a description specified in the order: see Energy Act 2008 s 62. For the meaning of 'nuclear site licence' see PARA 1494A.1.

The Secretary of State may require specified bodies (ie the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland) to provide the Secretary of State with such assistance as that body is reasonably able to give in connection with the performance by the Secretary of State of a function under the Energy Act 2008 Pt 3 Ch 1 (ss 45-68): see Energy Act 2008 s 63.

The obligations on an operator (or former operator) under a decommissioning programme (see PARA 1494A.1) remain until the Secretary of State explicitly releases them from their obligations, even if it no longer holds a site licence: see Energy Act 2008 s 64.

Where the Secretary of State enters an agreement for, or in connection with, the disposal of relevant hazardous material by or on behalf of the Secretary of State, the agreement may provide for a fee to be paid to the Secretary of State: see Energy Act 2008 s 66.

UPDATE

1487-1494 Nuclear Site Licensing

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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(ii) Duties of Nuclear Site Licensees and others in respect of Nuclear Occurrences

1495. Duty of licensees, the Crown or the Atomic Energy Authority.

Where a nuclear site licence¹ has been granted in respect of any site, it is the duty of the licensee² to secure:

- 3990 (1) that no specified occurrence³ involving nuclear matter⁴ causes injury⁵ to any person or damage to any property⁶ of any person other than himself arising out of or resulting from the radioactive properties of that nuclear matter or a combination of those properties and any toxic, explosive or other hazardous properties of the matter⁷; and
- 3991 (2) that no ionising radiations emitted during his period of responsibility⁸ either from anything caused or suffered by him to be on the site which is not nuclear matter, or from any waste discharged (in whatever form) on or from the site, cause injury to any person or damage to any property of any person other than himself⁹.

In determining the licensee's liability by virtue of these provisions in respect of any occurrence, any property on the site at the time of the occurrence which is a nuclear installation¹⁰ or other property which is on the site either for the purpose of use in connection with the operation, or the cessation of the operation, by the licensee of a nuclear installation which is or has been on that site, or for the purpose of the construction of a nuclear installation on that site, is deemed to be the licensee's property notwithstanding that it is the property of some other person¹¹.

These provisions apply, with modifications, to the Crown¹² and to the United Kingdom Atomic Energy Authority ('the UKAEA')¹³.

It has been held that these provisions do not impose any clear statutory duty to monitor, or to attempt to cure or to clean up, any damage to or contamination of property caused by an occurrence involving nuclear matter¹⁴.

1 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

2 For the meaning of 'licensee' see PARA 1490 note 11 ante.

3 Ie any such occurrence as is mentioned in the Nuclear Installations Act 1965 s 7(2): see PARA 1496 post.

4 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

5 For the meaning of 'injury' see PARA 1494 note 9 ante. If a child is born disabled as the result of an injury to either of its parents caused in breach of a duty imposed by any of the Nuclear Installations Act 1965 ss 7-11 (as amended), the child's disabilities are to be regarded under the subsequent provisions of that Act (compensation and other matters) as injuries caused on the same occasion, and by the same breach of duty, as was the injury to the parent: Congenital Disabilities (Civil Liability) Act 1976 s 3(3).

6 Such damage is not limited to particular types of damage, but will occur provided that there is some alteration in the physical characteristics of the property caused by radioactive properties which render it less useful or less valuable; the intermingling of plutonium with topsoil renders the characteristics of marshland

different since it becomes 'radioactive waste' and thus less useful and less valuable until the contaminated soil has been removed. Moreover, that damage is not mere economic damage; the land itself is physically damaged by the radioactive properties of the plutonium, even though its consequences are economic, in the sense that the property is worth less and requires the owner to expend money to remove the topsoil: see *Blue Circle Industries plc v Ministry of Defence* [1999] Ch 289, [1998] 3 All ER 385, CA, distinguishing *Merlin v British Nuclear Fuels plc* [1990] 2 QB 557, [1990] 3 All ER 711 (no breach of duty where diminution in value of property due to presence of carcinogenic agents). Cf *Magnohard Ltd v United Kingdom Atomic Energy Authority* 2004 SC 247, 2003 SLT 1083, Ct of Sess (OH) (the physical damage to property contemplated includes damage resulting in some alteration in the physical characteristics of the property caused by the radioactive properties of the nuclear material which render the property less useful or less valuable).

7 Nuclear Installations Act 1965 s 7(1)(a).

8 For the meaning of 'period of responsibility' see PARA 1494 note 7 ante.

9 Nuclear Installations Act 1965 s 7(1)(b). Section 7(1)(a), (b) is subject to s 7(4) (as added: see note 13 infra): s 7(1) (amended by the Nuclear Installations Act 1965 (Repeal and Modification) Regulations 1990, SI 1990/1918, reg 2, Schedule).

10 For the meaning of 'nuclear installation' see PARA 1487 note 3 ante.

11 Nuclear Installations Act 1965 s 7(3).

12 Ie by virtue of *ibid* s 9. If a government department uses any site for any purpose for which a nuclear site licence would be required if s 1 (as amended) (see PARA 1487 ante) applied to the Crown, s 7 (as amended) applies in like manner as if (1) the Crown were the licensee under a nuclear site licence in respect of that site (s 9(a)); and (2) any reference to the period of the licensee's responsibility were a reference to any period during which the department occupies the site (s 9(b)).

13 *Ibid* s 8 (as amended) applies in relation to sites occupied by the Authority: s 7(4) (added by the Nuclear Installations Act 1965 (Repeal and Modification) Regulations 1990, SI 1990/1918, Schedule). The Nuclear Installations Act 1965 s 7 (as amended) applies in relation to the Authority (1) as if any premises which are or have been occupied by the Authority were a site in respect of which a nuclear site licence has been granted to the Authority (s 8(a)); and (2) as if in relation to any such premises any reference to the period of the licensee's responsibility were a reference to any period during which the Authority is in occupation of those premises (s 8(b)); and s 7 (as amended) so applies whether or not a nuclear site licence has been granted in respect of the premises in question: s 8 (amended by the Nuclear Installations Act 1965 (Repeal and Modification) Regulations 1990, SI 1990/1918, Schedule). As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

14 See *Magnohard Ltd v United Kingdom Atomic Energy Authority* 2004 SC 247, 2003 SLT 1083, Ct of Sess (OH).

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1496. Nuclear occurrences.

The specified occurrences involving nuclear matter¹ are:

- 3992 (1) any occurrence on the licensed site², during the period of the licensee's³ responsibility⁴, which involves nuclear matter⁵;
- 3993 (2) any occurrence elsewhere than on the licensed site which involves nuclear matter, other than excepted matter⁶, which at the time of the occurrence is in the course of carriage⁷ either:
- 369
542. (a) on the licensee's behalf as licensee of that site; or
543. (b) to that site with his agreement from a place outside the relevant territories⁸,
- 370
- 3994 and, in either case, is not on any other relevant site⁹ in the United Kingdom¹⁰;
- 3995 (3) any occurrence elsewhere than on the licensed site which involves nuclear matter, other than excepted matter, which, having been on the licensed site at any time during the period of the licensee's responsibility or having been in the course of carriage on the licensee's behalf as licensee of that site, has not subsequently been on any relevant site or in the course of any relevant carriage¹¹ or (except in the course of relevant carriage) within the territorial limits¹² of a country which is not a relevant territory¹³.

1 The occurrences specified for the purposes of the Nuclear Installations Act 1965 s 7(1)(a): see PARA 1495 ante. For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

2 For the meaning of 'licensed site' see PARA 1494 note 8 ante.

3 For the meaning of 'licensee' see PARA 1490 note 11 ante.

4 For the meaning of 'period of responsibility' see PARA 1494 note 7 ante.

5 Nuclear Installations Act 1965 s 7(2)(a).

6 'Excepted matter' means nuclear matter consisting only of one or more of the following, namely (1) isotopes prepared for use for industrial, commercial, agricultural, medical, scientific or educational purposes; (2) natural uranium; (3) any uranium of which isotope 235 forms not more than 0.72%; (4) nuclear matter of such other description in such circumstances as may be prescribed by regulations or, for the purposes of the application of the Nuclear Installations Act 1965 to a relevant foreign operator, as may be excluded from the operation of the relevant international agreement by the relevant foreign law: s 26(1) (amended by the Energy Act 1983 s 32). In exercise of the power conferred by head (4) supra, the Secretary of State has made the Nuclear Installations (Excepted Matter) Regulations 1978, SI 1978/1779, which came into operation on 1 January 1979: reg 1. For the purposes of head (4) supra, the following is excepted matter: (a) any substance consisting substantially of uranium in which (i) the total activity content per gram of that substance of all radioisotopes other than uranium isotopes which are normally present in natural uranium or any daughter products of such uranium isotopes does not exceed 200,000 alpha disintegrations per minute for all alpha emitting isotopes and does not exceed 20 microcuries from all beta or gamma emitting isotopes; and (ii) the mass of the isotope uranium 235 does not exceed 1% of the total mass of all the uranium isotopes present; and (b) nuclear matter, for such time as it is outside a relevant site, which has been consigned from a relevant site and is not waste discharged on or from such a site or consigned therefrom, and which when it left that site (i) was duly packed and labelled in accordance with the appropriate provisions of the IAEA regulations; (ii) did not

exceed the prescribed limits of activity; and (iii) being fissile material, did not exceed the prescribed limits and was either exempted from the additional provisions of the IAEA regulations relating to packages containing fissile materials, or was packed in such a way as to satisfy the nuclear safety criteria laid down for Fissile Class I or Class II packages in those regulations: see the Nuclear Installations (Excepted Matter) Regulations 1978, SI 1978/1779, reg 3. For the prescribed limits of activity see reg 4; and for the prescribed limits for fissile material see reg 5, Schedule. 'The IAEA regulations' means the Regulations for the Safe Transport of Radioactive Materials published by the International Atomic Energy Agency, and for these purposes means the 1973 revised edition of those regulations, except where the 1967 edition is specified: Nuclear Installations (Excepted Matter) Regulations 1978, SI 1978/1779, reg 2(2). The current edition is the 2005 revised edition. Excepted matter is exempted from the need to have a certificate of insurance during carriage in the form prescribed by the Nuclear Installations (Insurance Certificate) Regulations 1965, SI 1965/1823: see PARA 1514 post.

'Relevant foreign operator' means a person who, for the purposes of a relevant international agreement, is the operator of a relevant installation in a relevant territory other than the United Kingdom; 'relevant foreign law' means the law of a relevant territory other than the United Kingdom or any part of it regulating in accordance with a relevant international agreement matters falling to be so regulated and, in relation to a particular relevant foreign operator, means such law of his home territory; 'relevant territory' means a country for the time being bound by a relevant international agreement; and 'home territory', in relation to a relevant foreign operator, means the relevant territory in which, for the purposes of a relevant international agreement, he is the operator of a relevant installation: Nuclear Installations Act 1965 s 26(1). Any question as to whether any person is a relevant foreign operator, or any law is the relevant foreign law with respect to any matter, must be referred to and determined by the Secretary of State: s 26(3)(a), (b). As to the Secretary of State see PARA 601 note 1 ante. His power to make regulations for the purposes of the definition of 'excepted matter' is only exercisable, in so far as it is exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3. For the meaning of 'relevant site' see note 9 infra. For the meanings of 'relevant installation' and 'relevant international agreement' see PARA 1487 note 7 ante; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante. See also note 8 infra.

7 Any reference in the Nuclear Installations Act 1965 to the carriage of nuclear matter must be construed as including references to any storage incidental to the carriage of the matter before its delivery at its final destination: s 26(2).

8 Any question whether any country is for the time being a relevant territory must be referred to and determined by the Secretary of State: *ibid* s 26(3)(c).

9 'Relevant site' means any of the following, ie: (1) a licensed site at any time during the period of the licensee's responsibility; (2) any premises when occupied by the United Kingdom Atomic Energy Authority ('the UKAEA'); (3) any site at any time when it is occupied by a government department, if it is being or has been used by the department as mentioned in *ibid* s 9 (see PARA 1495 note 12 ante); (4) any site in a relevant territory other than the United Kingdom at any time when it is being used for the operation of a relevant installation by a relevant foreign operator: s 26(1). As to the UKAEA see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

10 *Ibid* s 7(2)(b).

11 'Relevant carriage', in relation to nuclear matter, means carriage on behalf of (1) a licensee as the licensee of a particular licensed site; or (2) the United Kingdom Atomic Energy Authority; or (3) a government department for the purposes of the department's use of a site as mentioned in *ibid* s 9; or (4) a relevant foreign operator; or (5) a person authorised to operate a nuclear reactor which is comprised in a means of transport and in which the nuclear matter in question is intended to be used: s 26(1). See also note 7 supra. For the meaning of 'nuclear reactor' see PARA 1487 note 4 ante.

12 'Territorial limits' includes territorial waters: *ibid* s 26(1).

13 *Ibid* s 7(2)(c). 'Occurrence' is broad enough to cover both the arrival of a radioactive particle at a beach and the fact of its remaining on the beach: *Magnohard Ltd v United Kingdom Atomic Energy Authority* 2004 SC 247, 2003 SLT 1083, Ct of Sess (OH).

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1497. Duty of foreign operators.

In certain cases a relevant foreign operator¹ must secure that no occurrence causes injury² to any person or damage to any property of any person other than himself arising out of or resulting from the radioactive properties of nuclear matter³ or a combination of those and any toxic, explosive or other hazardous properties of that matter⁴.

This duty applies to any nuclear matter which is not excepted matter⁵ and which:

- 3996 (1) is in the course of carriage⁶:
371
 - 544. (a) on his behalf; or
 - 545. (b) to his relevant site⁷ with his agreement⁸ from a place outside the relevant territories⁹,
- 372 3997 and in either case is not for the time being on any relevant site in the United Kingdom¹⁰; or
- 3998 (2) having been on his relevant site or in the course of carriage on his behalf has not subsequently been on any relevant site or in the course of any relevant carriage¹¹ or (except in the course of relevant carriage) within the territorial limits¹² of a country which is not a relevant territory¹³.

The duty applies to an occurrence taking place wholly or partly within the territorial limits of the United Kingdom¹⁴ or an occurrence outside those limits which also involves nuclear matter in respect of which a duty is imposed¹⁵ on any person by certain provisions of the Nuclear Installations Act 1965¹⁶.

1 For the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

2 For the meaning of 'injury' see PARA 1494 note 9 ante.

3 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

4 See the Nuclear Installations Act 1965 s 10(1).

5 For the meaning of 'excepted matter' see PARA 1496 note 6 ante.

6 For the meaning of 'carriage' see PARA 1496 note 7 ante.

7 For the meaning of 'relevant site' see PARA 1496 note 9 ante.

8 Compensation is not payable under the Nuclear Installations Act 1965 in respect of injury or damage caused by a breach of a duty so imposed in respect of such carriage unless the agreement was expressed in writing: s 13(3).

9 For the meaning of 'relevant territory' see PARA 1496 note 6 ante.

10 Nuclear Installations Act 1965 s 10(1)(a). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

11 For the meaning of 'relevant carriage' see PARA 1496 note 11 ante.

- 12 For the meaning of 'territorial limits' see PARA 1496 note 12 ante.
- 13 Nuclear Installations Act 1965 s 10(1)(b).
- 14 Ibid s 10(2)(a).
- 15 le imposed on any person by ibid s 7, s 8 or s 9 (ss 7, 8 as amended): see PARAS 1495-1496 ante.
- 16 Ibid s 10(2)(b).

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1498. Duty of other persons causing nuclear matter to be carried.

Where any nuclear matter¹ other than excepted matter² is in the course of carriage³ within the territorial limits⁴ of the United Kingdom⁵ on behalf of any person ('the responsible party'), and (1) the carriage is not relevant carriage⁶; and (2) the nuclear matter is not for the time being on any relevant site⁷, it is the duty of the responsible party to secure that no occurrence involving that nuclear matter causes injury⁸ to any person or damage to any property of any person other than the responsible party, being injury or damage incurred within those territorial limits and arising out of or resulting from the radioactive properties of that nuclear matter or a combination of those and any toxic, explosive or other hazardous properties of that matter⁹.

1 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

2 For the meaning of 'excepted matter' see PARA 1496 note 6 ante.

3 For the meaning of 'carriage' see PARA 1496 note 7 ante.

4 For the meaning of 'territorial limits' see PARA 1496 note 12 ante.

5 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

6 Nuclear Installations Act 1965 s 11(a). For the meaning of 'relevant carriage' see PARA 1496 note 11 ante.

7 Ibid s 11(b). For the meaning of 'relevant site' see PARA 1496 note 9 ante.

8 For the meaning of 'injury' see PARA 1494 note 9 ante.

9 Nuclear Installations Act 1965 s 11.

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1499. Reports of dangerous occurrences.

On the happening of any occurrence of a prescribed¹ class or description² either on a licensed site or in the course of the carriage of nuclear matter on behalf of any person where a duty with respect to that carriage is imposed on him by certain statutory provisions³, the licensee⁴ or that person must cause the occurrence to be reported forthwith in the prescribed manner⁵ to the Health and Safety Executive and to any other persons who are prescribed in relation to occurrences of that class or description⁶. If the occurrence is not so reported, the licensee or that person is guilty of an offence⁷.

1 For the meaning of 'prescribed' see PARA 1487 note 6 ante. The Secretary of State's power to make regulations for these purposes is only exercisable, in so far as it is exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3. As to the exercise of this power see the Nuclear Installations (Dangerous Occurrences) Regulations 1965, SI 1965/1824; and note 2 infra.

2 Prescribed occurrences are occurrences of each of the following classes or descriptions, ie: (1) any occurrence on a licensed site involving the emission of ionising radiations or the release of radioactive or toxic substances in such circumstances as to cause or be likely to cause (a) the death of, or serious injury to the health of, persons outside the site at the time of the occurrence, whether or not persons on the site are also affected thereby; or (b) the death of, or serious injury to the health of, persons on the site at the time of the occurrence; (2) any occurrence in the course of carriage of nuclear matter, not being excepted matter, on behalf of any person other than the United Kingdom Atomic Energy Authority ('the UKAEA') or a government department, being (a) an occurrence which that person has reason to believe has caused or may be likely to cause the death of any person, or serious injury to his health, by reason of the radioactive properties of such nuclear matter; or (b) an occurrence involving the breaking open of any outside container in which such nuclear matter is being carried; (3) any explosion or outbreak of fire on a licensed site affecting or likely to affect the safe working or safe condition of the nuclear installation; and (4) any uncontrolled criticality excursion: *ibid* reg 3(1). The requirements of heads (2)-(4) supra are without prejudice to the generality of the requirements of head (1) supra: reg 3(2). For the meaning of 'licensed site' see PARA 1490 note 8 ante; for the meaning of 'injury' see PARA 1494 note 9 ante; for the meaning of 'carriage' see PARA 1496 note 7 ante; for the meaning of 'nuclear matter' see PARA 1492 note 4 ante; for the meaning of 'excepted matter' see PARA 1496 note 6 ante; and for the meaning of 'nuclear installation' see PARA 1487 note 3 ante. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 Ie the provisions of the Nuclear Installations Act 1965 s 7 (as amended: see PARAS 1495-1496 ante), s 10 (see PARA 1497 ante) or s 11 (see PARA 1498 ante): s 22(1)(b).

4 For the meaning of 'licensee' see PARA 1490 note 11 ante.

5 All such occurrences must be reported to the Health and Safety Executive by the quickest means available and thereafter confirmed to it in writing: Nuclear Installations (Dangerous Occurrences) Regulations 1965, SI 1965/1824, reg 4(1) (amended by virtue of SI 1974/2056). Such reports must contain the information (or such part of it as is applicable to the occurrence concerned) specified in the Nuclear Installations (Dangerous Occurrences) Regulations 1965, SI 1965/1824, reg 4(3), Schedule: reg 4(3). The specified information is: (1) in the case of a licensee, the licensee's full name and the site licence number, or, in the case of any other person on whose behalf the nuclear matter is being carried, the full name and address of that person; (2) the date, time and exact location of the occurrence; (3) a brief description of the occurrence together with, as the case may be, the state of the nuclear installation (eg normal operation, under maintenance) or the state of the nuclear matter in the case of an occurrence elsewhere than on a licensed site (eg on the means of transport, in transit storage) and any other relevant matters at the time of the occurrence; (4) so far as is known, whether any injury has been caused to persons or any damage to property or both, and, if so, whether such injury or damage has been caused on or off the licensed site or both; (5) where an occurrence has resulted in

contamination, particulars of: (a) the nature of the contaminant; (b) the area affected thereby; (c) the weather conditions and wind direction at the time of the occurrence; (d) persons contaminated and the extent of such contamination; (e) any area on the licensed site which was evacuated or to which access was restricted: reg 4(3), Schedule. As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

6 Nuclear Installations Act 1965 s 22(1), (2) (s 22(2) amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 1). In the case of any prescribed occurrence specified in the Nuclear Installations (Dangerous Occurrences) Regulations 1965, SI 1965/1824, reg 3(1)(a)(i) or (b) (see note 2 heads (1)(a), (2) supra), reports must be made (as well as to the Health and Safety Executive) to the local authority in whose area the occurrence happened and to the chief officer of police for the police area in which it happened, and confirmed thereafter in writing to the Executive: reg 4(1)(a) (amended by virtue of SI 1974/2056).

7 Nuclear Installations Act 1965 s 22(2) (as amended: see note 6 supra; further amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(a), Sch 1). The offender is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment to a fine: see the Health and Safety at Work etc Act 1974 ss 33(3), 53(1), Sch 1 (as amended): and HEALTH AND SAFETY AT WORK. As to the prescribed sum see PARA 613 note 20 ante.

UPDATE

1499 Reports of dangerous occurrences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1500. Registration of persons present in the area of certain occurrences.

On the happening of any occurrence in respect of which liability may be incurred by virtue of any of the statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences¹, the appropriate authority² may by order³ make provision for enabling such particulars of any person shown to have been within such area during such period (being the period during which the occurrence took place) as may be specified in the order to be registered by or on behalf of that person in a specified manner, and any such registration in respect of any person is to be sufficient evidence⁴ of his presence within that area during that period unless the contrary is proved⁵.

1 In the provisions of the Nuclear Installations Act 1965 ss 7-11 (as amended): see PARAS 1495-1498 ante. For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

2 'The appropriate authority' means, where the Crown is the person against whom any claim in respect of the occurrence falls to be made, the minister in charge of the government department concerned (or, where any part of the Scottish Administration is concerned, the minister) or, in any other case, the Secretary of State: *ibid* s 23(2) (amended by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, art 2, Schedule para 2). As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 23 (as amended) are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

3 Any such order must be made by statutory instrument and laid before Parliament after being made: Nuclear Installations Act 1965 s 23(1). Any such orders, being local, are not recorded in this work.

4 As to the effect of an enactment making a document sufficient evidence see CIVIL PROCEDURE vol 11 (2009) PARA 767.

5 Nuclear Installations Act 1965 s 23(1). This provision is without prejudice to any right of any person to claim against any person by virtue of ss 7-11 (as amended): s 23(1).

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(iii) Compensation in respect of Breach of Duty

A. RIGHTS TO COMPENSATION

1501. Compensation for breach of duty.

Where any injury¹ or damage has been caused in breach of a duty imposed by the statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences², compensation in respect of that injury or damage is payable³ wherever it occurred⁴, but no other liability is incurred by any person in respect of it⁵. Any injury or damage which, though not caused in breach of such a duty, is not reasonably separable from injury or damage so caused is deemed to have been so caused⁶.

Where, in the case of an occurrence which constitutes a breach of such a duty, a person other than the person subject to the duty makes any payment in respect of injury or damage caused by that occurrence and:

- 3999 (1) the payment is made in pursuance of any of certain international conventions⁷; or
- 4000 (2) the occurrence took place or the injury or damage was incurred within the territorial limits⁸ of a country which is not a relevant territory⁹ and the payment is made by virtue of a law of that country and by a person who has his principal place of business in a relevant territory or is acting on behalf of such a person,

the person making the payment may make the like claim for compensation of the like amount, if any, not exceeding the amount of the payment made by him, as would have been available to him if the injury in question had been suffered by him or the property suffering the damage in question had been his¹⁰.

1 For the meaning of 'injury' see PARA 1494 note 9 ante.

2 I.e. the provisions of the Nuclear Installations Act 1965 ss 7-10 (as amended): see PARAS 1495-1497 ante. For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

3 I.e. in accordance with *ibid* s 16 (as amended) (see PARAS 1506-1505 post); and subject to s 13(1), (3), (4) (see PARAS 1497 ante, 1502 post), s 15 (see PARA 1503 post) and s 17(1) (see PARA 1507 post): s 12(1)(a).

4 *Ibid* s 12(1)(a). See eg *Blue Circle Industries plc v Ministry of Defence* [1999] Ch 289, [1998] 3 All ER 385, CA (claimant entitled to compensation for damage to the land and all resulting losses, including diminution in the value and saleability of the land). As to the satisfaction of claims see PARAS 1505-1510 post. Nothing in the Health and Safety at Work etc Act 1974 Pt 1 (ss 1-54) (as amended) must be construed as affecting the operation of the Nuclear Installations Act 1965 s 12 (as amended): Health and Safety at Work etc Act 1974 s 47(1)(c). See further HEALTH AND SAFETY AT WORK.

5 Nuclear Installations Act 1965 s 12(1)(b). Section 12(1)(b) is subject to s 12(3) (see note 6 *infra*), and to s 12(4) (as amended) and s 21(2) (see PARA 1513 post): s 12(1)(b). Subject to s 13(5) (as amended) (see the text and notes 7-10 *infra*), nothing in s 12(1)(b) or in s 12(3A) (as added) (see PARA 1502 post) affects (1) the operation of the Carriage by Air Act 1961 or the Carriage by Air (Supplementary Provisions) Act 1962 (see

CARRIAGE AND CARRIERS vol 7 (2008) PARAS 121 et seq, 150, 154 et seq) in relation to any international carriage to which a convention referred to in the Act in question applies; or (2) the operation of the Carriage of Goods by Road Act 1965 (see CARRIAGE AND CARRIERS vol 7 (2008) PARA 650 et seq): Nuclear Installations Act 1965 s 12(4) (b), (c) (amended by the Nuclear Installations Act 1969 s 1). The requirements of the Road Traffic Act 1988 Pt VI ss 143-162 (as amended) (which relate to compulsory insurance or security against third-party risks of users of motor vehicles: see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 937 et seq), do not apply in relation to any injury to any person, or damage to the property of any person, for which any person is liable by virtue of the Nuclear Installations Act 1965 ss 7, 8 (as amended), or ss 9 or 10: s 21(5) (amended by virtue of the Motor Vehicles (Compulsory Insurance) Regulations 1987, SI 1987/2171, reg 5); Road Traffic (Consequential Provisions) Act 1988 s 5, Sch 4 para 1.

6 Nuclear Installations Act 1965 s 12(2). Where any injury or damage is caused partly in breach of such a duty and partly by an emission of ionising radiations which does not constitute such a breach, s 12(2) does not affect any liability of any person in respect of that emission apart from the Nuclear Installations Act 1965, but a claimant is not entitled to recover compensation in respect of the same injury or damage both under the Act and otherwise: s 12(3).

7 The relevant international conventions are those referred to in the Acts mentioned in the Nuclear Installations Act 1965 s 12(4) (as amended): s 13(5)(a). As to those Acts see note 5 supra.

8 For the meaning of 'territorial limits' see PARA 1496 note 12 ante.

9 For the meaning of 'relevant territory' see PARA 1496 note 6 ante.

10 Nuclear Installations Act 1965 s 13(5), (5A) (s 13(5) amended by the Nuclear Installations Act 1969 s 3; the Energy Act 1983 s 27(3); the Nuclear Installations Act 1965 s 13(5A) added by the Energy Act 1983 s 27(3)). The Nuclear Installations Act 1965 s 13(5) (as amended) applies as if the Nuclear Installations Act 1965 s 13(1) had not been passed: s 13(5)(ii). In the case of a claim made by virtue of head (2) in the text, however, the amount of the claim must not exceed the amount applicable under s 16(1) (as amended) or s 16(2) (see PARA 1505 post) to the person subject to the duty in question: s 13(5A) (as so added).

UPDATE

1501 Compensation for breach of duty

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1502. Exclusion or reduction of compensation.

Compensation is not payable in respect of injury¹ or damage caused by a breach of duty imposed by certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences² if the injury or damage was caused by an occurrence of a certain class³ which is shown to have taken place wholly within the territorial limits⁴ of one only of the relevant territories⁵ other than the United Kingdom⁶. Nor is compensation payable if the injury or damage so caused was incurred within the territorial limits of a country which is not a relevant territory⁷, but, in the case of such a breach of duty other than by a relevant foreign operator⁸, this provision does not apply to injury or damage incurred by, or by persons or property on, a ship or aircraft registered in the United Kingdom⁹.

The duty imposed by the statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences¹⁰ does not impose any liability on the person subject to that duty for injury or damage caused by an occurrence which constitutes a breach of that duty if the occurrence, or the causing thereby of the injury or damage, is attributable to hostile action in the course of any armed conflict, including any armed conflict within the United Kingdom¹¹. Such a liability is imposed, however, where the occurrence, or the causing thereby of the injury or damage, is attributable to a natural disaster, notwithstanding that the disaster is of such an exceptional character that it could not reasonably have been foreseen¹².

The amount of compensation payable to or in respect of any person for injury or damage caused in breach of a duty imposed by certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences¹³ may be reduced by reason of that person's fault if, but only if, and to the extent that, the causing of that injury or damage is attributable to any act of that person committed with the intention of causing harm to any person or property or with reckless disregard for the consequences of his act¹⁴. Where damage is caused to any property otherwise than in breach of such a duty, but the damage would have been caused in breach of such a duty if the property had not been the licensee's or a relevant foreign operator's¹⁵, no liability which would otherwise have been incurred by any person in respect of that damage is incurred except:

- 4001 (1) in pursuance of an agreement to incur liability in respect of such damage entered into in writing before the occurrence of the damage; or
- 4002 (2) where the damage was caused by an act or omission of that person done with intent to cause injury or damage¹⁶.

1 For the meaning of 'injury' see PARA 1494 note 9 ante.

2 I.e. the provisions of the Nuclear Installations Act 1965 s 7 (as amended) or s 8 (as amended) or s 9 or s 10: see PARAS 1495-1497 ante. For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

3 I.e. such an occurrence as is mentioned in ibid s 7(2)(b) or (c) (see PARA 1496 ante), or s 10(2)(b) (see PARA 1497 ante): s 13(1)(a).

4 For the meaning of 'territorial limits' see PARA 1496 note 12 ante.

5 For the meaning of 'relevant territory' see PARA 1496 note 6 ante.

6 Nuclear Installations Act 1965 s 13(1)(a). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 Ibid s 13(1)(b).

8 Ie in the case of such a breach of duty under ibid s 7 or s 8 (as amended) or s 9, but not in the case of a breach under s 10: s 13(2).

9 Ibid s 13(2).

10 Ie the provisions of ibid s 7 (as amended), s 8, (as amended), s 9, s 10 or s 11: s 13(4)(a).

11 Ibid s 13(4)(a).

12 Ibid s 13(4)(b).

13 See note 2 supra.

14 Nuclear Installations Act 1965 s 13(6). As respects compensation payable to a child by virtue of the Congenital Disabilities (Civil Liability) Act 1976, the Nuclear Installations Act 1965 s 13(6) must be applied as if the reference there to fault was to the fault of the parent: Congenital Disabilities (Civil Liability) Act 1976 s 3(4). Compensation is not payable in the child's case if the injury to the parent preceded the time of the child's conception and at that time either or both of the parents knew the risk of their child being born disabled (that is to say, the particular risk created by the injury): s 3(5).

15 Ie if in the Nuclear Installations Act 1965 s 7(1)(a) or (b), the words 'other than the licensee' or in s 10(1) the words 'other than that operator' had not been enacted: s 12(3A) (added by the Nuclear Installations Act 1969 s 1). As to property which is deemed to be the property of the licensee notwithstanding that it is the property of some other person see PARA 1495 ante.

16 Nuclear Installations Act 1965 s 12(3A) (as added: see note 15 supra). This does not affect the operation of any of the provisions mentioned in s 12(4) (as amended): see s 12(3A), (4) (as respectively added and amended); and PARA 1501 note 5 ante.

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B. PROSECUTION AND SATISFACTION OF CLAIMS; COVER FOR COMPENSATION

1503. Time for bringing claims.

Notwithstanding anything in any other enactment, a claim by virtue of any of the statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences¹ may be made at any time before, but may not be entertained if made at any time after, the expiration of 30 years from the relevant date, which is the date of the occurrence which gave rise to the claim or, where that occurrence was a continuing one, or was one of a succession of occurrences all attributable to a particular happening on a particular relevant site² or to the carrying out from time to time on a particular relevant site of a particular operation, the date of the last event in the course of that occurrence or succession of occurrences to which the claim relates³. A claim in respect of injury⁴ or damage caused by an occurrence involving nuclear matter⁵ stolen from, or lost, jettisoned or abandoned by, the person whose breach of a duty imposed by any of certain statutory provisions⁶ gave rise to the claim may not, however, be entertained if the occurrence takes place after the expiration of the period of 20 years beginning with the day when the nuclear matter was so stolen, lost, jettisoned or abandoned⁷.

1 Ie the provisions of the Nuclear Installations Act 1965 ss 7-11 (as amended) (see PARAS 1495-1498 ante): s 15(1). For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

2 For the meaning of 'relevant site' see PARA 1496 note 9 ante.

3 Nuclear Installations Act 1965 s 15(1).

4 For the meaning of 'injury' see PARA 1494 note 9 ante.

5 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

6 Ie the provisions of the Nuclear Installations Act 1965 ss 7-10 (as amended) PARAS 1495-1497 ante) but not of s 11 (see PARA 1498 ante): s 15(2).

7 Ibid s 15(2).

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1504. Protection for ships and aircraft.

A claim in respect of an occurrence¹ which constitutes a breach of a person's duty under the Nuclear Installations Act 1965² does not give rise to any lien or other right in respect of any ship or aircraft³.

1 le an occurrence such as is mentioned in the Nuclear Installations Act 1965 s 7(2)(b) or (c) (see PARA 1496 ante), s 10 (see PARA 1497 ante) or s 11 (see PARA 1498 ante): s 14(1).

2 le a breach of duty under ibid s 7 (as amended) or s 8 (as amended (see PARAS 1495-1496 ante), or s 9, s 10 or s 11 (see PARAS 1495, 1497-1498 ante): s 14(1).

3 Ibid s 14(1). The provisions of the Supreme Court Act 1981 s 21 which relate to the bringing of claims in rem against ships and aircraft (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 93) do not apply to such a claim: Nuclear Installations Act 1965 s 14(1) (amended by the Merchant Shipping Act 1979 s 50(4), Sch 7 Pt I); Interpretation Act 1978 s 17(2)(a). The Supreme Court Act 1981 is prospectively renamed as the Senior Courts Act 1981 by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1, as from a day to be appointed under s 148(1); at the date at which this title states the law, that amendment was not in force.

The Nuclear Installations Act 1965 s 14(1) (as so amended) has effect in relation to any claim, however, notwithstanding that by reason of s 16 (as amended) (see PARAS 1505-1506 post) no payment for the time being falls to be made in satisfaction of the claim: s 14(2).

UPDATE

1504 Protection for ships and aircraft

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

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1505. Limitations on liability to satisfy claims.

The liability of any person to pay compensation under the Nuclear Installations Act 1965 by virtue of a duty imposed on him by certain provisions of that Act¹ does not require him to make, in respect of any one occurrence² constituting a breach of that duty, payments by way of such compensation exceeding in the aggregate, apart from payments in respect of interest or costs, £140 million or, in the case of licensees³ of such sites as may be prescribed⁴, £10 million⁵. The Secretary of State⁶ may, with the Treasury's approval, by order increase or further increase these amounts⁷.

A relevant foreign operator⁸ is not required⁹ to make any payment by way of compensation in respect of an occurrence:

4003 (1) if he would not have been required to make that payment if the occurrence had taken place in his home territory¹⁰ and the claim had been made by virtue of the relevant foreign law¹¹ made for purposes corresponding to those of certain statutory provisions¹²; or

4004 (2) to the extent that the amount required for the satisfaction of the claim is not required to be available by the relevant foreign law made for purposes corresponding to those of the statutory provisions relating to special cover for the licensee's liability¹³ and has not been made available by statute¹⁴ or by means of a relevant foreign contribution¹⁵.

1 The provisions of the Nuclear Installations Act 1965 s 7 (as amended), s 8 (as amended) or s 9: see PARAS 1495-1496 ante.

2 For the meaning of 'occurrence' see PARA 1507 note 11 post.

3 For the meaning of 'licensee' see PARA 1490 note 11 ante.

4 For the meaning of 'prescribed' see PARA 1487 note 6 ante. In exercise of the power to prescribe such sites, the Secretary of State made the Nuclear Installations (Prescribed Sites) Regulations 1983, SI 1983/919, which came into force on 1 September 1983: reg 1. There is prescribed for these purposes any site in respect of which a nuclear site licence is for the time being in force on which (1) the quantity of radionuclides present at any time is such that their total activity does not exceed the limits of activity prescribed in reg 4; (2) the only nuclear reactor is a small nuclear reactor and the quantity of radionuclides outside the reactor other than associated nuclear fuel present at any time is such that their total activity does not exceed one half of the limits of activity so prescribed; and (3) in either case the total mass of fissile materials, other than those comprised in associated nuclear fuel, present at any time does not exceed the limits prescribed by reg 5: reg 3. For these purposes, 'associated nuclear fuel' means a quantity of nuclear fuel intended and ready for use or in use which has been used in a nuclear reactor and which is held in, or on the same site as, that nuclear reactor which does not exceed the quantity of nuclear fuel specified in the nuclear site licence relating to that nuclear reactor or any consent or approval granted under that site licence; and 'fissile material' means plutonium 239, plutonium 241, uranium 233, uranium 235 (where the mass of the isotope uranium 235 exceeds 1% of the total mass of all the uranium isotopes present), or any material containing any of them: reg 2. For the meaning of 'nuclear reactor' see PARA 1487 note 4 ante; and for the meaning of 'nuclear site licence' see PARA 1487 note 1 ante.

5 Nuclear Installations Act 1965 s 16(1) (amended by the Energy Act 1983 s 27(1); modified by the Nuclear Installations (Increase of Operators' Limits of Liability) Order 1994, SI 1994/909, reg 2).

6 As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 16(1), (1A) (as respectively amended and added) are only exercisable, in so far as they are exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

7 Nuclear Installations Act 1965 16(1A) (added by the Energy Act 1983 s 27(2)). In exercise of the power so conferred, the Secretary of State has made the Nuclear Installations (Increase of Operators' Limits of Liability) Order 1994, SI 1994/909: see note 5 supra. Any such order does not affect liability in respect of any occurrence before, or beginning before, the order comes into force: Nuclear Installations Act 1965 s 16(1A) (as so added).

8 For the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

9 Ie he is not required by virtue of the Nuclear Installations Act 1965 s 10 to make such a payment: s 16(2).

10 For the meaning of 'home territory' see PARA 1496 note 6 ante.

11 For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

12 Ie the provisions of the Nuclear Installations Act 1965 s 7 (as amended), s 8 (as amended) or s 9 (see PARAS 1495-1496 ante): s 16(2)(a).

13 Ie the provisions of ibid s 19(1) (as amended) (see PARA 1510 post): s 16(2)(b).

14 Ie under ibid s 18 (as amended) (see PARA 1509 post): s 16(2)(b).

15 Ibid s 16(2). For the meaning of 'relevant foreign contribution' see PARA 1506 note 8 post.

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1506. Making of claims.

Any claim by virtue of a duty imposed on any person by certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences¹:

- 4005 (1) to the extent to which, though duly established, it is not or would not be payable by that person²; or
- 4006 (2) which is made after the expiration of the relevant period³; or
- 4007 (3) which, being a claim in respect of injury or damage caused by an occurrence involving nuclear matter stolen from, or lost, jettisoned or abandoned by, that person⁴, is made after the expiration of 20 years beginning with the day of that theft, loss, jettisoning or abandonment; or
- 4008 (4) which is a claim the full satisfaction of which out of funds otherwise required to be, or to be made, available for the purpose is prevented by certain provisions relating to the carriage of nuclear matter⁵,

must be made to the appropriate authority⁶.

If such a claim is established to that authority's satisfaction, and to the extent to which it cannot be satisfied out of sums made available for the purpose⁷ or by means of a relevant foreign contribution⁸, it must be satisfied by that authority to such extent and out of funds provided by such means as Parliament may determine⁹.

1 Ie any provision of the Nuclear Installations Act 1965 s 7 (as amended) or s 8 (as amended) (see PARAS 1495-1496 ante) or s 9 or s 10 (see PARAS 1495, 1497 ante): s 16(3). For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

2 Ie to the extent to which, by virtue of *ibid* s 16(1) (as amended) or s 16(2) (see PARA 1505 ante), it is not or would not be payable by that person: s 16(3)(a).

3 'The relevant period' means the period of ten years beginning with the relevant date within the meaning of *ibid* s 15(1) (see PARA 1503 ante): s 16(5).

4 Ie such a claim as is mentioned in *ibid* s 15(2) (see PARA 1503 ante): s 16(3)(c). For the meaning of 'injury' see PARA 1494 note 9 ante; and for the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

5 Ie the provisions of *ibid* s 21(1) (see PARA 1513 post): s 16(3)(d). For the meaning of 'carriage' see PARA 1496 note 7 ante.

6 *Ibid* s 16(3). The appropriate authority, in the case of a claim by virtue of s 9 (other than a claim in connection with a site used by a department of the Government of Northern Ireland) is the minister in charge of the government department concerned (or, where the government department concerned is a part of the Scottish Administration, the Scottish Ministers) or, in any other case, is the Secretary of State: s 16(3) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 38(1), (2)). As to the Secretary of State see PARA 601 note 1 ante.

7 Ie the provisions of the Nuclear Installations Act 1965 s 18 (as amended): see PARA 1509 post.

8 'Relevant foreign contribution', in relation to any claim, means any sums falling by virtue of any relevant international agreement to be paid by the government of any relevant territory other than the United Kingdom towards the satisfaction of that claim: *ibid* s 26(1). For the meaning of 'relevant international agreement' see

PARA 1487 note 7 ante; and for the meaning of 'relevant territory' see PARA 1496 note 6 ante. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

9 Ibid s 16(3). Where a claim has been made to the appropriate authority, any question affecting the establishment of the claim or as to the amount of any compensation in satisfaction of it may, if the authority thinks fit, be referred for decision to whichever of the High Court, the Court of Session and the High Court of Justice in Northern Ireland would, but for the provisions of s 16 (as amended), have had jurisdiction in accordance with s 17(1), (2) (see PARA 1507 text and note 5 post) to determine the claim: s 16(4). The claimant may appeal to that court from any decision of the authority on any such question which is not so referred, and on any such reference or appeal the authority is entitled to appear and be heard: s 16(4)(a). Notwithstanding anything in any Act, the court's decision is final: s 16(4)(b).

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1507. Jurisdiction and shared liability.

No court in the United Kingdom¹ or any part of it has jurisdiction to determine any claim or question under the Nuclear Installations Act 1965 certified by the Secretary of State² to be one which, under any relevant international agreement³, falls to be determined by a court of some other relevant territory⁴ or of some other part of the United Kingdom, and any proceedings to enforce such a claim which are commenced in any court in the United Kingdom or, as the case may be, that part of it, must be set aside⁵.

Where, by virtue of any one or more of certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences⁶ and any relevant foreign law⁷ made for purposes corresponding to those of any of those provisions, liability in respect of the same injury⁸ or damage is incurred by two or more persons, then, for the purposes of any proceedings in the United Kingdom relating to that injury or damage⁹:

4009 (1) both or all of those persons are treated as jointly and severally liable in respect of that injury or damage¹⁰; and

4010 (2) until claims against each of those persons in respect of the occurrence¹¹ by virtue of which the person in question is liable for that injury or damage have been satisfied up to a specified limit¹²,

no sums in excess of those required for the purposes of the satisfaction of claims against a licensee, the United Kingdom Atomic Energy Authority ('the UKAEA') or the Crown¹³ are required to be made available out of money provided by Parliament¹⁴ for the purpose of paying compensation in respect of that injury or damage¹⁵.

Where, in the case of any claim in respect of breach of duty by a relevant foreign operator¹⁶, that operator is the government of a relevant territory, then, for the purposes of any proceedings brought in a court in the United Kingdom to enforce that claim, that government is deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such claim is to be commenced and carried on¹⁷, but this provision does not authorise the issue of execution against the property of that government¹⁸.

1 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 17(1), (4) are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers, by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

3 For the meaning of 'relevant international agreement' see PARA 1487 note 7 ante.

4 For the meaning of 'relevant territory' see PARA 1496 note 6 ante.

5 Nuclear Installations Act 1965 s 17(1). Where the Secretary of State certifies that any claim or question falls to be determined by a court in a particular part of the United Kingdom, that certificate is conclusive evidence of the jurisdiction of that court to determine that claim or question: s 17(2).

6 le the provisions of *ibid* ss 7-10 (as amended): see PARAS 1495-1496 ante. For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

7 For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

8 For the meaning of 'injury' see PARA 1494 note 9 ante.

9 This includes proceedings for the enforcement of a judgment registered under the Foreign Judgments (Reciprocal Enforcement) Act 1933 (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 171 et seq): Nuclear Installations Act 1965 s 17(3). See also PARA 1508 post.

10 *Ibid* s 17(3)(a).

11 'Occurrence', for the purposes of *ibid* ss 16(1), (1A) (as respectively amended and added: see PARA 1505 ante), s 17(3) (as amended: see note 12 infra), and s 18 (as amended: see PARA 1509 post), means: (1) in the case of a continuing occurrence, the whole of that occurrence; and (2) in the case of an occurrence which is one of a succession of occurrences all attributable to a particular happening on a particular relevant site or to the carrying out from time to time on a particular relevant site of a particular operation, all those occurrences collectively: s 26(1). For the meaning of 'relevant site' see PARA 1496 note 9 ante.

12 The limit is, in the case of a licensee, the United Kingdom Atomic Energy Authority or the Crown, an aggregate amount equal to that applicable to the person in question under *ibid* s 16(1) (as amended), or, in the case of a relevant foreign operator, such aggregate amount as may be provided for by the relevant foreign law made for purposes corresponding to those of s 19(1) (as amended): s 17(3)(b)(i), (ii) (amended by the Energy Act 1983 ss 28(4), 31, 36, Sch 4 Pt II). As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

13 le no sums in excess of those required for the purposes of the Nuclear Installations Act 1965 s 17(3)(b)(i) (as amended: see note 12 supra) (ie, up to an aggregate amount equal to that applicable to the person in question under s 16(1) (as amended)): s 17(3)(b).

14 le by virtue of *ibid* s 18 (as amended) (see PARA 1509 post): s 17(3)(b).

15 *Ibid* s 17(3)(b).

16 le by virtue of *ibid* s 10: s 17(6).

17 As to service out of the jurisdiction see CIVIL PROCEDURE vol 11 (2009) PARA 156 et seq.

18 Nuclear Installations Act 1965 s 17(6).

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1508. Foreign judgments.

The provisions of the Foreign Judgments (Reciprocal Enforcement) Act 1933 relating to the registration of foreign judgments¹ apply to any judgment given in a court of any foreign country which is certified by the Secretary of State² to be a relevant foreign judgment³ for the purposes of the Nuclear Installations Act 1965, whether or not those provisions would otherwise have so applied⁴.

It is sufficient defence to proceedings in the United Kingdom against any person for the recovery of a sum alleged to be payable under a judgment given in a country outside the United Kingdom for that person to show that:

- 4011 (1) the sum in question was awarded in respect of injury⁵ or damage of a description which is the subject of a relevant international agreement⁶;
- 4012 (2) the country in question is not a relevant territory⁷; and
- 4013 (3) the sum in question was not awarded in pursuance of any of certain international conventions⁸.

1 I.e. the provisions of the Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I (ss 1-7) (as amended): see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 171 et seq.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 'Relevant foreign judgment' means a judgment of a court of a relevant territory other than the United Kingdom which, under a relevant international agreement, is to be enforceable anywhere within the relevant territories: Nuclear Installations Act 1965 s 26(1). For the meaning of 'relevant territory' see PARA 1496 note 6 ante; and for the meaning of 'relevant international agreement' see PARA 1487 note 7 ante. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Ibid s 17(4). The Foreign Judgments (Reciprocal Enforcement) Act 1933 Pt I (as amended) has effect in relation to any judgment so certified as if s 4(1)(a)(ii), (2), (3) (as amended) were omitted: Nuclear Installations Act 1965 s 17(4).

5 For the meaning of 'injury' see PARA 1494 note 9 ante.

6 Nuclear Installations Act 1965 s 17(5)(a). Section 17(5) (as amended) does not apply where the judgment in question is enforceable in the United Kingdom in pursuance of an international agreement: s 17(5), (5A) (respectively amended and added by the Energy Act 1983 s 31).

7 Nuclear Installations Act 1965 s 17(5)(b). See also note 6 supra.

8 Ibid s 17(5)(c). The international conventions are those referred to in the Acts mentioned in s 12(4) (as amended) (see PARA 1501 note 5 ante): s 17(5). See also note 6 supra.

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1509. General cover for compensation.

In the case of any occurrence¹ in respect of which one or more persons incur liability by virtue of certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences² or by virtue of any relevant foreign law³ made for purposes corresponding to those or any of those provisions, there must be made available out of money provided by Parliament such sums as when aggregated:

- 4014 (1) with any funds required by the statutory provisions relating to special cover for the licensee's liability⁴, or by any relevant foreign law made for purposes corresponding to those statutory provisions, to be available for the purpose of satisfying claims in respect of that occurrence against any licensee or relevant foreign operator⁵;
- 4015 (2) with any relevant foreign contributions⁶ towards the satisfaction of claims in respect of that occurrence, in the case of a claim by virtue of any such foreign law⁷; and
- 4016 (3) with any amounts payable under a contract of insurance or other arrangements for satisfying claims in respect of that occurrence against the United Kingdom Atomic Energy Authority ('the UKAEA')⁸, in the case of an occurrence in respect of which the Authority incurs liability⁹,

may be necessary to ensure that all claims in respect of that occurrence made within the relevant period¹⁰, and duly established, excluding, but without prejudice to, any claim in respect of interest or costs, are satisfied up to an aggregate amount being the equivalent in sterling of 300 million special drawing rights¹¹ as defined by the International Monetary Fund¹².

In relation to liability by virtue of any relevant foreign law, there must be left out of account for these purposes any claim which, though made within the relevant period, was made after the expiration of any limitation period imposed by that law and permitted by a relevant international agreement¹³. Where:

- 4017 (a) a relevant foreign law provides in pursuance of a relevant international agreement for sums additional to those referred to in head (1) above to be made available out of public funds; but
- 4018 (b) the maximum aggregate amount of compensation for which such law provides is less than 300 million special drawing rights,

then heads (1) to (3) above have effect as if for the reference in relation to those heads to 300 million special drawing rights there were substituted a reference to the maximum aggregate amount for which the relevant foreign law provides¹⁴. Where a relevant foreign law makes no such provision for additional funds as is referred to in head (a) above, then in relation to liability by virtue of that law in respect of any occurrence:

- 4019 (i) heads (1) to (3) above do not have effect in relation to any claim unless the person (or one of the persons) liable is a licensee, the Authority or the Crown¹⁵; and
- 4020 (ii) if a licensee, the Authority or the Crown is liable, heads (1) to (3) above have effect as if for the reference in relation to those heads to 300 million special drawing rights there were substituted a reference to the amount which would be applicable to that person under the statutory provision limiting that person's liability¹⁶ in respect of the occurrence in question (or, if more than one such person is liable, to the aggregate of the amounts which would be so applicable) if it had constituted a breach of duty¹⁷ under the Nuclear Installations Act 1965¹⁸.

1 For the meaning of 'occurrence' see PARA 1507 note 11 ante.

2 le the provisions of the Nuclear Installations Act 1965 s 7 (as amended), or s 8 (as amended) (see PARAS 1495-1496 ante) or s 9 or s 10 (see PARAS 1495, 1497 ante): s 18(1). For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

3 For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

4 le the provisions of the Nuclear Installations Act 1965 s 19(1) (as amended): see PARA 1510 post.

5 Ibid s 18(1)(a).

6 For the meaning of 'relevant foreign contribution' see PARA 1506 note 8 ante. Any sums received by the Secretary of State by way of a relevant foreign contribution towards the satisfaction of any claim by virtue of ibid s 7 (as amended), s 8 (as amended), s 9 or s 10 must be paid into the Exchequer: ss 18(5), 26(1). As to the Secretary of State see PARA 601 note 1 ante. His functions under s 18(1B) (as added) (see note 12 infra) are only exercisable, in so far as they are exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

7 Ibid s 18(1)(b).

8 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

9 Nuclear Installations Act 1965 s 18(1)(c) (added by the Atomic Energy Act 1989 s 3).

10 'The relevant period' has the same meaning as in the Nuclear Installations Act 1965 s 16 (as amended) (see PARA 1506 note 3 ante): s 18(6).

11 'Special drawing rights' means those rights as defined by the International Monetary Fund (IMF); and for the purpose of defining the equivalent in sterling on any day of a sum expressed in special drawing rights, one special drawing right is treated as equal to such a sum in sterling as the IMF has fixed as being the equivalent of one special drawing right for that day, or if no sum has been fixed for that day, for the last day before that day for which a sum has been so fixed: ibid s 25B(1) (s 25B added by the Energy Act 1983 s 30). A certificate given by or on behalf of the Treasury stating (1) that a particular sum in sterling has been so fixed for a particular day; or (2) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day, is conclusive evidence of those matters for the purposes of the Nuclear Installations Act 1965 s 25B(1) (as so added); and the Treasury may charge a reasonable fee, payable into the Consolidated Fund, for any such certificate: s 25B(2), (3) (as so added). A document purporting to be such a certificate is receivable in evidence in any proceedings and is deemed to be such a certificate unless the contrary is proved: s 25B(2) (as so added). As to the International Monetary Fund see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1391; as to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031; and as to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512.

12 Ibid s 18(1), (1A) (amended and added respectively by the Energy Act 1983 s 28(1), (2)). The Secretary of State may with the Treasury's approval by order increase or further increase the sum expressed in special drawing rights in the Nuclear Installations Act 1965 s 18(1A) (as so added); but an order so made cannot have effect in respect of an occurrence before (or beginning before) the order comes into force: s 18(1B) (as so added); and see note 6 supra. Section 18(1) (as so amended) does not apply to any claim by virtue of such a relevant foreign law as is mentioned in it, in respect of injury or damage incurred within the territorial limits of a country which is not a relevant territory or to any claim such as is mentioned in s 15(2) (see PARA 1503 ante), which is not made within the period of 20 years so mentioned: s 18(2). Where any such claim as is mentioned in

s 18(1) (as so amended) is satisfied wholly or partly out of money provided by Parliament, there must also be made available out of money so provided such sums as are necessary to ensure the satisfaction of any claim in respect of interest or costs in connection with the first-mentioned claim: s 18(3). Section 18(1) (as so amended) takes effect subject to s 18(2)-(4B) (s 18(4) substituted, and s 18(4A), (4B) added, by the Energy Act 1983 s 28(3)); to the Nuclear Installations Act 1965 s 17(3)(b) (see PARA 1507 the text and notes 10-14 ante); and to s 21(1) (as amended) (see PARA 1513 post): s 18(1) (as so amended). For the meaning of 'injury' see PARA 1494 note 9 ante; for the meaning of 'territorial limits' see PARA 1496 note 12 ante; and for the meaning of 'relevant territory' see PARA 1496 note 6 ante.

13 Ibid s 18(4) (as substituted: see note 12 supra). For the meaning of 'relevant international agreement' see PARA 1487 note 7 ante.

14 Ibid s 18(4A) (as added: see note 12 supra).

15 Ibid s 18(4B)(a) (as added: see note 12 supra).

16 Ie under ibid s 16(1) (as amended): see PARA 1505 ante.

17 Ie under ibid s 7 (as amended), s 8 (as amended) or s 9: see PARAS 1495-1496 ante.

18 Ibid s 18(4B)(b) (as added: see note 12 supra).

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1510. Obligation to make funds available to satisfy claims.

Where a nuclear site licence¹ has been granted in respect of any site, the licensee² must make such provision, either by insurance or by some other means, as the Secretary of State may with Treasury consent³ approve for sufficient funds to be available at all times to ensure that any claims which have been or may be duly established against the licensee as licensee of that site by virtue either of the Nuclear Installations Act 1965⁴ or of any relevant foreign law⁵ made for purposes corresponding to the provisions of that Act imposing a duty on certain foreign operators⁶ (excluding, but without prejudice to, any claim in respect of interest or costs) are satisfied up to the required amount⁷ in respect of each severally of the following periods, namely:

- 4021 (1) the current cover period⁸, if any⁹;
- 4022 (2) any cover period which ended less than ten years before the time in question¹⁰; and
- 4023 (3) any earlier cover period in respect of which a claim remains to be disposed of¹¹;

and for the purposes of these provisions the cover period in respect of which any claim is to be treated as being made is that in which the beginning of the relevant period¹² fell¹³. If at any time while these provisions apply in relation to any licensed site they are not complied with in respect of that site, the licensee is guilty of an offence¹⁴.

Where, by reason of the gravity of any occurrence which has resulted or may result in any such claims against a licensee as licensee of a particular licensed site¹⁵, or having regard to any previous occurrences which have resulted or may result in such claims against the licensee, the Secretary of State thinks it proper to do so, he must by notice in writing to the licensee direct that a new cover period for the purpose of these provisions is to begin in respect of that site on such date not earlier than two months after the date of the service of the notice as may be specified in the notice¹⁶.

¹ For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante. As to the granting of nuclear site licences see PARA 1490 ante.

² For the meaning of 'licensee' see PARA 1490 note 11 ante.

³ As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 19(1), (4) (as amended) are transferred, in so far as they are exercisable in or as regards Scotland and, subject to the consent of the Treasury as regards certain matters, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

⁴ Ie by virtue of the Nuclear Installations Act 1965 s 7 (as amended): see PARAS 1495-1496 ante.

⁵ For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

⁶ Ie a duty under the Nuclear Installations Act 1965 s 10: see PARA 1497 ante.

7 'The required amount' in relation to the provision to be made by a licensee in respect of a cover period, means an aggregate amount equal to the amount applicable under *ibid* s 16(1) (as amended) (see PARA 1505 ante) to the licensee, as licensee of the site in question, in respect of an occurrence within that period: s 19(1A) (added by the Energy Act 1983 s 27(4)). For the meaning of 'cover period' see note 8 *infra*.

8 'Cover period' means, subject to the Nuclear Installations Act 1965 s 19(2A), (2B) (as added), the period of the licensee's responsibility, and for these purposes the period of the licensee's responsibility is deemed to include any time after the expiration of that period during which it remains possible for the licensee to incur any liability by virtue of s 7(2)(b) or (c) (see PARA 1496 the text and notes 10, 13 ante), or by virtue of any relevant foreign law made for purposes corresponding to those of s 10 (see PARA 1497 ante): ss 19(2), 26(1) (s 19(2) amended by the Atomic Energy Act 1989 s 4(1)(a)). When the amount applicable under the Nuclear Installations Act 1965 s 16(1) (as amended) to a licensee of a site changes as a result of the coming into force of an order under s 16(1A) (as added) or of regulations made for the purposes of s 16(1) (as amended), or an alteration relating to the site which brings it within, or takes it outside, the description prescribed by such regulations, the current cover period relating to him as licensee of that site ends and a new cover period begins: s 19(2A) (added by the Energy Act 1983 s 27(5)). The current cover period continues to run, and no new cover period begins, on the grant of a new nuclear site licence to the same licensee in respect of a site consisting of or including the site in respect of which his existing nuclear site licence is in force: Nuclear Installations Act 1965 s 19(2B) (added by the Atomic Energy Act 1989 s 4(1)(b)).

9 Nuclear Installations Act 1965 s 19(1)(a).

10 *Ibid* s 19(1)(b).

11 *Ie* a claim made within the relevant period within the meaning of *ibid* s 16 (as amended) (see PARA 1506 note 3 ante) (s 19(1)(c)(i)); and, in the case of a claim such as is mentioned in s 15(2) (see PARA 1503 the text and note 6 ante), also within the period of 20 years so mentioned (s 19(1)(c)(ii)).

12 *Ie* the relevant period within the meaning of *ibid* s 16 (as amended) (see PARA 1506 note 3 ante): s 19(1).

13 *Ibid* s 19(1). Section 19(1) is subject to s 3(5) (as amended) (see PARA 1490 the text and note 10 ante) and to s 19(3) (see PARA 1511 post): s 19(1). As to the satisfaction of the requirements where the licensee is licensee of two or more other sites see PARA 1511 post. Member states must take all measures necessary to facilitate the conclusion of insurance contracts covering nuclear risks: see the Euratom Treaty art 98. As to citation of the Treaty see PARA 1337 note 3 ante.

14 Nuclear Installations Act 1965 s 19(5). A licensee guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum, or to imprisonment for a term not exceeding three months, or to both, and on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both: s 19(5)(a), (b) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to fines on conviction on indictment of bodies corporate see PARA 1588 note 4 post. As to the prescribed sum see PARA 613 note 20 ante.

15 For the meaning of 'licensed site' see PARA 1490 note 8 ante.

16 Nuclear Installations Act 1965 s 19(4).

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1511. Cover for liability in respect of licensee of three or more sites.

Where in the case of any licensed site¹ the requirements of the Nuclear Installations Act 1965 for sufficient funds to be available to satisfy claims² are to be satisfied otherwise than by insurance and provision would also fall to be so made by the same person in respect of two or more other sites, those requirements are deemed to be satisfied in respect of each of those sites if funds are available to meet such claims in respect of all the sites collectively, and those funds would for the time being be sufficient to satisfy those requirements in respect of those two of the sites in respect of which those requirements are the highest³. The Secretary of State⁴ may, however, in any particular case at any time direct either that this provision does not apply or that the funds available must be of such amount higher than that provided for by this provision, but lower than that necessary to satisfy those requirements in respect of all the sites severally, as may be required by the direction⁵.

1 For the meaning of 'licensed site' see PARA 1490 note 8 ante.

2 Ie the requirements of the Nuclear Installations Act 1965 s 19(1) (as amended): see PARA 1510 ante.

3 Ibid s 19(3).

4 As to the Secretary of State see PARA 601 note 1 ante. His functions under ibid s 19(3) are transferred, in so far as they are exercisable in or as regards Scotland and, subject to the consent of the Treasury as regards certain matters, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

5 Nuclear Installations Act 1965 s 19(3) proviso.

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C. SUPPLEMENTARY PROVISIONS

1512. Notice of claims made.

In the case of each licensed site¹ the licensee² must give notice in writing to the Secretary of State³ forthwith upon its appearing to the licensee that the aggregate amount of any claims⁴ made in respect of any cover period⁵ falling within the period of the licensee's responsibility⁶ has reached three fifths of the required amount⁷ of special cover for the licensee's liability⁸. Where such a notice has been given, no payment by way of settlement of any claim in respect of the cover period in question by agreement between the licensee and the claimant may be made except after consultation with the Secretary of State and in accordance with the terms of any direction which he may give to the licensee in writing with respect to any particular claim⁹.

If in the case of any licensed site any cover period falling within the period of the licensee's responsibility has ended, the licensee must not later than 31 January in each year send to the Secretary of State in writing a statement showing the date when that cover period ended and the following particulars of any claims in respect of that cover period as at the beginning and end respectively of the last preceding calendar year, namely (1) the aggregate number of claims received; (2) the aggregate number of claims established; and (3) the aggregate number and aggregate amount of claims satisfied¹⁰.

Any person by whom any funds for the satisfaction of claims¹¹ fall to be provided must give to the Secretary of State not less than two months' notice in writing before ceasing to keep those funds available and, notwithstanding any such notice, so far as those funds relate to nuclear matter¹² for the time being in the course of carriage¹³, may not cease to keep them available while that carriage continues¹⁴.

1 For the meaning of 'licensed site' see PARA 1490 note 8 ante.

2 For the meaning of 'licensee' see PARA 1490 note 11 ante.

3 As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 20 (as amended) are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 2, Sch 1.

4 I.e. claims such as are mentioned in the Nuclear Installations Act 1965 s 19(1) (as amended): see PARA 1510 ante.

5 For the meaning of 'cover period' see PARA 1510 note 8 ante.

6 For the meaning of 'period of responsibility' see PARA 1494 note 7 ante.

7 I.e. the required amount within the meaning of the Nuclear Installations Act 1965 s 19(1) (as amended): see PARA 1510 ante.

8 Ibid s 20(1) (amended by the Energy Act 1983 s 27(6)). The Secretary of State must as soon as may be lay before each House of Parliament a copy of any such notice received by him: Nuclear Installations Act 1965 s 20(3).

9 Ibid s 20(1) (as amended: see note 8 supra).

10 Ibid s 20(2). The Secretary of State must as soon as may be lay before each House of Parliament a report (in such form as, having regard to s 16 (as amended) (see PARAS 1506-1505 ante), he may consider appropriate) with respect to any such statements received by him: s 20(3).

11 le funds such as are mentioned in ibid s 19(1) (as amended): see PARA 1510 ante.

12 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

13 For the meaning of 'carriage' see PARA 1496 note 7 ante.

14 Nuclear Installations Act 1965 s 20(4).

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1513. Supplementary provisions relating to damage to the means of transport of nuclear matter.

Where, in the case of an occurrence involving nuclear matter¹ in the course of carriage², a claim in respect of damage to the means of transport being used for that carriage is duly established either:

- 4024 (1) against any person by virtue of a breach of duty under certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences³; or
- 4025 (2) against a licensee, the United Kingdom Atomic Energy Authority ('the UKAEA')⁴ or the Crown by virtue of any relevant foreign law⁵ made for purposes corresponding to the statutory provisions which impose a duty on certain foreign operators⁶,

then, without prejudice to any right of the claimant to the satisfaction of that claim, no payment towards its satisfaction must be made:

- 4026 (a) out of funds which are required to be available for the purpose by statute⁷ or by any relevant foreign law made for corresponding purposes; or
- 4027 (b) out of funds which have been made available for the purpose out of money provided by Parliament⁸ or by means of a relevant foreign contribution⁹,

such as to prevent the satisfaction out of those funds up to an aggregate amount which is the equivalent in sterling (on the day or first day of that occurrence) of 5 million special drawing rights¹⁰ of all claims which have been or may be duly established against the same person in respect of injury¹¹ or damage caused by that occurrence other than damage to that means of transport¹².

Where, in the case of an occurrence involving nuclear matter in the course of carriage, a claim in respect of damage to the means of transport being used for that carriage is duly established¹³ against a relevant foreign operator, but that operator is not required¹⁴ to make a payment in satisfaction of the claim, the statutory exclusion of any other liability apart from that under the Nuclear Installations Act 1965¹⁵ does not apply to any liability of that operator with respect to the damage in question apart from that Act¹⁶.

1 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

2 For the meaning of 'carriage' see PARA 1496 note 7 ante.

3 I.e. under the Nuclear Installations Act 1965 s 7 (as amended) or s 8 (as amended) (see PARAS 1495-1496 ante) or s 9 or s 10 (see PARAS 1495, 1497 ante); s 21(1)(a). For the meaning of 'licensee' see PARA 1490 note 11 ante; and for the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

4 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

5 For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

6 le the provisions of the Nuclear Installations Act 1965 s 10: s 21(1)(b).

7 le by ibid s 19(1) (as amended): see PARA 1510 ante.

8 le under ibid s 18 (as amended): see PARA 1509 ante.

9 For the meaning of 'relevant foreign contribution' see PARA 1506 note 8 ante.

10 For the meaning of 'special drawing rights' see PARA 1509 note 11 ante.

11 For the meaning of 'injury' see PARA 1494 note 9 ante.

12 Nuclear Installations Act 1965 s 21(1) (amended by the Energy Act 1983 s 29(1)). The Secretary of State may with the Treasury's approval by order increase or further increase the sum so expressed in special drawing rights, but such an order does not have effect in respect of any occurrence before (or beginning before) the order comes into force: Nuclear Installations Act 1965 s 21(1A) (added by the Energy Act 1983 s 29(2)). At the date at which this title states the law, no such order had been made. The power to make such orders is exercisable by statutory instrument and a draft must be laid before and approved by resolution of the House of Commons: Nuclear Installations Act 1965 s 25A (added by the Energy Act 1983 s 30). As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 21(1A) (as added) are only exercisable, in so far as they are exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

13 le established by virtue of the Nuclear Installations Act 1965 s 10 (see PARA 1497 ante): s 21(2).

14 le by virtue of ibid s 16(2)(a) (see PARA 1505 the text and note 8 ante): s 21(2).

15 le ibid s 12(1)(b) (see PARA 1501 the text and note 5 ante): s 21(2).

16 Ibid s 21(2).

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1514. Insurance certificates in respect of carriage.

Where any nuclear matter¹ is to be carried other than wholly within the territorial limits of the United Kingdom² by, or on behalf or with the agreement of, a licensee³, the United Kingdom Atomic Energy Authority ('the UKAEA')⁴, a government department or a relevant foreign operator⁵ in such circumstances that, while the matter is in the course of that carriage⁶, the responsible party⁷ may incur liability by virtue of a breach of duty under certain statutory provisions relating to the duty of licensees and foreign operators in respect of nuclear occurrences⁸ or by virtue of any relevant foreign law⁹ made for purposes corresponding to the statutory provisions which impose a duty on certain foreign operators¹⁰, the responsible party must, before the carriage is begun, cause to be delivered to the person who is to carry that matter a document issued by or on behalf of the guarantor¹¹ which must contain such particulars as may be prescribed¹² of the responsible party, of that nuclear matter and carriage, and of the funds available in pursuance of the Nuclear Installations Act 1965¹³, or of the relevant foreign law made for corresponding purposes, to satisfy any claim by virtue of that liability¹⁴.

If in any case there is a wilful failure to comply with these provisions, the responsible party (except where that party is the Crown), and also the carrier (if he knew or ought to have known the matter carried to be such matter for carriage in such circumstances) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁵.

1 For the meaning of 'nuclear matter' see PARA 1492 note 4 ante.

2 Nuclear Installations Act 1965 s 21(4A) (added by the Energy Act 1983 s 29(3)). For the meaning of 'territorial limits' see PARA 1496 note 12 ante; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'licensee' see PARA 1490 note 11 ante.

4 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

5 For the meaning of 'relevant foreign operator' see PARA 1496 note 6 ante.

6 For the meaning of 'carriage' see PARA 1496 note 7 ante.

7 'The responsible party' means that licensee, the United Kingdom Atomic Energy Authority, that government department or that relevant foreign operator, as the case may be: Nuclear Installations Act 1965 s 21(3).

8 I.e. under ibid s 7 (as amended) or s 8 (as amended) (see PARAS 1495-1496 ante) or s 9 or s 10 (see PARAS 1495, 1497 ante): s 21(3).

9 For the meaning of 'relevant foreign law' see PARA 1496 note 6 ante.

10 I.e. the provisions of the Nuclear Installations Act 1965 s 10 (see PARA 1497 ante): s 21(3).

11 'The guarantor' means (1) where the responsible party is a licensee, the person by whom there fall to be provided the funds required by ibid s 19(1) (as amended) (see PARA 1510 ante) to satisfy any claim in respect of the carriage in question; (2) where the responsible party is the United Kingdom Atomic Energy Authority, the Secretary of State; (3) where the responsible party is the Crown, the minister in charge of the government

department concerned (or in relation to any part of the Scottish Administration the Scottish Ministers); and (4) where the responsible party is a relevant foreign operator, the person by whom there fall to be provided the funds required by the relevant foreign law made for purposes corresponding to those of s 18 (as amended) (see PARA 1509 ante) or s 19(1) (as amended) (see PARA 1510 ante) to be made available to satisfy any claim in respect of the carriage in question: s 21(3), (4)(a)-(d) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 38(1), (3)). As to the Secretary of State see PARA 601 note 1 ante. His functions under the Nuclear Installations Act 1965 s 21(3) (as amended) are only exercisable, in so far as they are exercisable in or as regards Scotland, after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

12 For the meaning of 'prescribed' see PARA 1487 note 6 ante. The prescribed particulars are (1) the name and address of the responsible party; (2) a description of the nuclear matter to be carried; (3) the place of departure and the intended destination of the nuclear matter to be carried in respect of which the responsible party may incur liability by virtue of the Nuclear Installations Act 1965 s 7 (as amended), s 8 (as amended), s 9 or s 10, or any relevant foreign law made for purposes corresponding to those of s 10; (4) the amount of the funds available for the satisfaction of claims and the period covered by such funds; (5) the type of security; (6) a statement that the responsible party is an operator of a relevant site made by or on behalf of the appropriate authority, namely, in relation to a licensee or the United Kingdom Atomic Energy Authority, the Secretary of State, in relation to a government department, the minister in charge of that department (or where the government department concerned is part of the Scottish Administration the Scottish Ministers), or, in relation to a relevant foreign operator, the government or other competent public authority of that operator's relevant territory: Nuclear Installations (Insurance Certificate) Regulations 1965, SI 1965/1823, regs 2, 3 (amended by SI 1969/64; SI 1999/1820). For the meaning of 'relevant site' see PARA 1496 note 9 ante; and for the meaning of 'relevant territory' see PARA 1496 note 6 ante.

13 I.e. in pursuance of the Nuclear Installations Act 1965 s 18 (as amended) or s 19(1) (as amended) (see PARAS 1509-1510 ante): s 21(3).

14 Ibid s 21(3). The guarantor is debarred from disputing in any court any of the particulars stated in that document: s 21(3).

15 Ibid s 21(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 613 note 11 ante.

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(7) POWERS OF ENTRY AND INSPECTION

1515. Powers of entry and inspection under the Atomic Energy Act 1946.

A person authorised by the Secretary of State¹ may, on producing his authority², enter any premises where he has reasonable grounds for believing (1) that work is being carried out for the purpose of or in connection with the production or use of atomic energy³, or research into matters connected with it; or (2) that any of the prescribed substances⁴ or any minerals⁵ from which any such substance can be obtained, or any plant⁶ of specified design or adaptation⁷ are situated, and may inspect the premises and any articles⁸ found in them⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The authority must be contained in some duly authenticated document, and need only be produced if required: see the Atomic Energy Act 1946 s 5(1).

3 For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to its production or use see PARA 1366 note 3 ante.

4 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

5 For the meaning of 'minerals' see PARA 1366 note 14 ante.

6 For the meaning of 'plant' see PARA 1427 note 11 ante.

7 The plant designed or adapted for the production or use of atomic energy or research into matters connected with it: Atomic Energy Act 1946 ss 4(1)(c), 5(1).

8 For the meaning of 'articles' see PARA 1366 note 5 ante.

9 Atomic Energy Act 1946 s 5(1). The person carrying out the inspection may make copies of or extracts from any drawing, plan or other document found in the premises, and for that purpose may remove any drawing etc, and retain possession of it for a period not exceeding seven days: s 5(1). Any person wilfully obstructing a person exercising these powers of entry and inspection is guilty of an offence: s 5(2). As to prosecutions and penalties see s 14 (as amended); and PARAS 1582, 1586, 1588 post. As to the power to search for minerals and the compensation to be paid see PARAS 1425-1426 ante.

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1516. Powers of entry with regard to radioactive substances.

As the 'appropriate Agency' in relation to England and Wales for the purposes of the Radioactive Substances Act 1993¹, the Environment Agency ('the Agency')² is not given specific powers of entry and inspection under that Act, but it has a general power under the Environment Act 1995 to do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions³. Under that 1995 Act the Agency may also authorise a person to exercise powers of entry to premises for the purposes of pollution control⁴; and the pollution control functions of the Agency include its functions under the Radioactive Substances Act 1993⁵.

1 See PARA 1440 note 8 ante.

2 As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

3 See the Environment Act 1995 s 37(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 73.

4 See ibid s 108, Sch 18 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 148 et seq.

5 See ibid s 108(15) (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 148.

UPDATE

1516 Powers of entry with regard to radioactive substances

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1517. Powers of entry relating to the carriage of radioactive materials by road.

The Radioactive Material (Road Transport) Act 1991 confers powers of entry on inspectors and examiners with respect to vehicles used to transport radioactive packages, and premises on which any such vehicle may be¹. These powers are discussed in detail elsewhere in this work².

¹ See the Radioactive Material (Road Transport) Act 1991 s 5; and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1662.

² See ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1662.

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1518. Powers of inspection in relation to nuclear installations.

The Secretary of State¹ may appoint as inspectors for the purpose of assisting him in the execution of the provisions of the Nuclear Installations Act 1965, other than the provisions which are relevant provisions for the purposes of the Health and Safety at Work etc Act 1974², such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient, and may make to or in respect of any person so appointed such payments by way of remuneration, allowances or other payments as he may with the approval of the Minister for the Civil Service determine³. Any such inspector may for that purpose exercise such of certain powers set out in the Health and Safety at Work etc Act 1974 as are specified in his instrument of appointment⁴, and provisions of the 1974 Act relating to restrictions on disclosure of information, offences and prosecutions by inspectors⁵ apply in the case of inspectors so appointed as they apply in the case of inspectors appointed under that 1974 Act⁶.

Any inspector appointed by the Health and Safety Executive⁷ may exercise the powers of an inspector under the Health and Safety at Work etc Act 1974⁸ in relation to certain provisions⁹ of the Nuclear Installations Act 1965¹⁰. The Executive has power to recover any sums paid by it by way of remuneration, allowances or other payments to such inspectors¹¹.

An inspector¹² must, if so required when exercising or seeking to exercise any power conferred on him by the above provisions, produce his instrument of appointment or a duly authenticated copy of it¹³. So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority¹⁴ which appointed him¹⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie other than the provisions which are mentioned in the Health and Safety at Work etc Act 1974 s 1, Sch 1 (amended for these purposes by the Atomic Energy Act 1989 s 6(3)). Those provisions are the Nuclear Installations Act 1965 s 1 (as amended) (see PARA 1487 ante), ss 3-6 (as amended) (see PARAS 1490-1494 ante), s 22 (as amended) (see PARA 1499 ante) and s 24A (as added) (see PARA 1490 ante).

3 Ibid s 24(1) (s 24(1), (2) substituted by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 4).

4 Ie such of the powers set out in the Health and Safety at Work etc Act 1974 s 20(2) as may be so specified: Nuclear Installations Act 1965 s 24(2) (as substituted: see note 3 supra). See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

5 Ie the provisions of the Health and Safety at Work etc Act 1974 s 28 (as amended), s 33 (as amended), and s 39 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 382, HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq): Nuclear Installations Act 1965 s 24(2) (as substituted: see note 3 supra).

6 Ibid s 24(2) (as substituted: see note 3 supra).

7 Ie any inspector appointed under the Health and Safety at Work etc Act 1974 s 19: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375. As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

8 As to those powers see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376 et seq.

9 Ie the provisions of the Nuclear Installations Act 1965 s 4(5) (see PARA 1492 ante) and s 5(2) (as amended: see PARA 1494 ante): s 26(1) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications)

Regulations 1974, SI 1974/2056, Sch 2 para 6). As to certain restrictions on such an inspector exercising a right of entry upon certain sites unless he has been specially authorised by or on behalf of a Minister of the Crown see PARA 1573 post.

10 le by virtue of the Nuclear Installations Act 1965 s 26(1) (as amended: see note 9 supra).

11 See *ibid* s 24A (as added); and PARA 1490 ante.

12 le an inspector appointed by the Secretary of State (see the text and notes 1-6 supra) or by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375).

13 See *ibid* s 19(4); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

14 In relation to the Nuclear Installations Act 1965, the 'enforcing authority' means the Health and Safety Executive or the Secretary of State (as the case may be): see the Health and Safety at Work etc Act 1974 s 18(7); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

15 *Ibid* s 19(3).

UPDATE

1518 Powers of inspection in relation to nuclear installations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1519. Powers of entry and search under the Nuclear Safeguards Act 2000.

A person authorised by the Secretary of State¹ for the purpose of exercising powers under the Nuclear Safeguards Act 2000 may be granted a warrant to enter premises and search them². These powers of entry and search, and the circumstances in which they may be exercised, are discussed below³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 See the Nuclear Safeguards Act 2000 ss 4, 8; and PARA 1579 the text and notes 1-14 post.

3 See PARA 1579 the text and notes 1-14 post.

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(8) SECURITY, SECRECY AND INFORMATION

(i) The Civil Nuclear Police Authority and Constabulary

A. THE CIVIL NUCLEAR POLICE AUTHORITY

(A) ESTABLISHMENT, MEMBERSHIP ETC AND PROCEEDINGS

1520. Establishment and function of the Civil Nuclear Police Authority.

There is a body corporate known as the Civil Nuclear Police Authority ('the Police Authority')¹. The Police Authority is not to be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown² and its property is not to be regarded as property of the Crown, or as held on behalf of the Crown³.

The Police Authority is a public body for the purposes of the Freedom of Information Act 2000⁴ and its administrative and departmental records are public records⁵.

It is the function of the Police Authority to secure the maintenance of an efficient and effective constabulary, to be known as the Civil Nuclear Constabulary⁶. Subject to the relevant statutory provisions⁷, the Police Authority may do anything which appears to it to be likely to facilitate the carrying out of its functions⁸, or to be incidental to carrying them out⁹.

¹ Energy Act 2004 s 51(1).

² Ibid s 51(2), Sch 10 para 16(1).

³ Ibid Sch 10 para 16(2).

⁴ See the Freedom of Information Act 2000 Sch 1 Pt V para 63A (added by the Energy Act 2004 Sch 10 para 18).

⁵ See the Public Records Act 1958 Sch 1 para 3, Table Pt II (amended for these purposes by the Energy Act 2004 s 69(1), Sch 14 para 1).

⁶ Energy Act 2004 s 52(1). As to the Civil Nuclear Constabulary, and the functions of the Police Authority with regard to it, see PARA 1528 et seq post.

⁷ Ie subject to the provisions of the Energy Act 2004 Pt 1 Ch 3 (ss 51-71, Schs 10-13) (as amended): see PARA 1521 et seq post.

⁸ References in ibid Pt 1 Ch 3 (as amended) to the functions of the Police Authority include references to securing that the functions of the Civil Nuclear Constabulary are carried out: s 71(2).

⁹ Ibid s 52(6).

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1521. Members and employees of the Civil Nuclear Police Authority.

The Civil Nuclear Police Authority ('the Police Authority')¹ is to consist of not fewer than seven and not more than 13 members² appointed by the Secretary of State³; and he must appoint one of the members of the Police Authority to be its chairman⁴. Subject to what follows, each member of the Police Authority is to hold and vacate office as chairman, or otherwise as a member, in accordance with the terms of his appointment⁵; and each appointment must state the period for which it is made⁶. That period must not exceed five years; but a person is eligible for reappointment as chairman, or otherwise as a member of the Police Authority, on any number of occasions, from the end of a term of office⁷.

A member of the Police Authority may at any time resign his office as the chairman or as a member of the Police Authority, or both, by giving notice to the Secretary of State⁸. If the Secretary of State is satisfied that the chairman or another member of the Police Authority:

- 4028 (1) is an undischarged bankrupt or has had his estate sequestrated without being discharged;
- 4029 (2) is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;
- 4030 (3) has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors;
- 4031 (4) has been convicted of an offence;
- 4032 (5) has been absent, on at least three consecutive occasions and without the consent of the Police Authority, from meetings of that authority; or
- 4033 (6) is for any other reason incapable of carrying out, or unfit to carry out, the functions of his office,

the Secretary of State may, by giving him notice to that effect, remove him from office⁹.

The Police Authority may pay to each of its members such remuneration and allowances as the Secretary of State may determine¹⁰.

Members of the Police Authority are disqualified for membership of the House of Commons¹¹.

The Police Authority may¹² employ such persons as it may determine¹³; and those persons are to be employed by the Police Authority on such terms and conditions, including terms and conditions as to remuneration, as the Police Authority determines¹⁴. The Police Authority may pay to or in respect of its employees such pensions, allowances or gratuities¹⁵, or with the approval of the Secretary of State, provide and maintain for them such pension schemes (whether contributory or not), as it determines¹⁶.

A pension scheme maintained by the United Kingdom Atomic Energy Authority ('the UKAEA')¹⁷ under the specified provision of the Atomic Energy Authority Act 1954¹⁸ ('a UKAEA pension scheme') may apply to employees of the Police Authority as it applies to persons to whom it otherwise applies¹⁹. The Secretary of State may, by direction²⁰, require the UKAEA to make such modifications²¹ of a UKAEA pension scheme as the Secretary of State considers appropriate in respect of the participation of persons in such a scheme by virtue of these provisions²². Such a

direction may also require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate²³. Before giving such a direction, the Secretary of State must consult:

- 4034 (a) the UKAEA;
- 4035 (b) the Police Authority;
- 4036 (c) the Treasury; and
- 4037 (d) such persons as appear to him to represent the employees likely to be affected by the direction²⁴.

The Police Authority must pay such amounts to the UKAEA in respect of the participation of persons in a pension scheme by virtue of these provisions as are agreed between the Police Authority and the UKAEA, or, in the absence of such agreement, determined by the Secretary of State²⁵.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 Energy Act 2004 s 51(2), Sch 10 para 1(1).

3 Ibid Sch 10 para 1(2). As to the Secretary of State see PARA 601 note 1 ante.

4 Ibid Sch 10 para 1(3).

5 Ibid Sch 10 para 2(1).

6 Ibid Sch 10 para 2(2).

7 Ibid Sch 10 para 2(3).

8 Ibid Sch 10 para 2(4). Oral notice is not effective for this purpose: Sch 10 para 2(7).

9 See ibid Sch 10 para 2(5), (6). Oral notice is not effective for this purpose: Sch 10 para 2(7).

10 Ibid Sch 10 para 3.

11 See the House of Commons Disqualification Act 1975 Sch 1 Pt II (amended for these purposes by the Energy Act 2004 Sch 10 para 17).

12 The Energy Act 2004 Sch 10 para 6 (see the text and notes 13-16 infra) is subject to s 58 (see PARA 1533 post) and any direction to the Police Authority under Sch 13 (see PARA 1539 post): Sch 10 para 6(4).

13 Ibid Sch 10 para 6(1).

14 Ibid Sch 10 para 6(2).

15 For the meaning of references to pensions, allowances or gratuities and their payment see PARA 1396 note 10 ante.

16 Energy Act 2004 Sch 10 para 6(3).

17 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

18 Ie under the Atomic Energy Authority Act 1954 Sch 1 para 7(2)(b): see PARA 1364 ante.

19 Energy Act 2004 Sch 10 para 7(1).

20 The power of the Secretary of State to give directions under ibid Sch 10 para 7: (1) is in addition to the powers of the Secretary of State to give directions to the UKAEA under Sch 8 paras 5, 6 (see PARA 1423 ante) or the Atomic Energy Authority Act 1954 s 3 (see PARA 1363 ante); and (2) is to be disregarded in construing those powers: Energy Act 2004 Sch 10 para 7(5).

21 References for these purposes to the modification of a UKAEA pension scheme include references to the modification of any one or more of the following: (1) the trust deed of the scheme, if there is one; (2) rules of the scheme; or (3) any other instrument relating to the constitution, management or operation of the scheme: *ibid* Sch 10 para 7(7).

22 *Ibid* Sch 10 para 7(2).

23 *Ibid* Sch 10 para 7(3).

24 *Ibid* Sch 10 para 7(4).

25 *Ibid* Sch 10 para 7(6).

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1522. Proceedings of the Civil Nuclear Police Authority; authentication of seal.

The Civil Nuclear Police Authority ('the Police Authority')¹ may make such arrangements as it thinks fit for regulating its proceedings². Those arrangements may include:

- 4038 (1) arrangements for quorums and the making of decisions by a majority;
- 4039 (2) the establishment of committees and the regulation of their proceedings;
- 4040 (3) the delegation of functions to committees established by the Police Authority and to its employees³;

and the membership of a committee established by the Police Authority may include employees of that authority and persons who are neither members nor employees of that authority⁴.

The validity of proceedings of the Police Authority is not be affected by a failure by the Secretary of State⁵ to comply with the statutory requirements as to the appointment of members⁶ or any other defect in the appointment of a member of the Police Authority⁷.

The application of the seal of the Police Authority is to be authenticated by the signature of a member of the Police Authority or any other person who has been authorised by it, whether generally or specifically, for the purpose⁸. A document purporting to be duly executed under the Police Authority's seal, or signed on behalf of the Police Authority, may be received in evidence and, except so far as the contrary is shown, is to be taken to be duly so executed or signed⁹.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 Energy Act 2004 s 51(2), Sch 10 para 4(1).

3 Ibid Sch 10 para 4(2).

4 Ibid Sch 10 para 4(3).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Ie to comply with the Energy Act 2004 Sch 10 para 1: see PARA 1521 ante.

7 Ibid Sch 10 para 5.

8 Ibid Sch 10 para 15(1).

9 Ibid Sch 10 para 15(2). Schedule 10 para 15 does not extend to Scotland: Sch 10 para 15(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/A. THE CIVIL NUCLEAR POLICE AUTHORITY/(B) Finances/1523. Borrowing by the Civil Nuclear Police Authority.

(B) FINANCES

1523. Borrowing by the Civil Nuclear Police Authority.

The Civil Nuclear Police Authority ('the Police Authority')¹ may borrow money, but only in accordance with the following provisions². The approval of the Treasury is required for borrowing by the Police Authority³. The Police Authority may borrow from the Secretary of State⁴ such sums in sterling as it may require for meeting its obligations and for carrying out its functions⁵. It may also, with the consent of the Secretary of State, borrow temporarily by way of overdraft from persons other than the Secretary of State such sums in sterling as it may require for meeting its obligations and for carrying out its functions⁶. The Police Authority must not, however, borrow if the effect would be:

- 4041 (1) to take the aggregate amount outstanding in respect of the principal of sums it has borrowed over its borrowing limit⁷; or
- 4042 (2) to increase the amount by which the aggregate amount so outstanding exceeds that limit⁸.

The Secretary of State may, with the consent of the Treasury⁹, guarantee:

- 4043 (a) the repayment of the principal of any sum borrowed by the Police Authority;
- 4044 (b) the payment of interest on such a sum; and
- 4045 (c) the discharge of any other financial obligation of the Police Authority in connection with the borrowing of such a sum¹⁰,

and may give such a guarantee in such manner, and on such terms, as he thinks fit¹¹. As soon as practicable after giving such a guarantee, the Secretary of State must lay a statement of the guarantee before Parliament¹². If sums are paid out by the Secretary of State under a guarantee so given, the Police Authority must pay him:

- 4046 (i) such amounts in or towards the repayment to him of those sums as he may, with the consent of the Treasury¹³, direct; and
- 4047 (ii) interest, at such rates as he may with such consent direct, on amounts outstanding under this provision¹⁴.

Payments to the Secretary of State under heads (i) and (ii) above must be made at such times, and in such manner, as he may from time to time and with Treasury consent¹⁵ direct¹⁶.

Where a sum has been paid out by the Secretary of State under a guarantee given under the above provisions, he must lay a statement relating to that sum before Parliament:

- 4048 (A) as soon as practicable after the end of the financial year¹⁷ in which that sum is paid out; and

4049 (B) as soon as practicable after the end of each subsequent relevant financial year¹⁸.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 Energy Act 2004 s 51(2), Sch 10 para 8(1).

3 Ibid Sch 10 para 8(2).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Energy Act 2004 Sch 10 para 8(3).

6 Ibid Sch 10 para 8(4).

7 The Police Authority's borrowing limit is £10 million: *ibid* Sch 10 para 8(6). The Secretary of State may by order vary the Police Authority's borrowing limit: Sch 10 para 8(7). The approval of the Treasury is required for the making of such an order (Sch 10 para 8(8)); and such an order is subject to the negative resolution procedure (Sch 10 para 8(9)). As to the negative resolution procedure see PARA 602 note 2 ante.

8 Ibid Sch 10 para 8(5).

9 See *ibid* Sch 10 para 9(8)(a).

10 Ibid Sch 10 para 9(1).

11 Ibid Sch 10 para 9(2).

12 Ibid Sch 10 para 9(3).

13 See *ibid* Sch 10 para 9(8)(b).

14 Ibid Sch 10 para 9(4).

15 See note 13 *supra*.

16 Energy Act 2004 Sch 10 para 9(5). The Secretary of State must pay sums received by him under Sch 10 para 9 into the Consolidated Fund: Sch 10 para 14. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

17 For the meaning of 'financial year' see PARA 763 note 17 ante.

18 Energy Act 2004 Sch 10 para 9(6). In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for these purposes unless (1) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under Sch 10 para 9(4) (see heads (i)-(ii) in the text); and (2) the Police Authority is not at any time during that year subject to a liability to pay interest on amounts that became due under Sch 10 para 9(4) in respect of that sum: Sch 10 para 9(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/A. THE CIVIL NUCLEAR POLICE AUTHORITY/(B) Finances/1524. Grants, loans, receipts and surpluses.

1524. Grants, loans, receipts and surpluses.

The Secretary of State¹ may make payments by way of grant to the Civil Nuclear Police Authority ('the Police Authority')² and may also make payments to it by way of loan³. He may make any grants made by him to the Police Authority subject to such conditions as he thinks fit⁴. Loans made by the Secretary of State to the Police Authority are to be on such terms, as to repayment and interest and other matters, as the Secretary of State may determine⁵; and he must pay sums so received by him into the Consolidated Fund⁶.

The Secretary of State may give a direction requiring the Police Authority to pay to him an amount equal to:

- 4050 (1) the whole or part of a sum which it has received (otherwise than from the Secretary of State); or
- 4051 (2) the whole or part of any surplus which it has for a financial year⁷;

and for these purposes the Police Authority has a surplus for a financial year if its revenues for that year exceed the sums which it requires for carrying out its functions in that year⁸. Before giving such a direction the Secretary of State must consult the Police Authority and the Treasury⁹. He must pay sums so received by him into the Consolidated Fund¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

3 Energy Act 2004 s 51(2), Sch 10 para 10(1).

4 Ibid Sch 10 para 10(2).

5 Ibid Sch 10 para 10(2).

6 Ibid Sch 10 para 14. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

7 Ibid Sch 10 para 13(1). For the meaning of 'financial year' see PARA 763 note 17 ante.

8 Ibid Sch 10 para 13(2).

9 Ibid Sch 10 para 13(3).

10 See note 6 supra.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/A. THE CIVIL NUCLEAR POLICE AUTHORITY/(B) Finances/1525. Financial duties of the Civil Nuclear Police Authority.

1525. Financial duties of the Civil Nuclear Police Authority.

The Secretary of State¹ may determine the financial duties of the Civil Nuclear Police Authority ('the Police Authority')². Before determining any financial duties under these provisions, the Secretary of State must consult the Police Authority³; and the approval of the Treasury is required for a determination by the Secretary of State of the Police Authority's financial duties⁴.

A determination by the Secretary of State of the Police Authority's financial duties may:

- 4052 (1) relate to a period beginning before, on or after the date on which it is made;
- 4053 (2) contain supplemental provisions; and
- 4054 (3) be varied by a subsequent determination⁵;

and the Secretary of State may make different determinations for different functions and activities of the Police Authority⁶.

The Secretary of State must give the Police Authority notice of every determination by him of its financial duties⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Energy Act 2004 s 51(2), Sch 10 para 11(1). As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

3 Ibid Sch 10 para 11(2).

4 Ibid Sch 10 para 11(3).

5 Ibid Sch 10 para 11(4).

6 Ibid Sch 10 para 11(5).

7 Ibid Sch 10 para 11(6). As to the giving of notice see PARA 739 note 2 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/A. THE CIVIL NUCLEAR POLICE AUTHORITY/(B) Finances/1526. Accounts and audit.

1526. Accounts and audit.

The Civil Nuclear Police Authority ('the Police Authority')¹ must keep proper accounts and proper accounting records² and must prepare, in respect of each of its accounting years³, a statement of its accounts⁴. A statement of accounts so prepared must give a true and fair view of the income and expenditure of the Police Authority for the accounting year in question and of its state of affairs⁵; and such a statement of accounts must comply with every requirement which has been notified⁶ by the Secretary of State⁷ to the Police Authority⁸. The approval of the Treasury is required for the imposition of such a requirement⁹; and those requirements may include, in particular, requirements relating to:

- 4055 (1) the information to be contained in the statement;
- 4056 (2) the manner in which that information is to be presented;
- 4057 (3) the methods and principles according to which the statement is to be prepared¹⁰.

The accounts of the Police Authority relating to each of its accounting years, including the statement of accounts prepared for the year under these provisions, must be audited by the Comptroller and Auditor General¹¹ who must send a copy of his report on what he is required to audit to the Police Authority¹². The Police Authority must send to the Secretary of State, in respect of each of its accounting years, a copy of the accounts for that year that are required to be audited under these provisions, and a copy of the Comptroller and Auditor General's report on those accounts¹³. The Secretary of State must lay a copy of whatever is so sent to him before Parliament¹⁴.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 For these purposes, 'accounting records' includes all books, papers and other records of the Police Authority relating to (1) the accounts which it is required to keep; or (2) matters dealt with in those accounts: Energy Act 2004 s 51(2), Sch 10 para 12(10).

3 For these purposes, 'accounting year', in relation to the Police Authority, means (1) the Police Authority's first accounting year; or (2) a financial year after the end of the Police Authority's first accounting year; and 'the Police Authority's first accounting year' means (a) where the Police Authority is established at the beginning of a financial year, that financial year; and (b) in any other case, the period which begins with the day on which the Police Authority is established and ends: (i) if no direction is given under head (ii) infra, with 31 March in the financial year current on that day; and (ii) if the Secretary of State so directs, with 31 March at the end of the following financial year: *ibid* Sch 10 para 12(10). For the meaning of 'financial year' see PARA 763 note 17 ante.

4 *Ibid* Sch 10 para 12(1).

5 *Ibid* Sch 10 para 12(2).

6 As to notification see PARA 739 note 2 ante.

7 As to the Secretary of State see PARA 601 note 1 ante.

8 Energy Act 2004 Sch 10 para 12(3).

9 *Ibid* Sch 10 para 12(5).

10 Ibid Sch 10 para 12(4).

11 Ibid Sch 10 para 12(6). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

12 Ibid Sch 10 para 12(7).

13 Ibid Sch 10 para 12(8).

14 Ibid Sch 10 para 12(9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/A. THE CIVIL NUCLEAR POLICE AUTHORITY/(C) Nuclear Transfer Scheme for United Kingdom Energy Authority Constabulary/1527. Secretary of State's duty to make nuclear transfer scheme.

(C) NUCLEAR TRANSFER SCHEME FOR UNITED KINGDOM ENERGY AUTHORITY CONSTABULARY

1527. Secretary of State's duty to make nuclear transfer scheme.

The Secretary of State¹ must make a nuclear transfer scheme² providing for the transfer to the Civil Nuclear Police Authority ('the Police Authority')³ of:

- 4058 (1) the employees of the United Kingdom Atomic Energy Authority ('the UKAEA')⁴ who are members of the UKAEA Constabulary⁵;
- 4059 (2) such other persons employed by the UKAEA for purposes connected with that Constabulary as he considers appropriate;
- 4060 (3) such property held by the UKAEA for purposes connected with the activities of members of the UKAEA Constabulary as he considers appropriate; and
- 4061 (4) such rights and liabilities of the UKAEA relating to any of those activities, or to any such property, as he considers appropriate⁶.

The nuclear transfer scheme that provides for the transfer of members of the UKAEA Constabulary to the Police Authority must provide for the transfer to the Police Authority, at the same time, of everyone who immediately before that time is employed by the UKAEA exclusively for purposes connected with that Constabulary⁷.

The provisions of the Energy Act 2004 relating to nuclear transfer schemes⁸ have effect as if the nuclear transfer scheme required by the above provisions were an authorised scheme⁹ but did not require the consent of the Police Authority to any of its provisions¹⁰. From the date on which the nuclear transfer scheme so required comes into force, the members of the UKAEA Constabulary who are transferred by the scheme are to hold office as members of the Civil Nuclear Constabulary¹¹ as if they had been appointed by the Police Authority in accordance with the statutory requirements¹² and had, on appointment, made the required¹³ declaration¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to nuclear transfer schemes generally see PARA 1402 et seq ante.

3 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

4 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

5 For these purposes, 'members of the UKAEA Constabulary', in relation to a nuclear transfer scheme, means persons who, on the date on which the scheme comes into force, are special constables appointed on the nomination of the UKAEA under the Special Constables Act 1923 s 3 (as amended): Energy Act 2004 s 70(5).

6 Ibid s 70(1).

7 Ibid s 70(2).

- 8 le *ibid* Pt 1 Ch 2 (ss 38-50, Schs 5-9) (as amended): see *PARA 1402 et seq ante*.
- 9 le a scheme authorised by *ibid* s 39: see *PARA 1414 ante*.
- 10 *Ibid* s 70(3).
- 11 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see *PARA 1520 ante*.
- 12 le in accordance with the Energy Act 2004 s 55: see *PARA 1531 post*.
- 13 le the declaration required by *ibid* s 55.
- 14 *Ibid* s 70(4).

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B. THE CIVIL NUCLEAR CONSTABULARY

(A) IN GENERAL

1528. Functions of the Civil Nuclear Constabulary.

The primary function of the Civil Nuclear Constabulary ('the Constabulary')¹ is:

- 4062 (1) the protection of licensed nuclear sites² which are not used wholly or mainly for defence purposes; and
- 4063 (2) safeguarding nuclear material³ in Great Britain⁴ and elsewhere⁵.

The Civil Nuclear Police Authority ('the Police Authority')⁶ may allocate to the Constabulary the function of carrying on such other activities relating to, or connected with, the security of nuclear material, or sites where such material is being, has been or is to be used, processed or stored, as the Police Authority thinks fit⁷; but the Secretary of State may give the Police Authority directions⁸ restricting the exercise of those powers of allocation⁹.

The Constabulary also has the function of carrying on such other activities as may be allocated to it by the Police Authority in accordance with directions given to that authority for these purposes by the Secretary of State¹⁰.

Nothing in the above provisions limits what a member of the Constabulary may do in the exercise of the powers and privileges conferred on him¹¹ in respect of his jurisdiction¹².

1 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

2 For these purposes, 'licensed nuclear site' means a site in respect of which a nuclear site licence is or is required to be in force: Energy Act 2004 s 71(1). For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante (definition applied by s 196(1)).

3 For these purposes, 'nuclear material' means (1) any fissile material in the form of (a) uranium metal, alloy or chemical compound; or (b) plutonium metal, alloy or chemical compound; (2) any other fissile material prescribed by regulations made by the Secretary of State: *ibid* s 71(1). Regulations under s 71(1) are subject to the negative resolution procedure: s 71(4). As to the negative resolution procedure see PARA 602 note 2 ante. Where regulations under the Anti-terrorism, Crime and Security Act 2001 s 76(7) (repealed) prescribing material to be treated as nuclear material for the purposes of that provision were in force immediately before the commencement of the Energy Act 2004 s 37 (ie 1 March 2005: see the Energy Act 2004 (Commencement No 4) Order 2005, SI 2005/442, art 2(1), Sch 1), those regulations have effect after that commencement as regulations made under and for the purposes of the Energy Act 2004 s 71: s 71(5). By virtue of s 71(5), material of the following kinds is prescribed for these purposes: (i) previously separated americium-241 which is not irradiated; (ii) previously separated americium-242m which is not irradiated, (iii) previously separated americium-243 which is not irradiated, and (iv) previously separated neptunium-237 which is not irradiated: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 3(1). In reg 3(1), 'irradiated', in relation to any kind of material, means that the material has a total radiation output giving a dose rate exceeding 1 Gray per hour at one metre from the unshielded surface of the material; and 'previously separated', in relation to any kind of material, means that the material has been subject to treatment that increases the concentration of the material: reg 3(2). As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

5 Energy Act 2004 s 52(2).

6 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

7 Energy Act 2004 s 52(3).

8 Any power of the Secretary of State under *ibid* Pt 1 Ch 3 (ss 51-71, Schs 10-13) (as amended) to give directions (1) restricting the exercise by the Police Authority of its powers; (2) requiring functions to be carried out or objectives to be met by the Constabulary or the Police Authority; or (3) imposing obligations on the Police Authority or any of its members or employees, includes power to impose restrictions, confer functions, require objectives to be met or impose obligations at or in relation to places outside Great Britain: s 71(3).

9 *Ibid* s 52(5).

10 *Ibid* s 52(4).

11 *Ie* by *ibid* s 56: see PARA 1532 post.

12 *Ibid* s 52(7).

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1529. Chief constable and other senior officers.

The Civil Nuclear Police Authority ('the Police Authority')¹ must appoint a chief constable of the Civil Nuclear Constabulary ('the Constabulary')² and a deputy chief constable of the Constabulary³ and may appoint one or more assistant chief constables of the Constabulary⁴. The approval of the Secretary of State⁵ is required for the making of any such appointment⁶; and before appointing the deputy chief constable or an assistant chief constable, the Police Authority must consult the chief constable⁷. The chief constable, the deputy chief constable and every assistant chief constable are to be members of the Constabulary⁸.

The Police Authority may call on a senior officer⁹, in the interests of efficiency or effectiveness, to retire or to resign¹⁰. The approval of the Secretary of State is required before the Police Authority may call on a senior officer to retire or to resign¹¹; and before seeking the approval of the Secretary of State, the Police Authority must:

- 4064 (1) give the senior officer a notice¹² of its intention to call on him to retire or to resign and an explanation of its grounds for doing so;
- 4065 (2) give the senior officer an opportunity of making representations, including an opportunity of making representations in person; and
- 4066 (3) consider any representations made by or on behalf of the senior officer¹³.

A senior officer who is called on to retire or to resign must retire or resign with effect from such date as the Police Authority may specify or such earlier date as may be agreed between him and the Police Authority¹⁴.

The Secretary of State may require the Police Authority to exercise its power under the above provisions to call on the chief constable to retire or to resign¹⁵. Before requiring the Police Authority to exercise that power, the Secretary of State must:

- 4067 (a) give the chief constable a notice¹⁶ of his intention to require the Police Authority to exercise that power and an explanation of his grounds for doing so;
- 4068 (b) give the chief constable an opportunity of making representations, including an opportunity of making representations in person; and
- 4069 (c) consider any representations made by or on behalf of the chief constable¹⁷.

The Secretary of State may not exercise his power to require the Police Authority to exercise its power to call on the chief constable to retire or to resign¹⁸ unless he has appointed one or more persons to hold an inquiry and to report to him and has considered the report made to him¹⁹. At least one of the persons so appointed must be a person who is neither a constable, an employee of the Police Authority nor an officer of a government department²⁰. At an inquiry so held the chief constable and the Police Authority must each be given an opportunity of making representations, including, in the case of the chief constable, an opportunity of making representations in person²¹ and the Police Authority must pay the costs reasonably incurred by the chief constable in respect of such an inquiry²².

If the Secretary of State exercises his power to require the Police Authority to exercise its power to call on the chief constable to retire or to resign, the Police Authority must call on him to retire or to resign and it is not required to comply with heads (1) to (3) above before doing so²³.

Where:

- 4070 (i) the Police Authority has notified a senior officer that it intends to exercise its statutory power²⁴ to call on him to retire or to resign;
- 4071 (ii) the Secretary of State has notified the chief constable²⁵ that he intends to require the Police Authority to exercise that power in his case; or
- 4072 (iii) the Police Authority has exercised that power in the case of a senior officer, or has been required to do so by the Secretary of State, but the senior officer has not yet retired or resigned,

the Police Authority may suspend the senior officer from duty²⁶; but this power is to be exercisable only where the Police Authority considers that it is necessary to exercise it in order to maintain public confidence in the Constabulary²⁷. The approval of the Secretary of State is required for such a suspension²⁸.

Where:

- 4073 (A) the Police Authority has notified the chief constable that it intends to exercise its statutory power²⁹ to call on him to retire or to resign;
- 4074 (B) the Secretary of State has notified the chief constable³⁰ that he intends to require the Police Authority to exercise that power in his case; or
- 4075 (C) the Police Authority has exercised that power, or has been required to do so by the Secretary of State, but the chief constable has not yet retired or resigned,

the Secretary of State may require the Police Authority to suspend the chief constable from duty³¹; but this power is to be exercisable only where the Secretary of State considers that it is necessary to exercise it in order to maintain public confidence in the Constabulary³². The Police Authority must comply with such a requirement to suspend the chief constable from duty³³.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 As to the Civil Nuclear Police Authority's statutory function of securing the maintenance of the Civil Nuclear Constabulary see PARA 1520 ante.

3 Energy Act 2004 s 53(1)(a).

4 Ibid s 53(1)(b).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Energy Act 2004 s 53(4).

7 Ibid s 53(2).

8 Ibid s 53(4).

9 'Senior officer' means the chief constable or the deputy chief constable or an assistant chief constable of the Constabulary: *ibid* s 71(1).

10 Ibid s 53(5), Sch 11 para 1(1).

11 Ibid Sch 11 para 1(2).

12 Oral notice is not effective for these purposes: *ibid* Sch 11 para 1(5).

13 Ibid Sch 11 para 1(3).

14 Ibid Sch 11 para 1(4).

15 Ibid Sch 11 para 2(1).

16 Where the Secretary of State gives such a notice, he must send a copy of the notice to the Police Authority: Sch 11 para 2(3). Oral notice is not effective for these purposes: Sch 1 para 2(10).

17 Ibid Sch 11 para 2(2).

18 Ie his power under ibid Sch 11 para 2(1).

19 Ibid Sch 11 para 2(4).

20 Ibid Sch 11 para 2(5).

21 Ibid Sch 11 para 2(6).

22 Ibid Sch 11 para 2(7). The amount of those costs is to be assessed in such manner as the Secretary of State may direct: Sch 11 para 2(8).

23 Ibid Sch 11 para 2(9).

24 Ie under ibid Sch 11 para 1.

25 Ie under ibid Sch 11 para 2.

26 Ibid Sch 11 para 3(1), (2).

27 Ibid Sch 11 para 3(3).

28 Ibid Sch 11 para 3(4).

29 See note 24 supra.

30 See note 25 supra.

31 Energy Act 2004 Sch 11 para 4(1), (2).

32 Ibid Sch 11 para 4(3).

33 Ibid Sch 11 para 4(4). Schedule 11 para 3(3), (4) (see the text and notes 27-28 supra) does not apply to the suspension of the chief constable in pursuance of a requirement under Sch 11 para 4: Sch 11 para 4(5).

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1530. Functions of senior officers.

In carrying out his functions in any financial year¹, the chief constable of the Civil Nuclear Constabulary² must have regard to the annual policing plan for that year issued³ by the Civil Nuclear Police Authority ('the Police Authority')⁴ and the three-year strategy plan most recently issued⁵ by the Police Authority for a period that includes that year⁶.

The deputy chief constable may perform a function of the chief constable:

- 4076 (1) while the chief constable is unable to act or unavailable;
- 4077 (2) during a vacancy in the office of chief constable; or
- 4078 (3) with the consent of the chief constable⁷, which consent may be either general or specific⁸.

The Police Authority may authorise an assistant chief constable to perform a function of the chief constable:

- 4079 (a) while both the chief constable and the deputy chief constable are unable to act or unavailable; or
- 4080 (b) while the offices of chief constable and deputy chief constable are both vacant⁹;

but at any one time, only one person may be authorised so to act¹⁰.

No person is entitled by virtue of head (1) or head (2) above, or an authorisation under head (a) or head (b) above, to act for a continuous period exceeding three months, except with the consent of the Secretary of State¹¹.

1 For the meaning of 'financial year' see PARA 763 note 17 ante.

2 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante; and as to the appointment etc of the chief constable see PARA 1529 ante.

3 Is issued under the Energy Act 2004 Sch 12 para 2: see PARA 1536 post.

4 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

5 Is issued under the Energy Act 2004 Sch 12 para 3: see PARA 1536 post.

6 Ibid s 54(1).

7 Ibid s 54(2).

8 See ibid s 54(3).

9 Ibid s 54(4).

10 Ibid s 54(5).

11 Ibid s 54(6).

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1531. Members of the Civil Nuclear Constabulary.

The Civil Nuclear Police Authority ('the Police Authority')¹ may appoint persons to be members of the Civil Nuclear Constabulary ('the Constabulary')². Members of the Constabulary are to be employees of the Police Authority and, apart from the chief constable himself, are to be under the direction and control of the chief constable³.

A person appointed as a member of the Constabulary must, on appointment, be attested as a constable by making the required declaration before a justice of the peace in England and Wales⁴ or make the required declaration before a sheriff or a justice of the peace in Scotland⁵.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 Energy Act 2004 s 55(1). As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

3 Ibid s 55(2).

4 Ibid s 55(3)(a). The required declaration is, in the case of a declaration before a justice of the peace in England and Wales, the declaration required by the Police Act 1996 s 29 (as amended) (see POLICE vol 36(1) (2007 Reissue) PARA 103) in the case of a member of a police force maintained under that Act: Energy Act 2004 s 55(4)(a).

5 Ibid s 55(3)(b). The required declaration is, in the case of a declaration before a sheriff or a justice of the peace in Scotland, a declaration faithfully to execute the duties of the office of a member of the Civil Nuclear Constabulary: s 55(4)(b).

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(B) JURISDICTION AND POWERS OF THE CONSTABULARY

1532. Jurisdiction and powers of the Civil Nuclear Constabulary; application of offences etc applying to constables.

A member of the Civil Nuclear Constabulary ('the Constabulary')¹ has the powers and privileges of a constable²:

- 4081 (1) at every place comprised in a relevant nuclear site³ and everywhere within 5 kilometres of such a place⁴;
 - 4082 (2) at every trans-shipment site⁵ where it appears to him expedient to be in order to safeguard nuclear material while it is at the site⁶;
 - 4083 (3) at every other place where it appears to him expedient to be in order to safeguard nuclear material which is in transit⁷;
 - 4084 (4) at every place where it appears to him expedient to be in order to pursue or to detain⁸ a person whom he reasonably believes to have unlawfully removed or interfered with nuclear material being safeguarded by members of the Constabulary, or to have attempted to do so⁹;
 - 4085 (5) throughout Great Britain¹⁰ for purposes connected with:
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- 546. (a) a place mentioned in heads (1) to (4) above;
 - 547. (b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or
 - 548. (c) anything which he reasonably believes to have been done, or to be likely to be done, by another person at or in relation to such a place¹¹.
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The above provisions have effect in United Kingdom waters¹² adjacent to Great Britain as they have effect in Great Britain, but as if references to the powers and privileges of a constable were references to the powers and privileges of a constable in the nearest part of Great Britain¹³.

In a place where a member of the Constabulary so has the powers and privileges of a constable, such a member who is of at least the rank of assistant chief constable may give an authorisation to stop and search vehicles, their occupants and their contents and to stop and search pedestrians in connection with terrorism¹⁴.

For the purposes of the specified provision of the Firearms Act 1968¹⁵, and of any rule of law whereby any provision of that Act does not bind the Crown, a member of the Constabulary is to be deemed to be a person in the service of Her Majesty and references to the public service are to be deemed to include references to use by a person in the exercise and performance of his powers and duties as a member of the Constabulary¹⁶.

In any enactment¹⁷:

- 4086 (i) references to a person's being in the custody of a constable, or to his being detained in the charge of a constable, include references to his being detained by a member of the Constabulary in the exercise of any of the powers or privileges of a constable conferred on him by the above provisions; and
- 4087 (ii) references to a person's accompanying a constable include references to his accompanying a member of the Constabulary¹⁸.

Any person who assaults a member of the Constabulary who is exercising any of the powers or privileges conferred on him by the above provisions, or who is otherwise performing his duties under the direction and control of the chief constable of the Constabulary or as an employee of the Civil Nuclear Police Authority¹⁹, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or to both²⁰. Any person who resists or wilfully obstructs such a member of the Constabulary when so acting, or a person assisting him, is likewise guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding:

- 4088 (A) at the date at which this title states the law, one month; or
- 4089 (B) as from a day to be appointed²¹, 51 weeks,

or a fine not exceeding level 3 on the standard scale, or to both²².

It is an offence to impersonate a member of the Constabulary²³ and it is also an offence to cause disaffection amongst members of the Constabulary²⁴.

The Secretary of State²⁵ may by order make such modifications of subordinate legislation²⁶ as appear to him to be appropriate in consequence of any of the relevant provisions²⁷ of the Energy Act 2004²⁸.

1 As to the Civil Nuclear Police Authority's statutory function of securing the maintenance of the Civil Nuclear Constabulary see PARA 1520 ante; and as to the appointment of members of the Constabulary see PARA 1531 ante.

2 As to the powers and privileges of a constable see POLICE vol 36(1) (2007 Reissue) PARA 102 et seq.

3 For these purposes, 'relevant nuclear site' means a licensed nuclear site other than a designated defence site: Energy Act 2004 s 56(7). For the meaning of 'licensed nuclear site' see PARA 1528 note 2 ante. 'Designated defence site' means a site designated by order made by the Secretary of State as a site which appears to him to be used wholly or mainly for defence purposes: s 56(8). An order under s 56(8) must be laid before Parliament after being made: s 56(9). Where an order designating a site for the purposes of the Anti-terrorism, Crime and Security Act 2001 s 76(2) (repealed) was in force immediately before the commencement of the Energy Act 2004 s 56 (ie 1 April 2005: see the Energy Act 2004 (Commencement No 5) Order 2005, SI 2005/877, art 2(1), Sch 1), that order has effect after that commencement as an order made under and for the purposes of the Energy Act 2004 s 56(8): s 56(10). By virtue of s 56(10), the following nuclear sites are designated for these purposes: (1) premises known as the Zero Energy Experimental Reactor (Neptune) at Moor Lane, Raynesway, Derby DE24 8BJ; (2) premises known as the Devonshire Dock Complex at Barrow-in-Furness, Cumbria, LA14 1AF; (3) premises known as the Nuclear Fuel Production Plant at Moor Lane, Raynesway, Derby, DE21 7XX; (4) premises known as Devonport Royal Dockyards at Devonport, Plymouth PL1 4SG; (5) premises known as the Atomic Weapons Establishment Aldermaston at Aldermaston, Berkshire RG7 4PR; (6) premises known as the Atomic Weapons Establishment Burghfield at Burghfield, Berkshire RG30 3RP; and (7) premises known as Rosyth Royal Dockyard at Rosyth, Fife KY11 2YD: Atomic Energy Authority (Special Constables) Order 2002, SI 2002/1151, art 2.

4 Energy Act 2004 s 56(1).

5 For these purposes, 'trans-shipment site' means a place which a member of the Constabulary reasonably believes to be (1) a place where a consignment of nuclear material in transit is trans-shipped or stored; or (2) a place to which a consignment of nuclear material may be brought to be trans-shipped or stored while it is in transit; and nuclear material is 'in transit' for the purposes of *ibid* s 56 if it is being carried (or is being trans-shipped or stored incidentally to carriage) before its delivery at its final destination: s 56(7). For the meaning of 'nuclear material' see PARA 1528 note 3 ante.

6 Ibid s 56(2).

7 Ibid s 56(3).

8 For these purposes, 'detain', in relation to a person, includes transferring him to the custody of another or to a place where he may be held in custody: *ibid* s 56(7).

9 Ibid s 56(4).

10 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

11 Energy Act 2004 s 56(5).

12 For these purposes, 'United Kingdom waters' means waters within the seaward limits of the territorial sea: *ibid* s 56(7). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

13 Energy Act 2004 s 56(6).

14 See the Terrorism Act 2000 s 44(4BA) (added by the Energy Act 2004 s 57(1), (2)(a)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 427.

15 *Ie* the Firearms Act 1968 s 54 (as amended) (application to Crown servants): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 634 note 1.

16 Ibid s 54(3AA) (added by the Energy Act 2004 s 69(1), Sch 14 para 3).

17 For the meaning of 'enactment' see PARA 750 note 9 ante.

18 Energy Act 2004 s 68(7).

19 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

20 See the Police Act 1996 s 89(1) (modified and applied for these purposes by the Energy Act 2004 s 68(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735. As to the standard scale see PARA 613 note 11 ante.

21 *Ie* as from a day to be appointed under the Criminal Justice Act 2003 s 336(3). At the date at which this title states the law, no such day had been appointed.

22 See the Police Act 1996 s 89(2) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 47, as from a day to be appointed (see note 21 *supra*); modified and applied for these purposes by the Energy Act 2004 s 68(1)). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 735.

23 See the Police Act 1996 s 90 (as amended) (applied for these purposes by the Energy Act 2004 s 68(2)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 527.

24 See the Police Act 1996 s 91(2)(b) (substituted by the Energy Act 2004 s 68(3)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 527.

25 As to the Secretary of State see PARA 601 note 1 ante.

26 For the meaning of 'subordinate legislation' see PARA 750 note 10 ante.

27 *Ie* the Energy Act 2004 Pt 1 Ch 3 (ss 51-71, Schs 10-13) (as amended): see PARA 1520 et seq ante, PARA 1533 et seq post.

28 Ibid s 69(2). Such orders are subject to the negative resolution procedure: s 69(3). As to the negative resolution procedure see PARA 602 note 2 ante.

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(C) ADMINISTRATION OF THE CONSTABULARY

1533. Government, administration and conditions of service.

Where:

- 4090 (1) the Civil Nuclear Police Authority ('the Police Authority')¹ makes provision about the government, administration or conditions of service of the Civil Nuclear Constabulary ('the Constabulary')² or its members; and
- 4091 (2) the provision relates to matters which are the subject of regulations about the government, administration and conditions of service of police forces under the specified provision of the Police Act 1996³,

the provision made by the Police Authority may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary⁴. Before making provision about the government, administration or conditions of service of the Constabulary or its members, the Police Authority must consult:

- 4092 (a) the chief constable of the Constabulary;
- 4093 (b) the Civil Nuclear Police Federation⁵; and
- 4094 (c) if the proposed provision relates to members of a rank-related association⁶, that association⁷.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

3 Ie regulations under the Police Act 1996 s 50 (as amended): see POLICE vol 36(1) (2007 Reissue) PARA 228.

4 Energy Act 2004 s 58(1).

5 As to the Civil Nuclear Police Federation see PARA 1541 post.

6 For the meaning of 'rank-related association' see the Energy Act 2004 s 65(2); and PARA 1542 post (definition applied by s 71(1)).

7 Ibid s 58(2).

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1534. Members of the Civil Nuclear Constabulary serving with other forces or with the Serious Organised Crime Agency.

Where a member of the Civil Nuclear Constabulary ('the Constabulary')¹ serves:

- 4095 (1) with a relevant force² under arrangements made between the chief officer³ of that force and the chief constable of the Constabulary, the member of the Constabulary is to be under the direction and control of the chief officer of the relevant force and is to have the same powers and privileges as a member of that force⁴;
- 4096 (2) with the Serious Organised Crime Agency⁵ under arrangements made between the Serious Organised Crime Agency and the chief constable of the Constabulary, the member of the Constabulary is to be under the direction and control of the Serious Organised Crime Agency and to continue to be a constable⁶.

1 As to the Civil Nuclear Police Authority's statutory function of securing the maintenance of the Civil Nuclear Constabulary see PARA 1520 ante; and as to the appointment of members of the Constabulary see PARA 1531 ante.

2 For these purposes, 'relevant force' means (1) a police force for a police area in Great Britain; (2) the Police Service of Northern Ireland; (3) the British Transport Police Force; or (4) the Ministry of Defence Police: Energy Act 2004 s 59(3) (amended by the Serious Organised Crime and Police Act 2005 ss 59, 174(2), Sch 4 paras 197, 198, Sch 17 Pt 2).

3 For these purposes, 'chief officer' means (1) a chief officer of police of a police force for a police area in Great Britain; (2) the Chief Constable of the Police Service of Northern Ireland; (3) the chief constable of the British Transport Police Force; or (4) the chief constable of the Ministry of Defence Police: Energy Act 2004 s 59(3) (as amended: see note 2 supra).

4 Ibid s 59(1), (2).

5 As to the Serious Organised Crime Agency see POLICE vol 36(1) (2007 Reissue) PARA 430 et seq.

6 Energy Act 2004 s 59A(1), (2) (added by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 paras 197, 199).

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1535. Charges for services provided by the Civil Nuclear Constabulary.

A person who:

- 4097 (1) is the owner or occupier of a site in respect of which services are provided by the Civil Nuclear Constabulary ('the Constabulary')¹;
- 4098 (2) is a person with an interest in, or with custody or control of, nuclear material² in respect of which services are so provided; or
- 4099 (3) is a person not falling within head (1) or head (2) above who is the recipient of services provided by the Constabulary³,

must pay to the Civil Nuclear Police Authority ('the Police Authority')⁴ such charges, if any, in respect of services provided by the Constabulary as are either agreed between that person and the Police Authority, or, in the absence of agreement, determined by the Secretary of State⁵.

The Secretary of State may pay to the Police Authority such sums as are either agreed between him and that authority, or, in the absence of agreement, determined by the Secretary of State, in respect of services provided by the Constabulary to such persons as he may determine⁶.

The services in respect of which charges or sums may be so imposed or paid include services which it is the duty of the Constabulary to provide and services which it is the duty of the person charged to have provided⁷.

1 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

2 For the meaning of 'nuclear material' see PARA 1528 note 3 ante.

3 A person described in heads (1)-(3) in the text is a person falling within the Energy Act 2004 s 60(2).

4 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

5 See the Energy Act 2004 s 60(1), (2). As to the Secretary of State see PARA 601 note 1 ante.

6 Ibid s 60(3).

7 Ibid s 60(4).

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(D) PLANNING, REPORTS, SUPERVISION AND INSPECTION

1536. Objectives and plans.

Before the beginning of each financial year¹, the Civil Nuclear Police Authority ('the Police Authority')² must determine objectives for policing by the Civil Nuclear Constabulary ('the Constabulary') during that year³. The objectives must:

- 4100 (1) incorporate every objective relating to policing imposed by directions given by the Secretary of State⁴ setting out objectives for the Police Authority for that financial year⁵; and
- 4101 (2) otherwise be consistent with the directions given by the Secretary of State to the Police Authority⁶ under the relevant statutory provisions⁷.

Before determining the objectives, the Police Authority must consult the chief constable of the Constabulary⁸.

Before the beginning of each financial year, the Police Authority must also issue a plan setting out the proposed arrangements for policing by the Constabulary during the year (the 'annual policing plan')⁹. The annual policing plan must include a statement of:

- 4102 (a) the objectives determined for the year under the provisions set out above;
- 4103 (b) the Police Authority's priorities for the year;
- 4104 (c) the performance targets set by the Police Authority for the year; and
- 4105 (d) the financial resources expected to be available and the proposed allocation of those resources¹⁰.

The annual policing plan for a financial year must be consistent with the three-year strategy plan most recently issued or proposed to be issued¹¹ for a period that includes that financial year¹². Before an annual policing plan for a financial year is issued, a draft of a plan for that year must have been prepared by the chief constable and submitted by him to the Police Authority for its consideration¹³; and before the Police Authority issues an annual policing plan which differs from the draft submitted by the chief constable, it must consult him¹⁴. The Police Authority must arrange for every annual policing plan to be published in such manner as appears to it to be appropriate and must send a copy of every annual policing plan to the Secretary of State¹⁵.

Before the beginning of each financial year, the Police Authority must issue a plan setting out the Police Authority's medium and long term strategies for policing by the Constabulary during the three year period¹⁶ beginning with that year (the 'three-year strategy plan')¹⁷. Before a three-year strategy plan for any period is issued, a draft of a plan for that period must have been prepared by the chief constable and submitted by him to the Police Authority for its consideration¹⁸; and before the Police Authority issues a three-year strategy plan which differs from the draft submitted by the chief constable, it must consult him¹⁹. The Police Authority must arrange for every three-year strategy plan to be published in such manner as appears to

it to be appropriate and must send a copy of every three-year strategy plan to the Secretary of State²⁰.

1 For the meaning of 'financial year' see PARA 763 note 17 ante.

2 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

3 Energy Act 2004 s 61, Sch 12 para 1(1). As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

In determining the objectives, the Police Authority must have regard to any strategic priorities determined for that year by the Secretary of State under the Police Act 1996 s 37A (as added) (strategic priorities for police authorities: see POLICE vol 36(1) (2007 Reissue) PARA 198): Energy Act 2004 Sch 12 para 1(3) (substituted by the Police and Justice Act 2006 s 52, Sch 14 para 59).

The first objectives that were required to be determined under the Energy Act 2004 Sch 12 para 1 (as amended), and the first plans or draft plans to be issued or prepared under Sch 12 paras 2, 3 (see the text and notes 9-20 infra), were required to be determined, issued or prepared as if the references in Sch 12 Pt 1 (paras 1-4) (as amended) to a financial year were references to such period (1) ending not more than two years after the commencement of Sch 12 Pt 1 (as amended) (ie 1 April 2005: see the Energy Act 2004 (Commencement No 5) Order 2005, SI 2005/877, art 2(1), Sch 1); and (2) ending with a 31 March, as might be notified to the Police Authority by the Secretary of State: Energy Act 2004 Sch 12 para 4.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 The directions given under the Energy Act 2004 s 63(1), Sch 13 para 1: see PARA 1539 post.

6 The directions given under ibid Pt 1 Ch 3 (ss 51-71, Schs 10-13) (as amended): see PARA 1520 et seq ante, PARA 1537 et seq post.

7 Ibid Sch 12 para 1(2).

8 Ibid Sch 12 para 1(4).

9 Ibid Sch 12 para 2(1). As to the initial plan see Sch 12 para 4, cited in note 3 supra.

10 Ibid Sch 12 para 2(2).

11 The under ibid Sch 12 para 3: see the text and notes 16-20 infra.

12 Ibid Sch 12 para 2(3).

13 Ibid Sch 12 para 2(4).

14 Ibid Sch 12 para 2(5).

15 Ibid Sch 12 para 2(6).

16 The reference in the text to a three year period is a reference to a period of three successive financial years: ibid Sch 12 para 3(5).

17 Ibid Sch 12 para 3(1). As to the initial plan see Sch 12 para 4, cited in note 3 supra.

18 Ibid Sch 12 para 3(2).

19 Ibid Sch 12 para 3(3).

20 Ibid Sch 12 para 3(4).

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1537. Reports by the chief constable of the Civil Nuclear Constabulary and by the Civil Nuclear Police Authority.

The chief constable of the Civil Nuclear Constabulary ('the Constabulary')¹ must, as soon as possible after the end of each reporting year², submit to the Civil Nuclear Police Authority ('the Police Authority')³ a report on the policing carried out by the Constabulary during that year and must arrange for the report to be published in such manner as appears to him to be appropriate⁴.

Whenever he is required to do so by the Police Authority, the chief constable must submit to it a report on such matters connected with policing by the Constabulary, and in such form, as it may specify⁵. The Police Authority may either arrange for a report so submitted to it to be published in such manner as appears to it to be appropriate, or may require the chief constable to arrange for it to be published in that manner⁶. If, however, it appears to the chief constable that a report so required from him would contain:

- 4106 (1) information which, in the public interest, ought not to be disclosed; or
- 4107 (2) information which is not needed by the Police Authority for the carrying out of its functions,

he may request the Police Authority to refer its requirement for a report to the Secretary of State⁷. Where such a request is made, the requirement for the report has effect only to the extent that it is confirmed by the Secretary of State⁸.

As soon as possible after the end of each reporting year, the Police Authority must issue a report relating to the policing carried out by the Constabulary during that year (an 'annual report')⁹. The annual report must include an assessment of the extent to which, during that year, proposals have been implemented and things have been done in accordance with:

- 4108 (a) the three-year strategy plan¹⁰ most recently issued for a period in which that year ends; and
 - 4109 (b) the annual policing plan issued:
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- 549. (i) in the case of the first annual report, for every financial year the whole or a part of which is included in the reporting year; and
 - 550. (ii) in any other case, for the financial year that coincides with the reporting year¹¹.
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The Police Authority must send a copy of each annual report to the Secretary of State¹². Where the Secretary of State receives a copy of the Police Authority's annual report for any year, he must lay it before Parliament and must arrange for it to be published in such manner as appears to him to be appropriate¹³.

The Secretary of State may at any time require the Police Authority to submit to him a report on such matters connected with the carrying out of its functions, or policing by the Constabulary, as he may specify¹⁴; and he may at any time require the chief constable to submit to him a report on such matters connected with policing by the Constabulary as the Secretary of State may specify¹⁵. If the Secretary of State specifies a particular form for such a report, the report must be submitted in that form¹⁶. Where a report is submitted to the Secretary of State under these provisions, he may either arrange for it to be published in such manner as appears to him to be appropriate or require the person submitting the report to arrange for it to be published in that manner¹⁷.

1 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante; and as to the appointment of the chief constable see PARA 1529 ante.

2 For these purposes, 'reporting year', in relation to the Police Authority or the chief constable, means (1) the initial reporting year; or (2) a financial year after the end of the initial reporting year; and 'the initial reporting year' means (a) where the Police Authority is established at the beginning of a financial year, that financial year; and (b) in any other case, the period which begins with the day on which the Police Authority is established and ends (i) if no direction is given under head (ii) infra, with 31 March in the financial year current on that day; and (ii) if the Secretary of State so directs, with 31 March at the end of the following financial year: Energy Act 2004 s 61, Sch 12 para 9(1), (2). For the meaning of 'financial year' see PARA 763 note 17 ante. As to the Secretary of State see PARA 601 note 1 ante.

3 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

4 Energy Act 2004 Sch 12 para 5.

5 Ibid Sch 12 para 6(1).

6 Ibid Sch 12 para 6(2).

7 Ibid Sch 12 para 6(3).

8 Ibid Sch 12 para 6(4).

9 Ibid Sch 12 para 7(1).

10 As to the three-year strategy plan see PARA 1536 ante.

11 Energy Act 2004 Sch 12 para 7(2).

12 Ibid Sch 12 para 7(3).

13 Ibid Sch 12 para 7(4).

14 Ibid Sch 12 para 8(1).

15 Ibid Sch 12 para 8(2).

16 Ibid Sch 12 para 8(3).

17 Ibid Sch 12 para 8(4).

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1538. Inspection of the Civil Nuclear Constabulary.

Her Majesty's Inspectors of Constabulary¹ must inspect the Civil Nuclear Constabulary ('the Constabulary')² from time to time³ and must also inspect the Constabulary if requested to do so by the Secretary of State⁴ either:

- 4110 (1) generally; or
- 4111 (2) in respect of a particular matter⁵.

Following an inspection under these provisions, Her Majesty's Inspectors of Constabulary must report to the Secretary of State on the efficiency and effectiveness of the Constabulary either generally or, in the case of an inspection under head (2) above, in respect of the matter to which the inspection related⁶. Such a report must be in such form as the Secretary of State may direct⁷.

The Secretary of State must arrange for every report which he receives⁸ to be published in such manner as appears to him to be appropriate⁹; but he may exclude from such publication any part of a report if, in his opinion, the publication of that part would be against the interests of national security or might jeopardise the safety of any person¹⁰. The Secretary of State must send a copy of the published report to the Civil Nuclear Police Authority ('the Police Authority')¹¹ and to the chief constable of the Constabulary¹².

The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of an inspection carried out under these provisions¹³; and the Secretary of State must pay sums so received by him into the Consolidated Fund¹⁴.

Where a report under the above provisions following an inspection states:

- 4112 (a) that the Constabulary is, whether generally or in a specified respect, not efficient or not effective; or
- 4113 (b) that the Constabulary is likely, unless remedial action is taken, to cease to be efficient or effective, whether generally or in a specified respect,

then the Secretary of State may give a direction requiring the Police Authority to take the particular steps specified in the direction for the purpose of remedying the matters stated in the report¹⁵. Before giving such a direction the Secretary of State must notify the Police Authority and the chief constable of his intention to give a direction and of his reasons for doing so and must give them an opportunity of making representations¹⁶. The Police Authority must comply with such a direction¹⁷.

1 As to Her Majesty's Inspectors of Constabulary see POLICE vol 36(1) (2007 Reissue) PARA 206.

2 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

3 Energy Act 2004 s 62(1); and see note 5 infra.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Energy Act 2004 s 62(1). Before carrying out an inspection under s 62 wholly or partly in Scotland, Her Majesty's Inspectors of Constabulary must consult the Scottish inspectors (1) in the case of any inspection by virtue of s 62(1) or (2)(a), about the scope and conduct in Scotland of the proposed inspection; and (2) in any other case, about its conduct in Scotland: s 62(3). For these purposes, 'the Scottish inspectors' means the inspectors of constabulary appointed under the Police (Scotland) Act 1967 s 33(1): Energy Act 2004 s 62(11).

6 Ibid s 62(4).

7 Ibid s 62(5).

8 Ie under ibid s 62(4): see the text and note 6 supra.

9 Ibid s 62(6).

10 Ibid s 62(7).

11 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

12 Energy Act 2004 s 62(8).

13 Ibid s 62(9).

14 Ibid s 62(10). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

15 Ibid s 63(1), Sch 13 para 4(2), (3)(b).

16 Ibid Sch 13 para 4(4).

17 Ibid s 63(1).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/B. THE CIVIL NUCLEAR CONSTABULARY/(D) Planning, Reports, Supervision and Inspection/1539. Supervision by the Secretary of State.

1539. Supervision by the Secretary of State.

The Secretary of State¹ may give directions to the Civil Nuclear Police Authority ('the Police Authority')² setting out objectives for that authority for a financial year³. The objectives may include:

- 4114 (1) objectives to be met generally in the carrying out by the Police Authority of its functions;
- 4115 (2) objectives to be met in the carrying out by the Police Authority of particular functions, or in its carrying out of functions, or particular functions, at particular times or places;
- 4116 (3) objectives to be met, whether generally or in relation to particular matters, in the management of the Civil Nuclear Constabulary ('the Constabulary')⁴;
- 4117 (4) objectives to be met in securing proper accountability by the Police Authority for its own activities and for those of the Constabulary⁵.

Before giving such a direction, the Secretary of State must consult the Police Authority and the chief constable of the Constabulary⁶.

The Secretary of State may also give directions to the Police Authority requiring it to secure:

- 4118 (a) that such tasks are performed by members of the Constabulary as are set out in the direction, or as are determined under it;
- 4119 (b) that the tasks so set out or determined are performed in the manner so set out or determined;
- 4120 (c) that the financial and other resources available to the Police Authority are allocated and used in such manner as is so set out or determined;
- 4121 (d) that the practices and procedures relating to security that are so set out or determined are adopted and followed⁷ by members of the Police Authority;
- 4122 (e) that the practices and procedures (relating to security or any other matter) that are so set out or determined are adopted and followed by and in relation to members of the Constabulary and other employees of the Police Authority, and in relation to their appointment as such;
- 4123 (f) that the practices and procedures (relating to security or any other matter) that are so set out or determined are adopted and followed in relation to agreements between the Police Authority and other persons;
- 4124 (g) that the criteria so set out or determined are applied in assessing the performance of members of the Constabulary and of other employees of the Police Authority, and in determining their operational, training and equipment needs; and
- 4125 (h) that such officers of the Secretary of State's department as are so set out or determined are given an entitlement, for the purpose of enabling them to monitor or inspect the activities of the Police Authority and of its employees, to have access to or make use of premises occupied by or under the control of the Police Authority, apparatus maintained for use by members or employees of the

Police Authority and documents⁸ and records in the custody or under the control of the Police Authority or of the chief constable⁹.

The Secretary of State may also give the Police Authority such other general or specific directions as he considers appropriate for securing the efficient and effective operation of the Constabulary¹⁰. Before giving a direction under these provisions, the Secretary of State must consult the Police Authority and the chief constable¹¹.

The Secretary of State may give directions to the Police Authority as to the government, administration and conditions of service of the Constabulary and its members¹². Before giving such a direction, the Secretary of State must consult:

- 4126 (i) the Police Authority;
- 4127 (ii) the chief constable;
- 4128 (iii) the Civil Nuclear Police Federation¹³; and
- 4129 (iv) if the direction affects members of a rank-related association¹⁴, that association¹⁵.

The Police Authority must comply with directions so given¹⁶. Where the Secretary of State considers that the Police Authority is failing to meet an objective set out by him under the above provisions, or to comply with a direction given under them, he may give a direction requiring the Police Authority to take the particular steps specified in the direction for the purpose of remedying the failure to meet the objective or to comply with the direction¹⁷. Before giving such a direction, the Secretary of State must notify the Police Authority and the chief constable of his intention to give a direction and of his reasons for doing so and give them an opportunity of making representations¹⁸. The Police Authority must comply with the direction¹⁹.

The Secretary of State must exercise his powers under the relevant statutory provisions²⁰ in such manner, and to such extent, as appears to him best calculated to promote the efficiency and effectiveness of the Constabulary²¹.

The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of things done by him for or in relation to the authority or its employees in connection with matters relating to security²²; and the Secretary of State must pay sums so received by him into the Consolidated Fund²³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

3 Energy Act 2004 s 63(1), Sch 13 para 1(1). For the meaning of 'financial year' see PARA 763 note 17 ante.

4 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

5 Energy Act 2004 Sch 13 para 1(2).

6 Ibid Sch 13 para 1(3).

7 For these purposes, references to adopting and following practices or procedures include references to meeting and complying with standards or guidelines: ibid Sch 13 para 2(4).

8 For the meaning of 'document' see PARA 733 note 4 ante.

9 Energy Act 2004 Sch 13 para 2(1).

10 Ibid Sch 13 para 2(2).

11 Ibid Sch 13 para 2(3).

12 Ibid Sch 13 para 3(1). The provision that may be required by directions under Sch 13 para 3, and that is to be capable of being made in pursuance of any such directions, includes any provision that may be made in relation to police forces under the Police Act 1996 s 50 (as amended) (police force regulations: see POLICE vol 36(1) (2007 Reissue) PARA 228); Energy Act 2004 Sch 13 para 3(2). If a direction under Sch 13 para 3 relates to a matter which is the subject of regulations under the Police Act 1996 s 50 (as amended), the direction may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary: Energy Act 2004 Sch 13 para 3(3).

13 As to the Civil Nuclear Police Federation see PARA 1541 post.

14 For the meaning of 'rank-related association' see PARA 1542 post (definition applied by the Energy Act 2004 s 71(1)).

15 Ibid Sch 13 para 3(4).

16 Ibid s 63(1).

17 Ibid Sch 13 para 4(1), (3)(a).

18 Ibid Sch 13 para 4(4).

19 Ibid s 63(1).

20 Ie under ibid Pt 1 Ch 3 (ss 51-71, Schs 10-13) (as amended): see PARA 1520 et seq ante; the text and notes 1-19 supra; and PARA 1540 et seq post.

21 Ibid s 63(2).

22 Ibid s 63(3).

23 Ibid s 63(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

1539 Supervision by the Secretary of State

TEXT AND NOTE 9--Energy Act 2004 Sch 13 para 2(1) amended: Energy Act 2008 Sch 5 para 21.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/B. THE CIVIL NUCLEAR CONSTABULARY/(E) Rights etc of Members of the Constabulary/1540. Trade union membership.

(E) RIGHTS ETC OF MEMBERS OF THE CONSTABULARY

1540. Trade union membership.

A member of the Civil Nuclear Constabulary ('the Constabulary')¹ must not be a member of a trade union² or of an association whose objects are or include controlling or influencing the pay, pensions or conditions of service of members of the Constabulary³. This does not, however, prevent a member of the Constabulary:

- 4130 (1) from being a member of the Civil Nuclear Police Federation⁴;
- 4131 (2) from being a member of a rank-related association⁵; or
- 4132 (3) with the consent of the chief constable of the Constabulary, from continuing to be a member of a trade union to which he belonged before becoming a member of the Constabulary⁶.

1 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

2 For these purposes, 'trade union' has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992 s 1 (see EMPLOYMENT vol 40 (2009) PARA 846); Energy Act 2004 s 67(3).

3 Ibid s 67(1).

4 As to the Civil Nuclear Police Federation see PARA 1541 post.

5 For the meaning of 'rank-related association' see the Energy Act 2004 s 65(2); and PARA 1542 post (definition applied by s 37(1)).

6 Ibid s 67(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/B. THE CIVIL NUCLEAR CONSTABULARY/(E) Rights etc of Members of the Constabulary/1541. Civil Nuclear Police Federation.

1541. Civil Nuclear Police Federation.

The Secretary of State¹ may approve a body, whether corporate or unincorporate, to be known as the Civil Nuclear Police Federation², to carry out the function of representing members of the Civil Nuclear Constabulary ('the Constabulary')³, other than senior officers⁴, in all matters affecting their welfare and efficiency⁵. Those matters do not, however, include:

- 4133 (1) the promotion in rank of particular individuals; or
- 4134 (2) except to the extent provided as set out below⁶, discipline matters affecting particular individuals⁷.

The Civil Nuclear Police Federation may represent a member of the Constabulary, other than a senior officer:

- 4135 (a) at disciplinary proceedings conducted in accordance with arrangements made by the Civil Nuclear Police Authority⁸; or
- 4136 (b) on an appeal under any such arrangements from a decision in such proceedings⁹;

but such representation must comply with any restrictions imposed¹⁰ by the relevant statutory provision¹¹.

Except so far as otherwise authorised by the Secretary of State¹², the Civil Nuclear Police Federation must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections¹³; but it may employ in an administrative or advisory capacity persons who are without appropriate police connections¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Energy Act 2004 s 64(1), (2).

3 As to the Civil Nuclear Police Authority's statutory function of securing the maintenance of the Civil Nuclear Constabulary see PARA 1520 ante.

4 For the meaning of 'senior officer' see PARA 1529 note 9 ante.

5 Energy Act 2004 s 64(1), (3).

6 Ie except as provided in ibid s 64(5): see the text and notes 8-9 infra.

7 Ibid s 64(4).

8 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

9 Energy Act 2004 s 64(5).

10 Ie imposed by ibid s 66: see PARA 1543 post.

11 Ibid s 64(6).

12 An authorisation for these purposes may be given either conditionally or unconditionally and may be varied or revoked at any time: *ibid* s 64(9).

13 *Ibid* s 64(7). Only the following have appropriate police connections for these purposes: (1) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland; (2) persons not falling within head (1) *supra* who are members of or employed by the Police Authority; (3) a federation referred to in the Police Act 1996 s 59 (as amended) (see *POLICE* vol 36(1) (2007 Reissue) PARA 423), the Ministry of Defence Police Act 1987 s 3 (see *POLICE* vol 36(1) (2007 Reissue) PARA 123) or the Railways and Transport Safety Act 2003 s 39 (see *RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES* vol 39(1A) (Reissue) PARA 283) (police federations); (4) the Police Association for Northern Ireland; (5) a rank-related association; (6) a body recognised under, and for the purposes specified in, the Police Act 1996 s 64(5) (see *POLICE* vol 36(1) (2007 Reissue) PARA 426) or the corresponding Northern Ireland legislation (recognition of other bodies for trade union purposes): Energy Act 2004 s 64(10).

14 *Ibid* s 64(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/B. THE CIVIL NUCLEAR CONSTABULARY/(E) Rights etc of Members of the Constabulary/1542. Rank-related associations.

1542. Rank-related associations.

The Secretary of State¹ may approve one or more bodies, whether corporate or unincorporate, to be known as a rank-related association², to carry out the function of representing, in all matters affecting their welfare and efficiency, members of the Civil Nuclear Constabulary ('the Constabulary')³ who are not members of the Civil Nuclear Police Federation⁴ or of another rank-related association and who hold such ranks as may be specified in the approval given for these purposes by the Secretary of State⁵. Those matters do not, however, include:

- 4137 (1) the promotion in rank of particular individuals; or
- 4138 (2) except to the extent provided as set out below⁶, discipline matters affecting particular individuals⁷.

A rank-related association may represent a member of the association:

- 4139 (a) at disciplinary proceedings conducted in accordance with arrangements made by the Civil Nuclear Police Authority⁸; or
- 4140 (b) on an appeal under any such arrangements from a decision in such proceedings⁹;

but such representation must comply with any restrictions imposed¹⁰ by the relevant statutory provisions¹¹.

Except so far as otherwise authorised by the Secretary of State¹², a rank-related association must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections¹³; but it may employ in an administrative or advisory capacity persons who are without appropriate police connections¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Energy Act 2004 s 65(1), (2).

3 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante.

4 As to the Civil Nuclear Police Federation see PARA 1541 ante.

5 Energy Act 2004 s 65(1), (3).

6 Ie except to the extent provided by ibid s 65(5): see the text and notes 8-9 infra.

7 Ibid s 65(4).

8 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

9 Energy Act 2004 s 65(5).

10 Ie imposed by ibid s 66: see PARA 1543 post.

11 Ibid s 65(6).

12 An authorisation for these purposes may be given either conditionally or unconditionally and may be varied or revoked at any time: *ibid* s 65(9).

13 Ibid s 65(7). In relation to a rank-related association, only the following have appropriate police connections for these purposes: (1) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland; (2) persons not falling within head (1) *supra* who are members of or employed by the Police Authority; (3) the Civil Nuclear Police Federation; (4) another rank-related association; (5) a federation referred to in the Police Act 1996 s 59 (as amended) (see *POLICE* vol 36(1) (2007 Reissue) PARA 423), the Ministry of Defence Police Act 1987 s 3 (see *POLICE* vol 36(1) (2007 Reissue) PARA 123) or the Railways and Transport Safety Act 2003 s 39 (see *RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES* vol 39(1A) (Reissue) PARA 283) (police federations); (6) the Police Association for Northern Ireland; (7) a body recognised under, and for the purposes specified in, the Police Act 1996 s 64(5) (see *POLICE* vol 36(1) (2007 Reissue) PARA 426) or the corresponding Northern Ireland legislation (recognition of other bodies for trade union purposes): Energy Act 2004 s 65(10).

14 Ibid s 65(8).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(i) The Civil Nuclear Police Authority and Constabulary/B. THE CIVIL NUCLEAR CONSTABULARY/(E) Rights etc of Members of the Constabulary/1543. Representation at certain disciplinary proceedings.

1543. Representation at certain disciplinary proceedings.

Where disciplinary proceedings conducted in accordance with arrangements made by the Civil Nuclear Police Authority¹ may lead to a member of the Civil Nuclear Constabulary ('the Constabulary')² who is not a senior officer³ being dismissed, required to resign or reduced in rank, the member of the Constabulary must be given an opportunity to elect to be legally represented in those proceedings and on any appeal under the arrangements⁴. If he so elects, he may be represented, at his option, by counsel or by a solicitor⁵.

If he is not legally represented, the member of the Constabulary may be represented in the proceedings or on an appeal only by a person who is:

- 4141 (1) a member of the Constabulary;
- 4142 (2) a member of a police force maintained under the Police Act 1996⁶;
- 4143 (3) a constable of a police force maintained under the Police (Scotland) Act 1967;
- 4144 (4) a constable of the British Transport Police Force⁷; or
- 4145 (5) a member of the Ministry of Defence Police⁸.

1 As to the establishment of the Civil Nuclear Police Authority see PARA 1520 ante.

2 As to the Civil Nuclear Police Authority's statutory function of maintaining the Civil Nuclear Constabulary see PARA 1520 ante; and as to the appointment of members of the Constabulary see PARA 1531 ante.

3 For the meaning of 'senior officer' see PARA 1529 note 9 ante.

4 Energy Act 2004 s 66(1), (2).

5 Ibid s 66(3).

6 As to police forces maintained under the Police Act 1996 see POLICE.

7 As to the British Transport Police Force see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 281 et seq.

8 Energy Act 2004 s 66(4). As to the Ministry of Defence Police Force see POLICE vol 36(1) (2007 Reissue) PARA 120 et seq.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(ii) Regulation of Security of the Civil Nuclear Industry/A. IN GENERAL/1544. Power to make regulations.

(ii) Regulation of Security of the Civil Nuclear Industry

A. IN GENERAL

1544. Power to make regulations.

The Secretary of State¹ may make regulations² for the purpose of ensuring the security of:

- 4146 (1) nuclear sites³ and other nuclear premises⁴;
- 4147 (2) nuclear material used or stored on nuclear sites or other nuclear premises and equipment⁵ or software used or stored on such sites or premises in connection with activities involving nuclear material;
- 4148 (3) other radioactive material used or stored on nuclear sites and equipment or software used or stored on nuclear sites in connection with activities involving other radioactive material;
- 4149 (4) equipment or software in the United Kingdom⁶ which:
 - 377 551. (a) is capable of being used in, or in connection with, the enrichment of uranium⁷; and
 - 552. (b) is in the possession or control of a person involved in uranium enrichment activities⁸;
- 378 4150 (5) sensitive nuclear information⁹ which is in the possession or control in the United Kingdom of:
 - 379 553. (a) a person who is involved in activities on or in relation to a nuclear site or nuclear premises or who is proposing or likely to become so involved;
 - 554. (b) a person involved in uranium enrichment activities; or
 - 555. (c) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within head (a) or head (b) above;
- 380 4151 (6) nuclear material which is being, or is expected to be:
 - 381 556. (a) transported within the United Kingdom or its territorial sea¹⁰;
 - 557. (b) transported, outside the United Kingdom and its territorial sea, to or from any nuclear site or other nuclear premises in the United Kingdom; or
 - 558. (c) carried on board a United Kingdom ship¹¹;
- 382 4152 (7) information relating to the security of anything mentioned in heads (1) to (6) above¹².

The regulations may, in particular:

- 4153 (i) require a person to produce for the approval of the Secretary of State a plan for ensuring the security of anything mentioned in heads (1) to (7) above and to comply with the plan as approved by the Secretary of State¹³;
- 4154 (ii) require compliance with any directions given by the Secretary of State¹⁴;
- 4155 (iii) impose requirements in relation to any activities by reference to the approval of the Secretary of State¹⁵;
- 4156 (iv) create summary offences or offences triable either way¹⁶;
- 4157 (v) make provision for the purposes mentioned in heads (1) to (7) above corresponding to any provision which may be made for the general purposes of Part I of the Health and Safety at Work etc Act 1974¹⁷ by virtue of the provisions of that Act¹⁸ relating to health and safety regulations¹⁹;
- 4158 (vi) make provision corresponding to any provision which may be made by virtue of the provisions of that Act relating to fees²⁰ in connection with the performance by or on behalf of the Secretary of State or any other specified body or person of functions under the regulations²¹; and
- 4159 (vii) apply, with or without modifications, or make provision corresponding to, any provision contained in the specified provisions²² of that Act²³.

An offence under the regulations may be made punishable:

- 4160 (A) in the case of an offence triable either way, on conviction on indictment, with imprisonment for a term not exceeding two years or a fine (or both), and on summary conviction, with imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both); or
- 4161 (B) in the case of a summary offence, with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale (or both)²⁴.

The regulations may make provision applying to acts done outside the United Kingdom by United Kingdom persons²⁵. They may also make different provision for different purposes²⁶ and such incidental, supplementary and transitional provision as the Secretary of State considers appropriate²⁷.

Before making the regulations the Secretary of State must consult the Health and Safety Commission²⁸ and such other persons as he considers appropriate²⁹.

In the exercise of these powers, the Secretary of State has made the Nuclear Industries Security Regulations 2003³⁰, which are discussed below³¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The power to make such regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Anti-terrorism, Crime and Security Act 2001 s 77(6).

3 For these purposes, 'nuclear site' means a licensed nuclear site within the meaning of the Energy Act 2004 Pt 1 Ch 3 (ss 50-71, Schs 10-13) (as amended): Anti-terrorism, Crime and Security Act 2001 s 77(7) (definition substituted by the Energy Act 2004 s 69(1), Sch 14 para 10(1)). For the meaning of 'licensed nuclear site' for those purposes see PARA 1528 note 2 ante.

4 For these purposes, 'other nuclear premises' means premises other than a nuclear site on which nuclear material is used or stored: Anti-terrorism, Crime and Security Act 2001 s 77(7). For the meaning of 'nuclear material' see PARA 1528 note 3 ante (definition applied by s 77(7) (amended for this purpose by the Energy Act 2004 s 69(1), Sch 14 para 10(1)).

5 For these purposes, 'equipment' includes equipment that has not been assembled and its components: Anti-terrorism, Crime and Security Act 2001 s 77(7) (definition added by the Energy Act 2004 s 77(1), (5)(a)).

6 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 For these purposes, 'enrichment of uranium' means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium: Anti-terrorism, Crime and Security Act 2001 s 77(7) (definition added by the Energy Act 2004 s 77(1), (5)(a)).

8 References for these purposes to a person involved in uranium enrichment activities are references to a person who is or is proposing to become involved in any of the following activities (whether in the United Kingdom or elsewhere): (1) the enrichment of uranium; (2) activities carried on with a view to, or in connection with, the enrichment of uranium; (3) the production, storage, transport or transmission of equipment or software for or on behalf of persons involved in uranium enrichment activities; or (4) activities that make it reasonable to assume that he will become involved in something mentioned in heads (1)-(3) supra: Anti-terrorism, Crime and Security Act 2001 s 77(6A) (added by the Energy Act 2004 s 77(1), (4)).

9 For these purposes, 'sensitive nuclear information' means (1) information relating to, or capable of use in connection with, the enrichment of uranium; or (2) information relating to activities carried out on or in relation to nuclear sites or other nuclear premises which appears to the Secretary of State to be information which needs to be protected in the interests of national security: Anti-terrorism, Crime and Security Act 2001 s 77(7) (definition amended by the Energy Act 2004 s 77(1), (5)(b)). For the purposes of head (2) of this definition; and in the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended) (see PARA 1545 et seq post), information which appears to the Secretary of State to be information which needs protecting in the interests of national security includes information which requires a protective marking in accordance with the classification policy: reg 2(4) (added by SI 2006/2815). 'Classification policy' means the classification policy 'Information concerning the Use, Storage and Transport of Nuclear and other Radioactive Material' issued by the Secretary of State from time to time: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1) (definition added by SI 2006/2815).

10 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

11 For these purposes, 'United Kingdom ship' means a ship registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23): see SHIPPING AND MARITIME LAW.

12 Anti-terrorism, Crime and Security Act 2001 s 77(1) (amended by the Energy Act 2004 s 77(1)-(3)).

13 Anti-terrorism, Crime and Security Act 2001 s 77(2)(a).

14 Ibid s 77(2)(b). See the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 11; and PARA 1551 post.

15 Anti-terrorism, Crime and Security Act 2001 s 77(2)(c).

16 Ibid s 77(2)(d).

17 I.e the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK.

18 I.e by virtue of ibid s 15(2), (3)(c), (4)-(8) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424-425.

19 Anti-terrorism, Crime and Security Act 2001 s 77(2)(e).

20 I.e by virtue of the Health and Safety at Work etc Act 1974 ss 43(2)-(5), (8), (9) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 354.

21 Anti-terrorism, Crime and Security Act 2001 s 77(2)(f). Any sums received by virtue of provision made under s 77(2)(f) must be paid into the Consolidated Fund: s 77(8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. In the exercise of the power under the Anti-terrorism, Crime and Security Act 2001 s 77(2)(f) the Secretary of State has made the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, which came into force on 5 September 2005: reg 1(2). See further PARA 1561 post.

22 I.e contained in the Health and Safety at Work etc Act 1974 ss 19-42 (as amended) (enforcement, information and offences) and ss 44-47 (appeals, default powers, service of notices and civil liability): see HEALTH AND SAFETY AT WORK.

23 Anti-terrorism, Crime and Security Act 2001 s 77(2)(g).

24 Ibid s 77(3). As to the standard scale see PARA 613 note 11 ante.

- 25 Ibid s 77(4)(a).
- 26 Ibid s 77(4)(b).
- 27 Ibid s 77(4)(c).
- 28 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 29 Anti-terrorism, Crime and Security Act 2001 s 77(5).
- 30 Ie the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq post.
- 31 See PARA 1545 et seq post.

UPDATE

1544 Power to make regulations

NOTES-- Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 29--2001 Act s 77(5) amended: SI 2008/960.

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B. SECURITY OF NUCLEAR PREMISES

1545. Requirement for approved security plan for nuclear premises.

There must be an approved security plan¹ for each nuclear premises², whether or not the premises form part of other premises to which this requirement and the requirements of heads (1) to (5) and (i) to (iv) below apply³. A security plan must describe in writing the standards, procedures and arrangements adopted or to be adopted by the responsible person⁴ to ensure the security of:

- 4162 (1) the nuclear premises in relation to which he is the responsible person;
 - 4163 (2) any Category I/II nuclear material⁵ and Category III nuclear material⁶ used or stored on the premises;
 - 4164 (3) any equipment or software used or stored on the premises in connection with activities involving nuclear material;
 - 4165 (4) any sensitive nuclear information⁷ kept on the premises; and
 - 4166 (5) in the case of nuclear premises which are or form part of a nuclear site:
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- 559. (a) any nuclear material, so far as not already mentioned in head (2) above, and other radioactive material used or stored on the premises; and
 - 560. (b) any equipment or software used or stored on the premises in connection with activities involving other radioactive material⁸.
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In particular, but without prejudice to the generality of heads (1) to (5) above, the plan must describe the standards, procedures and arrangements relating to:

- 4167 (i) the investigation and assessment by the Secretary of State⁹ of the suitability of relevant personnel¹⁰ of the responsible person with a view to ensuring the security of the premises and the material, equipment and information mentioned in those heads;
- 4168 (ii) the receipt and dispatch of any Category I/II nuclear material and Category III nuclear material to be transported to or from the nuclear premises;
- 4169 (iii) the manner in which the nuclear premises are to be policed and guarded, including the identity of the person providing any constables or persons acting as guards, the total number of constables and such persons attached to the premises and the number of such constables or other persons who will normally be present there; and
- 4170 (iv) the steps to be taken by the responsible person or any person acting on his behalf if any event of a specified kind¹¹ that requires immediate action occurs, and the regular practice of the activities required in connection with those steps¹².

The responsible person in relation to each nuclear premises must submit a security plan for the premises to the Secretary of State for approval¹³ and the Secretary of State may approve the plan as submitted or with such amendments as he may require¹⁴. In the case of premises which

were nuclear premises on the commencement date¹⁵, the security plan was to be submitted by 22 June 2003¹⁶. Failure to comply with these requirements is an offence¹⁷.

1 'Approved security plan' means a security plan which has been approved by the Secretary of State under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 5 (see the text and notes 13-16 *infra*) or reg 6 (see PARA 1546 *post*), as amended by any amendments approved under reg 6, and which has not been revoked (but see reg 8 (temporary security plans); and PARA 1548 *post*): reg 2(1). 'Security plan' must be construed in accordance with reg 4(2), (3) (as amended) (see the text and notes 4-12 *infra*): reg 2(1).

2 'Nuclear premises' means (1) a nuclear site on which nuclear material or other radioactive material is used or stored; (2) premises that form part of a nuclear site and are premises on which a person, who is not the holder of the nuclear site licence and is not acting as an officer, employee or contractor of that holder, uses or stores nuclear material or other radioactive material; or (3) other nuclear premises on which Category I/II nuclear material (see note 5 *infra*) or Category III nuclear material (see note 6 *infra*) is used or stored, but excluding premises that are used solely for the purpose of the temporary storage of such material during the course of or incidental to its transport in any case where the standards, procedures and arrangements in respect of the security of the transport are contained in an approved transport security statement: *ibid* reg 2(1). 'Nuclear site' has the meaning given in the Anti-Terrorism, Crime and Security Act 2001 s 76(7) (repealed) and 'nuclear material' has the meaning given in s 76(7) (repealed) (as extended under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 3: see PARA 1528 note 3 *ante*): reg 2(1). See now the Energy Act 2004 s 71(1); and PARA 1528 notes 2-3 *ante*. For the meaning of 'nuclear site licence' see PARA 1487 note 1 *ante* (definition applied by the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1)).

The 2003 Regulations do not apply to any nuclear premises controlled or operated wholly or mainly for the purposes of the department of the Secretary of State with responsibility for defence, or to any transport of nuclear material for the purposes of the department of the Secretary of State with responsibility for defence: reg 26. For the meaning of 'transport' see PARA 1552 note 1 *post*.

Notwithstanding anything in regs 27, 28(2) (see PARA 1552 note 1 *post*), nothing in the 2003 Regulations applies to acts done outside the United Kingdom by a person other than a United Kingdom person: regs 27(13), 28(3) (c).

3 *Ibid* reg 4(1). In the case of premises which were nuclear premises on the commencement date, reg 4(1) did not apply until (1) if a security plan had been submitted by 22 June 2003 to the Secretary of State for approval under reg 5, the date on which the Secretary of State approved a security plan for the premises; or (2) if it had not, 22 June 2003: reg 4(4). 'Commencement date' means 22 March 2003: reg 2(1).

Where, immediately before the commencement date, an operator of nuclear premises which is a generating station or a laboratory was under any obligation under the Nuclear Generating Stations (Security) Regulations 1996, SI 1996/665 (revoked) by virtue of any existing approved security plan, the operator was to continue to comply with that obligation as if it were an obligation under the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended) until there was an approved security plan for those premises: see reg 12.

4 For these purposes, 'responsible person', in relation to any nuclear premises, means (1) in the case of a nuclear site falling within PARA (a) of the definition of 'nuclear premises' (see note 2 *head* (1) *supra*), the holder of the nuclear site licence; (2) in the case of premises falling within PARA (b) of that definition (see note 2 *head* (2) *supra*), the person mentioned in that *head*; and (3) in the case of premises falling within PARA (c) of that definition (see note 2 *head* (3) *supra*), the person who uses or stores the Category I/II nuclear material or Category III nuclear material on those premises; but this is subject to *ibid* reg 2(3): reg 2(1), (2). No person is the responsible person in relation to any nuclear premises falling within PARA (b) or (c) of the definition of 'nuclear premises' by virtue of using or storing nuclear material or other radioactive material on behalf of another person if he is that other person's officer, employee or contractor: reg 2(3).

5 For these purposes, nuclear material is 'Category I/II nuclear material' if and only if it is: (1) a kind of nuclear material specified in *ibid* Schedule, Table col 1 in relation to which there is an entry in Schedule, Table col 2 specifying a quantity (including 'any quantity') for material of that kind; and (2) of such a quantity as is specified in Schedule, Table col 2 for material of that kind: regs 2(1), 3(3). In determining the quantity of material of any kind for the purposes of reg (3)(b), (4)(b) (see *head* (2) *supra*; and note 6 *head* (2) *infra*): (a) in the case of material used or stored on nuclear premises, the quantities of all material of the kind in question that is being used or stored on the nuclear premises in question are to be aggregated; and (b) in the case of material being transported by road, train or ship, the quantities of all material of the kind in question that is being transported in the road convoy, on the train or on the ship, as the case may be, are to be aggregated: reg 3(5). The specified materials and quantities are as follows (Schedule, Table cols 1, 2), ie in the case of:

103 (1) plutonium (other than plutonium with an isotopic concentration exceeding 80% in plutonium-238) which is not irradiated, the specified quantity is more than 500 g;

104 (2) uranium-233 which is not irradiated, the specified quantity is more than 500 g;

- 105 (3) previously separated neptunium-237 which is not irradiated, the specified quantity is more than 1 kg;
- 106 (4) previously separated americium-241, previously separated americium-242m or previously separated americium-243, which are not irradiated, the specified quantity is more than 1 kg;
- 107 (5) uranium-235 in enriched uranium containing 20% or more of uranium-235, which is not irradiated, the specified quantity is more than 1 kg;
- 108 (6) uranium-235 in enriched uranium containing 10% or more, but less than 20%, of uranium-235, which is not irradiated, the specified quantity is 10 kg; and
- 109 (7) irradiated reactor fuel being transported outside the United Kingdom, other than such fuel which, prior to being irradiated, was uranium enriched so as to contain 10% or more, but less than 20%, of uranium-235, the specified quantity is any quantity.

'Enriched uranium' means uranium enriched so as to contain more than 0.711% of uranium-235; and 'irradiated' and 'previously separated' have the meanings given in reg 3(2) (see PARA 1528 note 3 ante): Schedule.

6 For these purposes, nuclear material is 'Category III nuclear material' if and only if it is (1) a kind of nuclear material specified in *ibid* Schedule, Table col 1 in relation to which there is an entry in Schedule, Table col 3 specifying a quantity (including 'any quantity') for material of that kind; and (2) of such a quantity as is specified in Schedule, Table col 3 for material of that kind: regs 2(1), 3(4). As to determining the quantity of material of any kind for the purposes of head (2) *supra* see reg 3(5), cited in note 5 *supra*. The specified materials and quantities are as follows (Schedule, Table cols 1, 3), ie in the case of:

- 110 (1) plutonium (other than plutonium with an isotopic concentration exceeding 80% in plutonium-238) which is not irradiated, the specified quantity is 500 g or less, but more than 15 g;
- 111 (2) uranium-233 which is not irradiated, the specified quantity is 500 g or less, but more than 15 g;
- 112 (3) previously separated neptunium-237 which is not irradiated, the specified quantity is 1 kg or less, but more than 15 g;
- 113 (4) previously separated americium-241, previously separated americium-242m or previously separated americium-243, which are not irradiated, the specified quantity is 1 kg or less, but more than 15 g;
- 114 (5) uranium-235 in enriched uranium containing 20% or more of uranium-235, which is not irradiated, the specified quantity is 1 kg or less, but more than 15 g;
- 115 (6) uranium-235 in enriched uranium containing 10% or more, but less than 20%, of uranium-235, which is not irradiated, the specified quantity is less than 10 kg but more than 1 kg;
- 116 (7) uranium-235 in enriched uranium containing less than 10% but more than 0.711% of uranium-235, which is not irradiated, the specified quantity is 10 kg or more;
- 117 (8) irradiated reactor fuel being used, stored or transported within the United Kingdom, the specified quantity is any quantity;
- 118 (9) irradiated reactor fuel being transported outside the United Kingdom which, prior to being irradiated, was uranium enriched so as to contain 10% or more, but less than 20%, of uranium-235, the specified quantity is any quantity;
- 119 (10) other irradiated nuclear material, the specified quantity is any quantity.

7 For the meaning of 'sensitive nuclear information' see PARA 1544 note 9 ante (definition applied by *ibid* reg 2(1)).

8 *Ibid* reg 4(2) (amended by SI 2006/2815).

9 As to the Secretary of State see PARA 601 note 1 ante.

10 'Relevant personnel', in relation to a person ('the principal') who is the responsible person in relation to any nuclear premises, a carrier or a person to whom the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22 (as substituted) applies (see PARAS 1558-1559 post), means (1) each of the principal's officers,

employees, contractors and consultants; and (2) each officer, employee, contractor or consultant of the principal's contractors and consultants: reg 2(1).

11 le specified in ibid reg 10(5)(a), (b), (e) or (h): see PARA 1550 post.

12 Ibid reg 4(3).

13 Ibid reg 5(1).

14 Ibid reg 5(2). The responsible person who has submitted the security plan must pay a fee to the Secretary of State for assessing and approving the plan: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

15 For the meaning of 'commencement date' see note 3 supra.

16 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 5(3).

17 See ibid reg 25; and PARA 1560 post.

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1546. Replacement, amendment and revocation of approved security plans.

The responsible person¹ in relation to each nuclear premises² may at any time submit to the Secretary of State³ for approval:

- 4171 (1) a fresh security plan⁴ for the premises, or
- 4172 (2) proposals for amending the approved security plan⁵ for the premises⁶.

The Secretary of State may approve the plan or proposals as submitted or with such amendments as he may require⁷ and may, on approving a fresh security plan for the premises, revoke the approval of the former plan for the premises⁸.

1 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

2 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'security plan' see PARA 1545 note 1 ante.

5 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

6 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 6(1).

7 Ibid reg 6(2). The responsible person who has submitted the proposal for amendment must pay a fee to the Secretary of State for assessing and approving the proposal: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

8 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 6(3).

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1547. Maintenance of security.

The responsible person¹ in relation to each nuclear premises² must comply with the standards, procedures and arrangements described in the approved security plan³ for the premises⁴. He is not, however, to be regarded as having failed to comply with any of those standards, procedures or arrangements by reason of any matter if the Secretary of State⁵ has notified the responsible person in writing that that matter, or a matter of its description, is in his opinion unlikely to be prejudicial to the security of the premises and the specified⁶ material, equipment and information⁷.

Failure to comply with these provisions is an offence⁸.

1 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

2 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

3 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

4 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 7(1).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 I.e. the material, equipment and information mentioned in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 4(2) (as amended): see PARA 1545 ante.

7 Ibid reg 7(2). The responsible person to whom the notification is made must pay a fee to the Secretary of State for preparing and making the notification: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

8 See the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 25; and PARA 1560 post.

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1548. Temporary security plans during building works etc.

If it is proposed to carry out any work of alteration or extension to any building or other structure which is, or forms part of, nuclear premises¹, the responsible person² in relation to the premises must give notice in writing to the Secretary of State³ specifying the nature of the proposed works, and stating whether in his opinion they are likely to involve any derogation from any of the standards, procedures and arrangements described in the approved security plan⁴ for the premises⁵. The works may not be begun until the Secretary of State has approved a temporary security plan⁶ for them⁷. This does not, however, apply in the case of any particular work if before the work is begun the Secretary of State has notified the responsible person in writing that that work, or any work of a description that includes that work, is in his opinion unlikely to be prejudicial to the security of the premises and the specified⁸ material and equipment⁹.

To obtain approval of a temporary security plan for any works, the responsible person must submit the plan in writing to the Secretary of State¹⁰. The temporary security plan must describe any standards, procedures and arrangements which the responsible person proposes to adopt to ensure the security of the premises and the specified material and equipment¹¹ during the period whilst the works are being carried out¹². The Secretary of State may approve the temporary security plan as submitted or with such amendments as he may require¹³.

During the period whilst the works are being carried out, the approved security plan for the premises has effect subject to the approved temporary security plan¹⁴; and during that period the responsible person must comply with the standards, procedures and arrangements described in the approved temporary security plan¹⁵.

The responsible person may at any time submit proposals for amending the approved temporary security plan to the Secretary of State, and the Secretary of State may approve the proposals as submitted or with such amendments as he may require¹⁶.

Failure to comply with these provisions is an offence¹⁷.

1 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

2 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

5 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(1)(a).

6 For the meaning of 'security plan' see PARA 1545 note 1 ante.

7 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(1)(b).

8 I.e. the material and equipment mentioned in *ibid* reg 4(2) (as amended): see PARA 1545 ante.

9 *Ibid* reg 8(2). The responsible person to whom the notification is made must pay a fee to the Secretary of State for preparing and making the notification: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

10 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(3).

11 See note 8 *supra*.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(4).

13 Ibid reg 8(5). The responsible person who has submitted the temporary security plan must pay a fee to the Secretary of State for assessing and approving the plan: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further *PARA 1561 post*.

14 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(6).

15 Ibid reg 8(7).

16 Ibid reg 8(8). The responsible person who has submitted the proposal must pay a fee to the Secretary of State for assessing and approving the proposal: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further *PARA 1561 post*.

In the case of premises which were nuclear premises on the commencement date, the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 8(1)-(8) did not apply until there was an approved security plan for the premises: see reg 8(9). For the meaning of 'commencement date' see *PARA 1545 note 3 ante*.

17 See *ibid* reg 25; and *PARA 1560 post*.

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1549. Requirement for approval of relevant personnel.

The responsible person¹ in relation to each nuclear premises² must ensure that each of his relevant personnel³ in relation to the premises who is specified in the approved security plan⁴ for the premises as requiring investigation and assessment⁵, or who falls within a description of persons who are so specified, is a person who has been approved by the Secretary of State⁶ as being of suitable character and integrity, having regard to the need to ensure the security of the premises and the specified⁷ material, equipment and information⁸.

Failure to comply with these provisions is an offence⁹.

1 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

2 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

3 For the meaning of 'relevant personnel' see PARA 1545 note 10 ante.

4 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

5 I.e. as mentioned in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 4(3)(a): see PARA 1545 ante.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 I.e. the material and equipment mentioned in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 4(2) (as amended): see PARA 1545 ante.

8 Ibid reg 9. The responsible person in relation to whom the persons being assessed are relevant personnel must pay a fee to the Secretary of State for assessing and approving any person or persons under reg 9: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

9 See the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 25; and PARA 1560 post.

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1550. Reports by responsible persons.

The responsible person¹ in relation to each nuclear premises² must report to the Secretary of State³ any event or matter of a kind specified in heads (1) to (10) below⁴, namely:

- 4173 (1) any unauthorised incursion on to the premises or any attempted or suspected such incursion;
- 4174 (2) any incident occurring on the premises involving an explosive or incendiary device or suspected such device, or a firearm or replica firearm;
- 4175 (3) any damage to any building or equipment on the premises which might affect the security of the premises or any specified material or equipment⁵;
- 4176 (4) any malicious damage to any building or equipment on the premises, other than any trivial damage that does not affect the security of the premises or any specified material or equipment⁶;
- 4177 (5) any theft or attempted theft, or any loss or suspected loss, or any unauthorised movement:
- 385 561. (a) of any nuclear material⁷ used or stored on the premises or in transit to or from them; or
- 562. (b) in the case of premises which are or form part of a nuclear site⁸, of any other radioactive material used or stored on them;
- 386 4178 (6) any theft or attempted theft, or any loss or unauthorised disclosure, of sensitive nuclear information⁹ kept on the premises, or any suspected such theft, loss or disclosure;
- 4179 (7) any unauthorised access to any sensitive nuclear information kept on the premises, or any attempt to gain such access;
- 4180 (8) any threat to do anything which would fall within any of heads (1) to (7) above;
- 4181 (9) any failure to comply with any of the standards, procedures and arrangements described in the approved security plan¹⁰ for the premises or in any approved temporary security plan¹¹ to which for the time being they are subject;
- 4182 (10) any other event or matter which might affect the security of the premises or the specified material, equipment or information¹²,

as soon as practicable and in any event within 24 hours of its becoming known to him¹³. If it is not possible for him to make a written report within that period, he must make the report orally and confirm it in writing within 48 hours of the event or matter becoming known to him¹⁴. In any other case the report must be made in writing¹⁵.

The report must specify the nature of the matter or event and, in the case of an event, the date and time it occurred and the apparent reason for it¹⁶.

Failure to comply with these provisions is an offence¹⁷.

¹ For the meaning of 'responsible person' see PARA 1545 note 4 ante.

- 2 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.
- 3 As to the Secretary of State see PARA 601 note 1 ante.
- 4 le any event or matter of a kind specified in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 10(5).
- 5 le any material and equipment mentioned in ibid reg 4(2) (as amended): see PARA 1545 ante.
- 6 See note 5 supra.
- 7 For the meaning of 'nuclear material' see PARA 1545 note 2 ante.
- 8 For the meaning of 'nuclear site' see PARA 1545 note 2 ante.
- 9 For the meaning of 'sensitive nuclear information' see PARA 1544 note 9 ante (definition applied by the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1)).
- 10 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.
- 11 As to temporary security plans and their approval see PARA 1548 ante.
- 12 See note 5 supra.
- 13 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 10(1), (5). The responsible person who has made the report must pay a fee to the Secretary of State for reviewing the report: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.
- 14 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 10(2) (amended by SI 2006/2815).
- 15 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 10(3).
- 16 Ibid reg 10(4).
- 17 See ibid reg 25; and PARA 1560 post.

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1551. Directions to responsible persons.

The responsible person¹ in relation to each nuclear premises² must comply with any direction given by the Secretary of State³ for the specified statutory purpose⁴ requiring him:

- 4183 (1) to adopt or implement, in respect of the whole or any specified part of the premises, standards, procedures or arrangements specified in the direction and to secure that the responsible person's officers, employees, contractors and consultants comply with them;
- 4184 (2) to submit a fresh security plan⁵ or amendments of the approved security plan⁶ for the premises to the Secretary of State for approval;
- 4185 (3) to satisfy the Secretary of State about the continuing or future adequacy of the approved security plan for the premises, or that the responsible person is complying with it;
- 4186 (4) to record or investigate in such manner as is specified in the direction any event or matter of a prescribed kind⁷ or any such other event or matter as is specified in the direction, or to report, in such manner as is specified in the direction, to the Secretary of State, or such other person as is so specified, any such other event or matter as is so specified; or
- 4187 (5) to take such steps as the Secretary of State considers necessary to remedy or alleviate the consequences of any contravention⁸ of the relevant regulations⁹.

Such a direction may impose a requirement to be met:

- 4188 (a) within a period specified in the direction; or
- 4189 (b) in the case of a direction under head (3) above, periodically at such intervals as are specified in the direction¹⁰.

Failure to comply with these provisions is an offence¹¹.

1 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

2 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 I.e. the purpose specified in the Anti-terrorism, Crime and Security Act 2001 s 77(1) (as amended): see PARA 1544 ante.

5 For the meaning of 'security plan' see PARA 1545 note 1 ante.

6 For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

7 I.e. any event or matter specified in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 10(5): see PARA 1550 ante.

8 I.e. any contravention of the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante, PARA 1552 et seq post.

9 Ibid reg 11(1). The responsible person: (1) who has been given the direction must pay a fee to the Secretary of State for monitoring the standards, procedures or arrangements at nuclear premises, the adequacy of existing security plans and the adequacy of compliance with existing security plans in order to decide whether to issue a direction and for preparing, giving and implementing the direction; (2) who has provided the material must pay a fee to the Secretary of State for reviewing material supplied under reg 11(1)(c) (see head (3) in the text) to decide whether the approved security plan is adequate or whether it is being complied with; (3) who has made the report must pay a fee to the Secretary of State for reviewing the report under reg 11(1)(d) (see head (4) in the text): see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

10 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 11(2).

11 See ibid reg 25; and PARA 1560 post.

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C. SECURITY OF TRANSPORT OF NUCLEAR MATERIAL

1552. Requirement for Category I/II nuclear material and Category III nuclear material to be transported by approved carriers.

No person must transport¹ any Category I/II nuclear material² unless:

- 4190 (1) he is a carrier³ who is for the time being approved by the Secretary of State⁴ as a Class A carrier⁵ to transport Category I/II nuclear material and Category III nuclear material⁶; or
- 4191 (2) he is doing so as an officer or employee of such a carrier⁷.

No person must transport any Category III nuclear material unless:

- 4192 (a) he is a carrier who is for the time being approved by the Secretary of State as a Class A carrier to transport Category I/II nuclear material and Category III nuclear material;
- 4193 (b) he is a carrier who is for the time being approved by the Secretary of State as a Class B carrier⁸ to transport Category III nuclear material; or
- 4194 (c) he is doing so as an officer or employee of a carrier falling within head (a) or head (b) above⁹.

If the responsible person¹⁰ in relation to any nuclear premises¹¹ arranges for the transport of any Category I/II nuclear material or Category III nuclear material to or from the premises, he must ensure that the transport is undertaken by a carrier who is not prohibited under this provision from transporting the material in question¹².

Failure to comply with these provisions is an offence¹³.

¹ 'Transport' means transport by any means, but excluding (1) transport by air; and (2) transport within nuclear premises or between adjacent nuclear premises; and 'transport security statement' must be construed in accordance with the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16(2), (3) (see PARA 1553 post): reg 2(1). The Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended) apply to transport in a United Kingdom ship whether or not that ship is in the territorial sea of the United Kingdom: reg 27(1). They do not, however, apply to transport in a ship that is not a United Kingdom ship, except that (subject to reg 27(3)-(12)), Pt 1 (regs 4-12) (as amended) (see the text and notes 3-16 infra; and PARAS 1546-1551 post), regs 18-21 (as amended) (see PARAS 1552-1557 post) and Pt 5 (regs 23-28) (general and supplementary provisions) apply to transport within the United Kingdom or its territorial sea in such a ship if the ship (a) is proceeding to a port in the United Kingdom in order to enter it, or entering, leaving or proceeding from such a port, and is carrying nuclear material; or (b) is proceeding to such a port in order for nuclear material to be loaded on to it there: reg 27(2). Part 1 (as amended), regs 18-21 (as amended) and Pt 5 do not apply to transport in a ship that is not a United Kingdom ship and is owned by the government of a country outside the United Kingdom or a department or agency of such a government except at a time when such a ship is being used for commercial purposes: reg 27(3). In relation to transport in a ship that is not a United Kingdom ship: (i) any obligation imposed by virtue of the 2003 Regulations (including any obligation arising under the Health and Safety at Work etc Act 1974 Act as it applies by virtue of the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23 (see PARA 1560 post) or under the corresponding Northern Ireland legislation as it applies by virtue of reg 24) is

to be regarded as an obligation that must be met in respect of the ship in question as a condition of its entry into the port in question (but without prejudice to the continuation of that obligation, in so far as it is capable of remaining operative, after it leaves the port); and (ii) any offence to which reg 25(2) applies (see PARA 1560 post) is to be regarded as an offence constituted by a breach of such a condition in respect of the ship in question: reg 27(4). For the meaning of 'United Kingdom ship' see PARA 1544 note 11 ante (definition applied by reg 2(1)). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

Subject to reg 28(3), the 2003 Regulations apply as if any reference to a ship (other than in the expression 'United Kingdom ship') included a reference to a hovercraft: reg 28(1). They apply to transport in a United Kingdom hovercraft if and only if the transport is either within the United Kingdom or its territorial sea, or to or from any nuclear premises in the United Kingdom: reg 28(2). Regulation 27 applies as if the references in reg 27(2)-(4) to a United Kingdom ship included references to a United Kingdom hovercraft: reg 28(3)(a). For these purposes, 'hovercraft' has the same meaning as in the Hovercraft Act 1968 s 4(1) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381); and 'United Kingdom hovercraft' means a hovercraft registered under the Hovercraft (General) Order 1972, SI 1972/674 (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 388 et seq): Nuclear Industries Security Regulations 2003, SI 2003/403, reg 28(4).

Notwithstanding anything in regs 27, 28(2), nothing in the 2003 Regulations applies to acts done outside the United Kingdom by a person other than a United Kingdom person: regs 27(13), 28(3)(c).

2 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

3 'Carrier' means a person undertaking the transport of Category I/II nuclear material or Category III nuclear material, and includes both a carrier for hire or reward and a carrier on his own account: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1).

4 As to the Secretary of State see PARA 601 note 1 ante; and as to the approval of carriers see PARA 1553 post.

5 'Class A carrier' means a carrier approved by the Secretary of State under the Nuclear Industries Security Regulations 2003, SI 2003/403, Pt 3 (regs 13-21) (see the text and notes 6-12 infra; and PARA 1553 et seq post) to transport Category I/II nuclear material and Category III nuclear material: reg 2(1). A carrier who applies for approval must pay a fee to the Secretary of State: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

6 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

7 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 13(1).

8 'Class B carrier' means a carrier approved by the Secretary of State under ibid Pt 3 to transport Category III nuclear material: reg 2(1). A carrier who applies for approval must pay a fee to the Secretary of State: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

9 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 13(2).

10 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

11 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 13(3).

13 See ibid reg 25; and PARA 1560 post.

UPDATE

1552 Requirement for Category I/II nuclear material and Category III nuclear material to be transported by approved carriers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1553. Approval of carriers and of transport security statements.

The Secretary of State¹ may approve a carrier² as an approved carrier³ only if he is satisfied that:

- 4195 (1) in the case of an approval as a Class A carrier, the carrier transports⁴ or proposes to transport Category I/II nuclear material⁵ in the course of his business;
- 4196 (2) in the case of an approval as a Class B carrier, the carrier transports or proposes to transport Category III nuclear material⁶ in the course of his business;
- 4197 (3) the carrier has provided the Secretary of State with:
 - 387 563. (a) his telephone number, facsimile number and principal place of business; and
 - 564. (b) with the name, address, telephone number and facsimile number of an individual who will accept any written or oral communication from the Secretary of State under the relevant regulations⁷ on behalf of the carrier⁸; and
- 388 4198 (4) the carrier has submitted a transport security statement⁹ that the Secretary of State has approved (as submitted or with such amendments as he has required), and he will comply with the standards, procedures and arrangements described in the approved transport security statement¹⁰ while he is approved¹¹.

A carrier applying for approval as a Class A carrier or Class B carrier under the above provisions must submit with his application a transport security statement for approval by the Secretary of State¹². The transport security statement must describe in writing the standards, procedures and arrangements adopted or to be adopted by the carrier to ensure the security of:

- 4199 (i) in the case of a carrier applying for approval as a Class A carrier, any Category I/II nuclear material or Category III nuclear material transported or to be transported by him;
- 4200 (ii) in the case of a carrier applying for approval as a Class B carrier, any Category III nuclear material transported or to be transported by him; and
- 4201 (iii) in any case, any information which is or comes within his possession or control relating to the security of any nuclear premises or of any Category I/II nuclear material or Category III nuclear material transported or to be transported by him¹³.

In particular, but without prejudice to the generality of heads (i) to (iii) above, the statement must describe the standards, procedures and arrangements relating to the investigation and assessment by the Secretary of State of the suitability of relevant personnel¹⁴ of the carrier with a view to ensuring the security of:

- 4202 (A) any Category I/II nuclear material or Category III nuclear material transported or to be transported by the carrier;

- 4203 (B) any information falling within head (iii) above; and
 4204 (C) any nuclear premises¹⁵ to or from which the carrier transports or is to transport any Category I/II nuclear material or Category III nuclear material, and any premises used or to be used for the purpose of the temporary storage of such material during the course of or incidental to its transport¹⁶.

The statement must also describe the standards, procedures and arrangements relating to the temporary storage of Category I/II nuclear material or Category III nuclear material during the course of or incidental to its transport, including the security of premises used for such storage¹⁷, and to the steps to be taken by the carrier or any person acting on his behalf if any event of a specified kind¹⁸ that requires immediate action occurs, and the regular practice of the activities required in connection with those steps¹⁹. The Secretary of State may approve the statement as submitted or with such amendments as he may require²⁰.

Where a carrier has applied to the Secretary of State for approval as an approved carrier, he must give him notice in writing of his decision and, if he has granted the application, of the date from which he is approved and whether he is approved as a Class A carrier or as a Class B carrier²¹. If the Secretary of State proposes not to approve a carrier as an approved carrier, he must give him written notice of his proposal and of the reasons for it²². The carrier may make representations to the Secretary of State within 28 days from the date on which that notice is given²³ and the Secretary of State must take into account any such representations before reaching a decision whether to approve the carrier as an approved carrier²⁴. If the Secretary of State decides not to approve a carrier as an approved carrier, he must state the reasons for his decision when he gives him notice²⁵ of the decision²⁶.

The Secretary of State's approval of a carrier as an approved carrier has effect for the period of five years from the date from which he is approved, unless it is revoked²⁷ earlier²⁸.

An approved carrier may at any time submit to the Secretary of State for approval a fresh transport security statement, or proposals for amending his approved transport security statement²⁹. The Secretary of State may approve the fresh statement or proposals as submitted or with such amendments as he may require³⁰. On approving a fresh transport security statement for an approved carrier, the Secretary of State may revoke the approval of the former statement for the approved carrier³¹.

An approved carrier must comply with the standards, procedures and arrangements described in his approved transport security statement³². He must also ensure that each of his relevant personnel who is specified in his approved transport security statement as requiring investigation and assessment as mentioned above³³, or who falls within a description of persons who are so specified, is a person who has been approved by the Secretary of State as being of suitable character and integrity, having regard to the need to ensure the security of the material, information and premises³⁴ mentioned above³⁵. Failure to comply with these requirements is an offence³⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'carrier' see PARA 1552 note 3 ante.

3 'Approved carrier' means a Class A carrier or a Class B carrier: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1). For the meanings of 'Class A carrier' and 'Class B carrier' see PARA 1552 notes 5, 8 ante.

4 For the meaning of 'transport' see PARA 1552 note 1 ante.

5 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

6 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

7 Ie under the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante; the text and notes 1-6 supra, 8-36 infra; and PARA 1554 et seq post.

8 An approved carrier must notify the Secretary of State of any change to the information referred to in ibid 14(1)(c) (see head (3) in the text): (1) in the case of information referred to in reg 14(1)(c)(i) (see head (3)(a) in the text), within seven days of the change occurring; and (2) in the case of information referred to in reg 14(1)(c)(ii) (see head (3)(b) in the text), no later than the change occurs: reg 17(2). The carrier who has made the notification must pay a fee to the Secretary of State for reviewing it: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

9 Ie under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16: see the text and notes 12-20 infra. For the meaning of 'transport security statement' see PARA 1552 note 1 ante.

10 'Approved transport security statement' means a transport security statement which has been approved by the Secretary of State under ibid reg 16, as amended by any amendments approved under reg 16, and which has not been revoked: reg 2(1).

11 Ibid reg 14(1). The carrier who has made the application must pay a fee to the Secretary of State for assessing the application and approving the carrier: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16(1). The carrier who has submitted the transport security statement must pay a fee to the Secretary of State for assessing and approving it: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

13 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16(2).

14 For the meaning of 'relevant personnel' see PARA 1545 note 10 ante.

15 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

16 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16(3)(a).

17 Ibid reg 16(3)(b).

18 Ie any event of a kind specified in ibid reg 18(5)(a), (b), (c), (f) or (i): see PARA 1555 post.

19 Ibid reg 16(3)(c).

20 Ibid reg 16(4); and see note 12 supra.

21 Ibid reg 14(2).

22 Ibid reg 14(3).

23 Ibid reg 14(4).

24 Ibid reg 14(5).

25 Ie notice of the decision under ibid reg 14(2): see the text to note 21 supra.

26 Ibid reg 14(6). The carrier who has submitted the proposal must pay a fee to the Secretary of State for assessing and approving it: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

27 Ie under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 15: see PARA 1554 post.

28 Ibid reg 14(7).

29 Ibid reg 16(5).

30 Ibid reg 16(6).

31 Ibid reg 16(7).

32 Ibid reg 17(1).

33 le as mentioned in *ibid* reg 16(3)(a): see the text and notes 14-16 *supra*.

34 le the material, information and premises mentioned in *ibid* reg 16(3)(a).

35 *Ibid* reg 17(3). The carrier in relation to whom the persons being assessed are relevant personnel must pay a fee to the Secretary of State for assessing and approving any person or persons under reg 17(3): see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further *PARA 1561 post*.

36 See the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 25; and *PARA 1560 post*.

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1554. Revocation of approval of carriers.

The Secretary of State¹ may revoke the approval of an approved carrier² if he has requested that his approval be revoked, or on any of the following grounds:

- 4205 (1) that:
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565. (a) in the case of a Class A carrier³, he has ceased to carry on a business as a carrier of Category I/II nuclear material⁴; or
566. (b) in the case of a Class B carrier⁵, he has ceased to carry on a business as a carrier of Category III nuclear material⁶;
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- 4206 (2) that he has failed to comply with any obligation imposed on him under the relevant regulations⁷;
- 4207 (3) that he has supplied false or misleading information in his application for approval as an approved carrier or has failed to supply information that was material to the application; or
- 4208 (4) that the Secretary of State is of the view that the approval should be revoked in the interests of ensuring the security of the Category I/II nuclear material or Category III nuclear material that the approved carrier might otherwise transport⁸.

If the Secretary of State proposes to revoke the approval of an approved carrier otherwise than pursuant to a request from him, he must give him written notice of his proposal and of the reasons for it⁹. The approved carrier may make representations to the Secretary of State within 28 days from the date on which that notice is given¹⁰; and the Secretary of State must take into account any such representations before reaching a decision whether to revoke the approved carrier's approval¹¹.

If the Secretary of State decides to revoke the approval of an approved carrier, he must give him written notice of his decision and of the reasons for it¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'approved carrier' see PARA 1553 note 3 ante.

3 For the meaning of 'Class A carrier' see PARA 1552 note 5 ante.

4 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

5 For the meaning of 'Class B carrier' see PARA 1552 note 8 ante.

6 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

7 Ie under the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante, PARA 1555 et seq post.

8 Ibid reg 15(1). For the meaning of 'transport' see PARA 1552 note 1 ante. The approved carrier whose approval is the subject of the decision must pay a fee to the Secretary of State for deciding whether any of the

grounds set out in heads (2)-(4) in the text apply and whether to revoke approval: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further [PARA 1561](#) post.

9 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 15(2).

10 Ibid reg 15(3).

11 Ibid reg 15(4).

12 Ibid reg 15(5).

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1555. Reports by carriers.

An approved carrier¹ must report to the Secretary of State² any event or matter of a kind specified in heads (1) to (11) below³, namely:

- 4209 (1) any unauthorised incursion on to, interference with, or other incident affecting the security of any means of conveyance of Category I/II nuclear material⁴ or Category III nuclear material⁵ during the course of its transport⁶ or any attempted or suspected such incursion, interference or incident;
 - 4210 (2) any unauthorised incursion on to premises where Category I/II nuclear material or Category III nuclear material is being stored temporarily during the course of or incidental to its transport or any attempted or suspected such incursion;
 - 4211 (3) any incident occurring during the transport of Category I/II nuclear material or Category III nuclear material, or on premises where such material is being stored temporarily during the course of or incidental to its transport, involving an explosive or incendiary device or suspected such device, or a firearm or replica firearm;
 - 4212 (4) any damage to the means of conveyance of Category I/II nuclear material or Category III nuclear material which might affect the security of that material;
 - 4213 (5) any damage to any building or equipment on premises where Category I/II nuclear material or Category III nuclear material is being stored temporarily during the course of or incidental to its transport which might affect the security of the material;
 - 4214 (6) any theft or attempted theft, or any loss or suspected loss, or any unauthorised movement of, or any interference with, Category I/II nuclear material or Category III nuclear material during transport;
 - 4215 (7) any theft or attempted theft, or any loss or unauthorised disclosure, of specified information⁷ or any suspected such theft, loss or disclosure;
 - 4216 (8) any unauthorised access to any such information or any attempt to gain such access;
 - 4217 (9) any threat to do anything which would fall within any of heads (1) to (8) above;
 - 4218 (10) any failure to comply with any of the standards, procedures and arrangements described in the approved carrier's approved transport security statement or the measures described in any approved transport plan⁸ required under the relevant regulation⁹;
 - 4219 (11) any other event or matter which might affect the security of:
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- 567. (a) Category I/II nuclear material or Category III nuclear material being transported;
 - 568. (b) premises where Category I/II nuclear material or Category III nuclear material is being stored temporarily during the course of or incidental to its transport; or
 - 569. (c) any specified information¹⁰,
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as soon as practicable and in any event within 24 hours of its becoming known to him¹¹. If it is not possible for him to make a written report within that period, he must make the report orally and confirm it in writing within 48 hours of the event or matter becoming known to him¹². In any other case the report must be made in writing¹³.

The report must specify the nature of the matter or event and, in the case of an event, the date and time it occurred and the apparent reason for it¹⁴.

Failure to comply with these provisions is an offence¹⁵.

1 For the meaning of 'approved carrier' see PARA 1553 note 3 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie any event or matter of a kind specified in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 18(5).

4 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

5 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

6 For the meaning of 'transport' see PARA 1552 note 1 ante.

7 Ie information falling within the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 16(2)(c): see PARA 1553 ante.

8 'Approved transport plan' means a transport plan which has been approved by the Secretary of State under *ibid* reg 19 (see PARA 1556 post): reg 2(1). 'Transport plan' must be construed in accordance with reg 19(3) (see PARA 1556 post): reg 2(1).

9 Ie required under *ibid* reg 19: see PARA 1556 post.

10 See note 7 *supra*.

11 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 18(1), (5). Regulation 18(1), (5) applies with modifications in relation to transport in a ship that is not a United Kingdom ship or a United Kingdom hovercraft: see regs 27(5), (6), 28(3)(a). For the meaning of 'United Kingdom ship' see PARA 1544 note 11 ante (definition applied by reg 2(1)); and for the meaning of 'United Kingdom hovercraft' see PARA 1552 note 1 ante.

The carrier making the report must pay a fee to the Secretary of State for reviewing the report: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 18(2) (amended by SI 2006/2815).

13 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 18(3).

14 *Ibid* reg 18(4).

15 See *ibid* reg 25; and PARA 1560 post.

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1556. Duties relating to particular transports of Category I/II and Category III nuclear material.

No Class A carrier¹ must transport² any Category I/II nuclear material³ unless a transport plan⁴ relating to the particular transport by him has been approved by the Secretary of State⁵. No less than one month before the proposed date on which the transport of any Category I/II nuclear material is to begin, whether or not the transport is to be undertaken in stages by more than one carrier, each Class A carrier who is to transport the material must submit a transport plan relating to the transport by him for the approval of the Secretary of State⁶. The transport plan must describe in writing the measures to be adopted to ensure the security of the material during:

- 4220 (1) the course of the transport;
- 4221 (2) the loading or unloading of the material during the course of or incidental to the transport; and
- 4222 (3) any period of temporary storage during the course of or incidental to the transport⁷.

The Secretary of State may approve the transport plan as submitted or with such amendments as he may require⁸. Before approving such a plan the Secretary of State must consult the responsible person⁹ in relation to any nuclear premises¹⁰ to or from which the material is to be transported and any other Class A carrier who is to undertake another stage of the transport of the material, and must consider any representations made by them¹¹.

Each Class A carrier must ensure that any particular transport of Category I/II nuclear material by him conforms to the transport plan approved by the Secretary of State in relation to that transport¹². No less than seven days before the proposed date on which any Class A carrier is to begin transporting any Category I/II nuclear material, he must give notice in writing to the Secretary of State of the dates on which the transport by him is to begin and end¹³.

No less than seven days¹⁴ before the proposed date on which any approved carrier¹⁵ is to begin transporting any Category III nuclear material¹⁶, he must give notice in writing to the Secretary of State of the following matters in relation to the transport by him¹⁷, namely:

- 4223 (a) the dates on which the transport is to begin and end;
- 4224 (b) the places from which and to which the material is to be transported;
- 4225 (c) the identity of the persons from whom and to whom the material is to be transferred;
- 4226 (d) where all or any part of the transport is to take place outside the United Kingdom¹⁸, the route of the transport;
- 4227 (e) any places at which the material is to stop temporarily; and
- 4228 (f) where the material is to be transported otherwise than in a closed and locked vehicle, railway compartment or shipping compartment, details of the container to be used to transport the material¹⁹.

This does not, however, apply to a carrier who transports a vehicle carrying nuclear material on his ship to or from the United Kingdom if the driver of the vehicle drives it on and off the ship and remains on the ship during the ship's journey²⁰.

The above provisions²¹ have effect with modifications in relation to transport in a ship that is not a United Kingdom ship²². Failure to comply with them is an offence²³.

1 For the meaning of 'Class A carrier' see PARA 1552 note 5 ante.

2 For the meaning of 'transport' see PARA 1552 note 1 ante.

3 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

4 For the meaning of 'transport plan' see PARA 1555 note 8 ante.

5 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 19(1). As to the Secretary of State see PARA 601 note 1 ante. The carrier who has submitted the transport plan must pay a fee to the Secretary of State for assessing and approving the plan: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

6 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 19(2).

7 Ibid reg 19(3).

8 Ibid reg 19(4); and see note 5 supra.

9 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

10 For the meaning of 'nuclear premises' see PARA 1545 note 2 ante.

11 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 19(5). The carrier who has submitted the transport plan must pay a fee to the Secretary of State for carrying out such consultations: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 19(6).

13 Ibid reg 19(7). The carrier who has given the notice must pay a fee to the Secretary of State for reviewing the notice: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

14 In exceptional circumstances notice under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 20(1) may be given less than seven days before the proposed date on which the approved carrier is to begin transporting the material, but a notice that is so given must specify what the exceptional circumstances are: reg 20(3). Where an approved carrier gives notice as mentioned in reg 20(3), he must obtain approval from the Secretary of State for the transport of the material by him before he begins transporting it: reg 20(4). The carrier who has given the notice must pay a fee to the Secretary of State for reviewing the notice for the purpose of deciding whether to approve the transport described in it and approving the transport: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

15 For the meaning of 'approved carrier' see PARA 1553 note 3 ante.

16 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

17 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 20(1). The carrier who has given the notice must pay a fee to the Secretary of State for reviewing the notice: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

18 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

19 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 20(2).

20 Ibid reg 20(5) (amended by SI 2006/2815).

21 I.e the Nuclear Industries Security Regulations 2003, SI 2003/403, regs 19, 20 (as amended): see the text and notes 1-20 supra.

22 See *ibid* regs 27(5), (7), (8), 28(3)(a). For the meaning of 'United Kingdom ship' see PARA 1544 note 11 ante (definition applied by reg 2(1)); and for the meaning of 'United Kingdom hovercraft' see PARA 1552 note 1 ante.

23 See *ibid* reg 25; and PARA 1560 post.

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1557. Directions to carriers.

An approved carrier¹ must comply with any direction given by the Secretary of State² for the specified statutory purpose³ relating to his business as a carrier of Category I/II nuclear material⁴ or Category III nuclear material⁵ and requiring the approved carrier:

- 4229 (1) not to begin a particular proposed transport⁶;
- 4230 (2) to adopt or implement standards, procedures or arrangements specified in the direction and to secure that his officers, employees, contractors and consultants comply with them;
- 4231 (3) to submit a fresh transport security statement⁷ or amendments of his approved transport security statement⁸;
- 4232 (4) to satisfy the Secretary of State about the continuing or future adequacy of his approved transport security statement, or that he is complying with it;
- 4233 (5) to record or investigate in such manner as is specified in the direction any event or matter of a prescribed kind⁹ or any such other event or matter as is specified in the direction, or to report, in such manner as is specified in the direction, to the Secretary of State, or such other person as is so specified, any such other event or matter as is so specified; or
- 4234 (6) to take such steps as the Secretary of State considers necessary to remedy or alleviate the consequences of any contravention¹⁰ of the relevant regulations¹¹.

Such a direction may impose a requirement to be met:

- 4235 (a) within a period specified in the direction; or
- 4236 (b) in the case of a direction under head (4) above, periodically at such intervals as are specified in the direction¹².

Failure to comply with these requirements is an offence¹³.

1 For the meaning of 'approved carrier' see PARA 1553 note 3 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 I.e. the purpose specified in the Anti-terrorism, Crime and Security Act 2001 s 77(1) (as amended): see PARA 1544 ante.

4 For the meaning of 'Category I/II nuclear material' see PARA 1545 note 5 ante.

5 For the meaning of 'Category III nuclear material' see PARA 1545 note 6 ante.

6 For the meaning of 'transport' see PARA 1552 note 1 ante.

7 For the meaning of 'transport security statement' see PARA 1552 note 1 ante.

8 For the meaning of 'approved transport security statement' see PARA 1553 note 10 ante.

9 le specified in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 18(5): see PARA 1555 ante.

10 le any contravention of the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante, PARA 1558 et seq post.

11 Ibid reg 21(1). Regulation 21(1) has effect with modifications in relation to transport in a ship that is not a United Kingdom ship: see regs 27(5), (9), 28(3)(a). For the meaning of 'United Kingdom ship' see PARA 1544 note 11 ante (definition applied by reg 2(1)); and for the meaning of 'United Kingdom hovercraft' see PARA 1552 note 1 ante.

The carrier (1) who has been given the direction must pay a fee to the Secretary of State for monitoring the adequacy of the carrier's standards, procedures and arrangements, the adequacy of the transport security statement and compliance with that statement in order to decide whether to issue a direction, and for preparing, giving and implementing the direction; (2) providing the material must pay a fee to the Secretary of State for reviewing the material supplied under head (4) in the text in order to decide whether the approved transport security statement is adequate or whether it is being complied with; (3) making the report must pay a fee to the Secretary of State for reviewing a report under head (5) in the text: see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

12 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 21(2).

13 See ibid reg 25; and PARA 1560 post.

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D. SECURITY OF SENSITIVE NUCLEAR INFORMATION, URANIUM ENRICHMENT SOFTWARE AND EQUIPMENT

1558. Application of the provisions regulating sensitive nuclear information, uranium enrichment equipment and software.

Subject to the prescribed exceptions¹, the statutory provisions² regulating sensitive nuclear information³, uranium enrichment equipment⁴ and uranium enrichment software⁵ apply:

- 4237 (1) to any person who has possession or control of sensitive nuclear
information in the United Kingdom⁶ and who is involved in the following activities:
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570. (a) activities on or in relation to a nuclear site or nuclear premises⁷ or who is
proposing to become so involved;
571. (b) the enrichment of uranium, whether in the United Kingdom or elsewhere;
or
572. (c) activities with a view to, or in connection with, the enrichment of uranium,
whether in the United Kingdom or elsewhere; and
394
- 4238 (2) to any person who has possession or control of uranium enrichment
equipment or uranium enrichment software in the United Kingdom and who is
involved or proposing to become involved in the following activities, whether in the
United Kingdom or elsewhere:
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573. (a) the enrichment of uranium;
574. (b) activities with a view to, or in connection with, the enrichment of uranium;
or
575. (c) the production, storage or transport⁸ of equipment or software on behalf of
a person involved in the activities mentioned in head (a) or head (b) above⁹.
396

They do not apply:

- 4239 (i) to an approved carrier¹⁰ in so far as the security of the sensitive nuclear
information that he has in his possession is the subject of an approved transport
security statement¹¹ or an approved transport plan¹²; or
- 4240 (ii) to any person, in so far as the information he has in his possession or
control has previously been made available to the public anywhere in the world
otherwise than in contravention of the relevant statutory provision¹³ or of any other
prohibition breach of which was an offence at the time when it was so made
available (including, in a case in which it was made available outside but not within
the United Kingdom, an offence under the law of one or more of the places where it
was made available)¹⁴.

Subject to that, head (1)(a) above applies to a person only to the extent that he knows that the information in his possession or control is or should have been protectively marked¹⁵, or was so marked when he received it, but a person listed in heads (A) to (F) below¹⁶ cannot benefit from this exception¹⁷, namely a person who:

- 4241 (A) is a responsible person¹⁸ who keeps such information on any premises other than nuclear premises for which there is an approved security plan¹⁹;
- 4242 (B) has possession or control of such information for the purposes of planning, designing, or constructing any proposed nuclear premises or installation or other facility on nuclear premises;
- 4243 (C) is the Nuclear Decommissioning Authority ('the NDA')²⁰ or has possession or control of such information for purposes related to the discharge by the NDA of responsibilities given to it by designation under the relevant statutory provisions²¹;
- 4244 (D) is any contractor or consultant of any person referred to in heads (A) to (C) above;
- 4245 (E) is a holding company²² whose subsidiary²³ falls within any of heads (A) to (D) above; or
- 4246 (F) is a subsidiary²⁴ of a person falling within head (E) above²⁵.

1 Ie subject to the exceptions in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(2), (3) and (6) (as substituted): see the text and notes 10-17, 19 infra.

2 Ie *ibid* reg 22 (as substituted): see PARA 1559 post.

3 For the meaning of 'sensitive nuclear information' see PARA 1544 note 9 ante (definition applied by *ibid* reg 2(1)).

4 'Uranium enrichment equipment' means equipment capable of being used in or in connection with the enrichment of uranium: *ibid* reg 2(1) (definition added by SI 2006/2815). 'Enriched', in relation to uranium, means enriched so as to contain more than 0.711% of uranium-235: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 2(1).

5 'Uranium enrichment software' means any software capable of being used in or in connection with the enrichment of uranium: *ibid* reg 2(1) (definition added by SI 2006/2815).

6 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 For the meanings of 'nuclear site' and 'nuclear premises' see PARA 1545 note 2 ante.

8 For the meaning of 'transport' see PARA 1552 note 1 ante.

9 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(1) (reg 22 substituted by SI 2006/2815).

10 For the meaning of 'approved carrier' see PARA 1553 note 3 ante.

11 For the meaning of 'approved transport security statement' see PARA 1553 note 10 ante.

12 For the meaning of 'approved transport plan' see PARA 1555 note 8 ante.

13 Ie otherwise than in contravention of the Anti-terrorism, Crime and Security Act 2001 s 80(3): see PARA 1563 post.

14 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(2) (as substituted: see note 9 supra).

15 For these purposes: (1) information is protectively marked if it bears a protective marking (a) which complies with the requirements of the classification policy; (b) which conforms to the guidelines set out in the document entitled 'Finding a Balance: Guidance on the Sensitivity of Nuclear and Related Information and its Disclosure' issued from time to time by the Secretary of State; or (c) which has been applied by the Secretary of State or a statutory body in the interests of national security; and (2) information should have been protectively marked if such marking was required by the classification policy: Nuclear Industries Security Regulations 2003,

SI 2003/403, reg 22(5) (as substituted: see note 9 supra). For the meaning of 'classification policy' see PARA 1544 note 9 ante.

16 Ie a person listed in *ibid* reg 22(4) (as substituted).

17 *Ibid* reg 22(3) (as substituted: see note 9 supra).

18 For the meaning of 'responsible person' see PARA 1545 note 4 ante.

19 The Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22 (as substituted) applies to a responsible person only to the extent that he keeps sensitive nuclear information or uranium enrichment equipment or uranium enrichment software in premises other than premises for which there is an approved security plan: reg 22(6) (as substituted: see note 9 supra). For the meaning of 'approved security plan' see PARA 1545 note 1 ante.

20 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARAS 1592-1595 post.

21 Ie under the Energy Act 2004 s 3 or s 4: see PARAS 1592-1593 post.

22 Ie as defined in the Companies Act 1985 s 736(1) (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): see COMPANIES vol 14 (2009) PARA 25.

23 Ie as defined in *ibid* s 736 (as substituted; prospectively repealed and replaced: see note 22 supra): see COMPANIES vol 14 (2009) PARA 25.

24 See note 22 supra.

25 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(4) (as substituted: see note 9 supra).

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1559. Regulation of sensitive nuclear information, uranium enrichment equipment and software.

A person to whom the following provisions apply¹ must:

- 4247 (1) maintain such security standards, procedures and arrangements as are necessary for the purpose of minimising the risk of loss, theft or unauthorised disclosure of, or unauthorised access to, any sensitive nuclear information², uranium enrichment equipment³ or uranium enrichment software⁴ within his possession or control;
- 4248 (2) comply with any directions given by the Secretary of State⁵ requiring him to take such steps as are necessary or as are specified in the direction for that purpose;
- 4249 (3) ensure that each of his relevant personnel⁶ who is involved in any of the specified activities⁷ is familiar with the security standards, procedures and arrangements mentioned in head (1) above or steps specified in any direction given under head (2) above relevant to that activity;
- 4250 (4) ensure that each of his relevant personnel who is specified in a direction given under head (2) above as a person whose suitability requires investigation and assessment by the Secretary of State, or who falls within a description of persons who are so specified, is a person who has been approved by the Secretary of State as being of suitable character and integrity, having regard to the need to ensure the security of any sensitive nuclear information, uranium enrichment equipment or software within the possession or control of the person to whom these provisions apply; and
- 4251 (5) report to the Secretary of State any event or matter of a kind specified in heads (a) to (c) below⁸ that relates to any sensitive nuclear information, uranium enrichment equipment or uranium enrichment software within his possession or control, namely:
 - 397 576. (a) any theft or attempted theft, or any loss or unauthorised disclosure, of sensitive nuclear information, uranium enrichment equipment or uranium enrichment software, or any suspected such theft, loss or disclosure;
 - 577. (b) any unauthorised access to sensitive nuclear information, uranium enrichment equipment or uranium enrichment software, or any attempt to gain such access;
 - 578. (c) any other event or matter which might affect the security of any sensitive nuclear information, uranium enrichment equipment or uranium enrichment software,
 - 398 4252 as soon as practicable and in any event within 24 hours of its becoming known to him, specifying the nature of the event or matter and, in the case of any event, the date and time it occurred and the apparent reason for it⁹.

If it is not possible for the person in question to make a written report under head (5) above within the period specified in that head, he must make the report orally and confirm it in writing within 48 hours of the event or matter becoming known to him¹⁰. In any other case the report must be made in writing¹¹.

Failure to comply with these provisions is an offence¹². In proceedings for such an offence it is a defence for the accused to show that he is a member of the relevant personnel of another person to whom these provisions apply and that he was acting under the instruction of that other person at the time of the alleged offence¹³.

1 Ie a person to whom the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22 (as substituted) applies. As to such persons see PARA 1558 ante.

2 For the meaning of 'sensitive nuclear information' see PARA 1544 note 9 ante.

3 For the meaning of 'uranium enrichment equipment' see PARA 1558 note 4 ante.

4 For the meaning of 'uranium enrichment software' see PARA 1558 note 5 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 For the meaning of 'relevant personnel' see PARA 1545 note 10 ante.

7 Ie any of the activities listed in the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(1)(a) or (b) (as substituted): see PARA 1558 ante at heads (1)-(2) in the text.

8 Ie any event or matter of a kind specified in *ibid* reg 22(10) (as substituted).

9 *Ibid* reg 22(7), (10) (reg 22 substituted by SI 2006/2815). A fee is payable to the Secretary of State for certain of his functions under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22 (as substituted): see the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule. See further PARA 1561 post.

10 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22(8) (as substituted: see note 9 *supra*).

11 *Ibid* reg 22(9) (as substituted: see note 9 *supra*).

12 See *ibid* reg 25; and PARA 1560 post.

13 *Ibid* reg 22(11) (as substituted: see note 9 *supra*).

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E. ENFORCEMENT, OFFENCES AND FEES

1560. Enforcement of the Nuclear Industries Security Regulations 2003 and offences under those regulations.

The provisions of the Health and Safety at Work etc Act 1974 relating to:

- 4253 (1) the appointment of inspectors¹;
- 4254 (2) the powers of inspectors²;
- 4255 (3) the power of enforcing authorities to indemnify their inspectors³;
- 4256 (4) obtaining of information⁴;
- 4257 (5) restrictions on the disclosure of information⁵;
- 4258 (6) offences⁶;
- 4259 (7) venue⁷;
- 4260 (8) offences due to the fault of another person⁸;
- 4261 (9) offences by bodies corporate⁹;
- 4262 (10) restriction on the institution of proceedings in England and Wales¹⁰;
- 4263 (11) the power of the court to order the cause of an offence to be remedied or, in certain cases, forfeiture¹¹; and
- 4264 (12) the service of notices¹²,

apply with specified modifications¹³ for the purposes of the Nuclear Industries Security Regulations 2003¹⁴ as they apply for the purposes of that Act¹⁵.

If any person fails to comply with any of the specified provisions of those 2003 Regulations¹⁶ he is guilty of an offence¹⁷. A person guilty of such an offence, or of an offence under the provision of the Health and Safety at Work etc Act 1974 mentioned in head (6) above as it applies by virtue of the provisions set out above¹⁸, is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both¹⁹. Proceedings for an offence to which these provisions apply that is committed outside the United Kingdom²⁰ may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom²¹. Nothing in the 2003 Regulations applies, however, to acts done outside the United Kingdom by a person other than a United Kingdom person²².

1 Ie the Health and Safety at Work etc Act 1974 s 19: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

2 Ie *ibid* s 20 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376. For the prescribed modifications see the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23(4). See also note 13 *infra*.

3 Ie the Health and Safety at Work etc Act 1974 s 26: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

4 Ie *ibid* s 27(1): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 369. Section 27(1) applies for these purposes with the following modifications: (1) in s 27(1)(a), for 'the Commission' substitute 'the Secretary of

State' and for 'its' substitute 'his'; (2) in s 27(1)(b), for 'the Commission may, with the consent of the Secretary of State' substitute 'the Secretary of State may' and for 'furnish to the Commission' substitute 'furnish to the Secretary of State': Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23(5) (substituted by SI 2006/2815). See also note 13 infra.

5 le the Health and Safety at Work etc Act 1974 s 28 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 382.

6 le ibid s 33(1)(e), (f), (h), (i), (j), (k), (l), (m), (n), (o) (as amended): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852. For the prescribed modification in relation to transport in a ship that is not a United Kingdom ship or a United Kingdom hovercraft see the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23(5A) (added for these purposes by regs 27(5), (10), 28(3)(a), (b)). For the meaning of 'United Kingdom ship' see PARA 1571 note 11 ante (definition applied by reg 2(1)); and for the meaning of 'United Kingdom hovercraft' see PARA 1552 note 1 ante.

7 le the Health and Safety at Work etc Act 1974 s 35: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 856.

8 le ibid s 36: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 859.

9 le ibid s 37: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 860.

10 le ibid s 38 (as amended): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 856. For the prescribed modification see the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23(6).

11 le the Health and Safety at Work etc Act 1974 s 42: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 857.

12 le ibid s 46: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 388-389.

13 In the provisions of the Health and Safety at work etc Act 1974 mentioned in notes 1-12 supra, references to an enforcing authority are to be taken as references to the Secretary of State with responsibility for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry), and references to the relevant statutory provisions are to be taken as references to the Anti-terrorism, Crime and Security Act 2001 s 77 (as amended) (regulation of security of civil nuclear industry: see PARA 1544 ante), the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended) and any provisions of the 1974 Act which apply for the purposes of those 2003 Regulations: Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23(3). See also notes 2, 4, 10 supra.

14 le for the purposes of the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante.

15 Ibid reg 23(1), (2).

16 le any provision of ibid reg 5 (see PARA 1545 ante), reg 7 (see PARA 1547 ante), reg 8 (see PARA 1548 ante), reg 9 (see PARA 1549 ante), reg 10 (as amended) (see PARA 1550 ante), reg 11 (see PARA 1551 ante), reg 12 (transitional provisions: see PARA 1545 ante), reg 13 (see PARA 1552 ante), reg 17 (see PARA 1553 ante), reg 18 (as amended) (see PARA 1555 ante), regs 19, 20 (see PARA 1556 ante), reg 21 (see PARA 1557 ante), or reg 22 (as substituted) (see PARA 1559 ante).

17 Ibid reg 25(1).

18 le an offence under the Health and Safety at Work etc Act 1974 s 33 (as amended) as it applies by virtue of the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 23.

19 Ibid reg 25(2). As to the statutory maximum see PARA 689 note 2 ante.

20 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

21 Nuclear Industries Security Regulations 2003, SI 2003/403, reg 25(3).

22 See ibid regs 27(13), 28(3)(c). For the meaning of 'United Kingdom person' see PARA 1562 note 10 post (definition applied by reg 2(1)).

UPDATE

1560-1561 Enforcement of the Nuclear Industries Security Regulations 2003 and offences under those regulations, Fees payable for regulation of nuclear industries security

Certain functions under provisions mentioned in these paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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1561. Fees payable for regulation of nuclear industries security.

Where the Secretary of State¹ carries out a function² under or in connection with the provision of the Nuclear Industries Security Regulations 2003³ specified in relation to that function⁴, a fee is payable⁵ to the Secretary of State⁶.

Where an inspector performs functions in exercise of his enforcement powers under the relevant provision of the Health and Safety at Work etc Act 1974⁷, a fee is payable to the Secretary of State:

- 4265 (1) by a responsible person⁸, to the extent that such functions are performed for the purpose of putting into effect the 2003 Regulations in relation to that person;
- 4266 (2) by a carrier⁹, to the extent that such functions are performed for the purpose of putting into effect those regulations in relation to that person; and
- 4267 (3) by a person subject to requirements by or under the relevant regulation regulating sensitive nuclear information, uranium enrichment equipment and software¹⁰, to the extent that such functions are performed for the purpose of putting into effect the 2003 Regulations in relation to that person¹¹.

Where, in connection with putting into effect the 2003 Regulations, the Secretary of State carries out intelligence activities, makes security threat assessments, takes measures to counter security threats, or issues alert warnings, a fee is payable to the Secretary of State by the responsible person, carrier, or person subject to requirements as mentioned in head (3) above, in relation to whom such functions are performed¹²; and where, in connection with putting into effect those regulations, the Secretary of State provides advice or training to responsible persons, carriers, or persons subject to such requirements, a fee is payable to the Secretary of State by the person to whom such advice or training is given¹³.

Where, in connection with the enforcement of the 2003 Regulations, the Secretary of State performs functions other than functions referred to above¹⁴, a fee is payable to the Secretary of State:

- 4268 (a) by a responsible person, to the extent that such functions are for the purpose of putting into effect those regulations in relation to that person;
- 4269 (b) by a carrier, to the extent that such functions are performed for the purpose of putting into effect those regulations in relation to that person; and
- 4270 (c) by a person subject to requirements as mentioned in head (3) above, to the extent that such functions are performed for the purpose of putting into effect those regulations in relation to that person¹⁵.

The fees referred to above:

- 4271 (i) must not exceed the costs reasonably incurred of performing the functions for which the fees are payable;

- 4272 (ii) must take into account the seniority of the individuals performing the functions, and the time spent performing the functions;
- 4273 (iii) are to be calculated at the end of each quarter of the financial year, which financial year is to be from 1 April to 31 March; and
- 4274 (iv) are to be payable within 30 days from the date of the invoice that the Secretary of State has sent or given to the person who is required to pay the fees, such invoices to include a statement of the functions performed and the costs incurred including the period to which the statement relates¹⁶.

They are not to include any costs connected with any criminal investigation or prosecution in England, Wales and Northern Ireland, incurred, in either case, from the date any summons is obtained from a magistrates' court¹⁷.

The Secretary of State may apportion fees between different persons for a function performed by the Secretary of State or an inspector, as the case may be, where such function is reasonably attributable to those different persons¹⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. a function specified in the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule col 2. See further note 6 infra.

3 I.e. the provision of the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended): see PARA 1545 et seq ante.

4 I.e. specified in the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule col 1. See further note 6 infra.

5 The fee referred to in the text is payable by the person specified in the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(1), Schedule col 3. See further note 6 infra.

6 Ibid reg 3(1). See further PARA 1545 note 14, PARA 1546 note 7, PARA 1547 note 7, PARA 1548 notes 9, 13, 16, PARA 1549 note 8, PARA 1550 note 13, PARA 1551 note 9, PARA 1552 notes 5, 8, PARA 1553 notes 8, 11, 12, 26, 35, PARA 1554 note 8, PARA 1555 note 11, PARA 1556 notes 5, 11, 13, 14, 17, PARA 1557 note 11 and PARA 1559 note 9 ante.

7 I.e. under the Health and Safety at Work etc Act 1974 s 20 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376) (as applied for the purposes of the Nuclear Industries Security Regulations 2003, SI 2003/403 (as amended) by reg 23(1), (2)(b), (3), (4) (see PARA 1560 ante).

8 For the meaning of 'responsible person' see PARA 1545 note 4 ante (definition applied by the Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 2(2)).

9 For the meaning of 'carrier' see PARA 1552 note 3 ante (definition applied by ibid reg 2(2)).

10 I.e. a person subject to requirements under the Nuclear Industries Security Regulations 2003, SI 2003/403, reg 22 (as substituted): see PARAS 1558-1559 ante.

11 Nuclear Industries Security (Fees) Regulations 2005, SI 2005/1654, reg 3(2).

12 Ibid reg 3(3).

13 Ibid reg 3(4).

14 I.e. other than the functions referred to in ibid reg 3(1), (3), (4): see the text and notes 1-6, 12-13 supra.

15 Ibid reg 3(5).

16 Ibid reg 4(1).

17 Ibid reg 4(2)(a).

18 Ibid reg 4(3).

UPDATE

1560-1561 Enforcement of the Nuclear Industries Security Regulations 2003 and offences under those regulations, Fees payable for regulation of nuclear industries security

Certain functions under provisions mentioned in these paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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F. PROHIBITION OF DISCLOSURES

(A) DISCLOSURES RELATING TO NUCLEAR SECURITY

1562. Prohibition of disclosures relating to nuclear security.

A person is guilty of an offence if he discloses¹ any information or thing the disclosure of which might prejudice the security:

- 4275 (1) of any nuclear site²; or
- 4276 (2) of any nuclear material³;
- 399
- 579. (a) which is being held on any nuclear site; or
- 580. (b) anywhere in the world which is being transported to or from a nuclear site or carried on board a British ship⁴,
- 400
- 4277 including nuclear material which is expected to be so held, transported or carried⁵,

with the intention of prejudicing that security, or being reckless as to whether the disclosure might prejudice that security⁶. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, and on summary conviction to imprisonment for a term not exceeding six months⁷ or a fine not exceeding the statutory maximum, or to both⁸. Proceedings for such an offence may not be instituted in England and Wales except by or with the consent of the Attorney General⁹.

These provisions apply to acts done outside the United Kingdom, but only if they are done by a United Kingdom person¹⁰; but this does not affect any criminal liability otherwise arising¹¹. Proceedings for an offence committed outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom¹².

1 For these purposes, 'disclose' and 'disclosure', in relation to a thing, include parting with possession of it: Anti-terrorism, Crime and Security Act 2001 s 79(4).

2 For these purposes, 'nuclear site' means a site in the United Kingdom (including a site occupied by or on behalf of the Crown) which is (or is expected to be) used for any purpose mentioned in the Nuclear Installations Act 1965 s 1(1) (as amended) (see PARA 1487 ante): Anti-terrorism, Crime and Security Act 2001 s 79(4).

3 For the meaning of 'nuclear material' see PARA 1528 note 3 ante (definition applied by ibid s 79(4) (amended for this purpose by the Energy Act 2004 s 69(1), Sch 14 para 10(2)).

4 For these purposes, 'British ship' means a ship (including a ship belonging to Her Majesty) which is registered in the United Kingdom: Anti-terrorism, Crime and Security Act 2001 s 79(4). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

5 See ibid s 79(2).

6 Ibid s 79(1).

7 As from a day to be appointed this maximum term of imprisonment is to be increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not in force); although this does not affect the penalty for any offence committed before that day (see s 282(4) (not in force). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (Reissue) PARA 1121. At the date at which this title states the law, no such day had been appointed.

8 Anti-terrorism, Crime and Security Act 2001 s 79(3).

9 Ibid s 81(1)(a).

10 Ibid s 79(5). For the purposes of Pt 8 (ss 77-81) (as amended), 'United Kingdom person' means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom: s 81(2). For this purpose a United Kingdom national is an individual who is (1) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; (2) a person who under the British Nationality Act 1981 is a British subject; or (3) a British protected person within the meaning of that Act: Anti-terrorism, Crime and Security Act 2001 s 81(3) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 23-43; as to British overseas territories citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 44-57; as to the status of British National (Overseas) see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 63-65; as to British overseas citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 58-62; as to British subjects under the British Nationality Act 1981 see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 66-71; and as to British protected persons within the meaning of s 50(1) see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 72-76.

11 Anti-terrorism, Crime and Security Act 2001 s 79(7).

12 Ibid s 79(6).

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(B) DISCLOSURES OF URANIUM ENRICHMENT TECHNOLOGY

1563. Prohibition of disclosures of uranium enrichment technology.

The Secretary of State¹ may make regulations² prohibiting the disclosure³ of any information⁴ about the enrichment of uranium⁵ or of any information or thing which is, or is likely to be, used in connection with the enrichment of uranium⁶. The regulations may, in particular, provide for:

- 4278 (1) a prohibition to apply, or not to apply, to such information or things, and in such cases or circumstances, as may be prescribed⁷;
- 4279 (2) the authorisation by the Secretary of State of disclosures that would otherwise be prohibited⁸; and
- 4280 (3) defences to an offence⁹ relating to any prohibition¹⁰.

The regulations may:

- 4281 (a) provide for any prohibition to apply to acts done outside the United Kingdom¹¹ by United Kingdom persons¹²;
- 4282 (b) make different provision for different purposes; and
- 4283 (c) make such incidental, supplementary and transitional provision as the Secretary of State thinks fit¹³.

Subject to the statutory exceptions¹⁴, no person within the United Kingdom, and no United Kingdom person outside the United Kingdom, may disclose to any person anywhere in the world any of the following equipment¹⁵ or software, namely:

- 4284 (i) enrichment equipment¹⁶;
- 4285 (ii) any equipment specifically designed or adapted to be used to manufacture enrichment equipment;
- 4286 (iii) any equipment specifically designed or adapted to be used to adapt any equipment which, following its adaptation, remains or becomes enrichment equipment;
- 4287 (iv) any equipment specifically designed or adapted to be used to test the proper working of enrichment equipment; and
- 4288 (v) any software specifically designed or adapted to be used in connection with the use of any equipment falling within any of heads (i) to (iv) above,

with the intention of assisting or enabling, or being reckless¹⁷ as to whether the disclosure might assist or enable, any person, whether the person to whom the disclosure is made or any other person, to undertake a specified activity¹⁸. Nor, subject to those exceptions, may such a person disclose to any person anywhere in the world any of the following information¹⁹, namely any information where, in any such case as is mentioned in heads (A) to (D) below, the

information would assist or enable a specified activity²⁰ to be undertaken, being information about:

- 4289 (A) any equipment or software to which heads (i) to (v) above apply or the construction, testing or evaluation of such equipment;
- 4290 (B) any equipment or software which is no longer in existence but, during its existence, was equipment or software to which heads (i) to (v) above applied;
- 4291 (C) any design for any equipment or software which, were it to be manufactured or produced in accordance with the design, would be equipment or software to which heads (i) to (v) above apply; and
- 4292 (D) the method of use of any equipment or software mentioned in any of heads (A) to (C) above,

with the intention of assisting or enabling, or being reckless as to whether the disclosure might assist or enable, any person, whether the person to whom the disclosure is made or any other person, to undertake a specified activity²¹.

A person who contravenes such a prohibition²² is guilty of an offence and is liable on conviction on indictment to imprisonment for a term not exceeding seven years or a fine, or to both, and on summary conviction to imprisonment for a term not exceeding six months²³ or a fine not exceeding the statutory maximum, or to both²⁴. Proceedings for such an offence may not be instituted in England and Wales except by or with the consent of the Attorney General²⁵.

Proceedings for such an offence alleged to have been committed outside the United Kingdom may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom²⁶. In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, the court may, upon application by the prosecution in the course of proceedings for such an offence, order all or any portion of the public to be excluded during any part of the hearing if it considers that the publication of any evidence to be given or of any statement to be made in the course of the hearing would be prejudicial to national security; but the passing of sentence must in any case take place in public²⁷. In proceedings for such an offence relating to the disclosure of information, it is not to be necessary to prove that, at the time of the disclosure, the information had not been made available to the general public²⁸ unless the defence adduces evidence to the contrary²⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The power to make the regulations is exercisable by statutory instrument: Anti-terrorism, Crime and Security Act 2001 s 80(6). The regulations may not be made unless a draft of the regulations has been laid before and approved by each House of Parliament: s 80(7).

3 For these purposes, 'disclosure', in relation to a thing, includes parting with possession of it: *ibid* s 80(8).

4 For these purposes, 'information' includes software: *ibid* s 80(8).

5 For this purpose 'the enrichment of uranium' means any treatment of uranium that increases the proportion of the isotope 235 contained in the uranium: *ibid* s 80(1).

6 *Ibid* s 80(1), (2). In the exercise of this power, the Secretary of State has made the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, which came into force on 11 August 2004: see reg 1(1). See the text and notes 14-20, 24-27 *infra*; and PARAS 1564-1565 *post*.

7 Anti-terrorism, Crime and Security Act 2001 s 80(4)(a). 'Prescribed' means specified or described in the regulations: s 80(8).

8 *Ibid* s 80(4)(b).

9 I.e. an offence under *ibid* s 80(3): see the text and notes 21-22 *infra*.

- 10 Ibid s 80(4)(c).
- 11 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 12 For the meaning of 'United Kingdom person' see PARA 1562 note 10 ante.
- 13 Anti-terrorism, Crime and Security Act 2001 s 80(5).
- 14 Ie subject to the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 3 (exempt disclosures): see PARA 1564 post. See also reg 4 (authorisation of disclosures); and PARA 1565 post.
- 15 'Equipment' includes (1) a component of equipment; and (2) buildings: ibid reg 1(2).
- 16 'Enrichment equipment' means equipment which is (1) specifically designed or adapted for use in connection with the enrichment of uranium; or (2) not so designed or adapted but likely to be of exceptional use in that connection: ibid reg 1(2).
- 17 For these purposes, a person is reckless as to whether a disclosure made by him might assist or enable any person who is undertaking or proposes to undertake a specified activity to undertake that activity if (1) at the time he makes the disclosure: (a) he has recognised that the disclosure would create a risk that any person who is undertaking or proposes to undertake a specified activity might be assisted or enabled to undertake that activity; or (b) he is indifferent as to whether the disclosure would create such a risk or not; or (2) the disclosure creates an obvious risk that any person who is undertaking or proposes to undertake a specified activity might be assisted or enabled to undertake that activity, but at the time he makes the disclosure he has failed to give any thought to the possibility that the disclosure would create such a risk: ibid reg 2(2).
'Specified activity' means any of the following activities: (1) treating uranium to increase the proportion of the isotope 235 contained in the uranium; (2) manufacturing enrichment equipment; (3) adapting equipment which, following its adaptation, remains or becomes enrichment equipment; (4) testing or evaluating the proper working of enrichment equipment: ibid reg 1(2).
- 18 Ibid reg 2(1), (3).
- 19 For these purposes, 'information' does not include software: reg 1(2).
- 20 See note 17 supra.
- 21 Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 2(1), (3), (4).
- 22 Ie a prohibition to which regulations made under the Anti-terrorism, Crime and Security Act 2001 s 80 apply.
- 23 As from a day to be appointed this maximum term of imprisonment is to be increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not in force); although this does not affect the penalty for any offence committed before that day (see s 282(4) (not in force). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (Reissue) PARA 1121. At the date at which this title states the law, no such day had been appointed.
- 24 Anti-terrorism, Crime and Security Act 2001 s 80(3).
- 25 Ibid s 81(1)(a).
- 26 Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 7(1).
- 27 Ibid reg 7(2).
- 28 Ie as provided in ibid reg 3(3): see PARA 1564 post.
- 29 Ibid reg 7(3).

UPDATE

1563 Prohibition of disclosures of uranium enrichment technology

TEXT AND NOTES--See also Anti-terrorism, Crime and Security Act 2001 s 80A (added by Energy Act 2008 s 101), which relates to the securing of sensitive nuclear information pertaining to uranium enrichment.

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1564. Exempt disclosures.

The statutory prohibition on the disclosure of prescribed equipment, software and information¹ does not prohibit disclosure if:

- 4293 (1) it is made with the intention of assisting or enabling the proper working of enrichment equipment² to be tested for the purpose of enabling or facilitating, or evaluated in the course of, the carrying out of any functions of:
- 401
- 581. (a) the Health and Safety Executive³;
 - 582. (b) the Environment Agency⁴;
 - 583. (c) Euratom⁵; or
 - 584. (d) the International Atomic Energy Agency ('the IAEA')⁶; or
- 402
- 4294 (2) it is made:
- 403
- 585. (a) for the purpose of enabling an application for a patent to be filed in the Patent Office⁷; or
 - 586. (b) for the purpose of enabling such an application to be amended; or
 - 587. (c) in the course of the filing or amendment of such an application; or
 - 588. (d) by a person acting in the course of his duties in respect of such applications under the authority or direction of the Comptroller-General of Patents, Designs and Trade Marks⁸; or
- 404
- 4295 (3) it consists of information⁹ contained in an application for a patent and was made not less than six weeks after the application was filed in the Patent Office and no directions prohibiting or restricting its publication on the grounds of national security or public safety have been given¹⁰ in relation to the application or all such directions have been revoked; or
- 4296 (4) it is made:
- 405
- 589. (a) for the purpose of enabling an application for a patent, or other protection for an invention, to be filed outside the United Kingdom under the law of a country other than the United Kingdom or under a treaty or international convention to which the United Kingdom is a party; or
 - 590. (b) for the purpose of enabling such an application to be amended; or
 - 591. (c) in the course of the filing or amendment of such an application,
- 406
- 4297 where the Comptroller-General of Patents, Designs and Trade Marks has granted written authority for the filing¹¹; or
- 4298 (5) it is made by a United Kingdom person¹² outside the United Kingdom acting in the course of his duties in respect of applications for patents, or other protections for inventions, filed outside the United Kingdom under the law of a country other than the United Kingdom or under a treaty or international convention, whether it is one to which the United Kingdom is a party or not; or
- 4299 (6) it constitutes:

407

592. (a) an activity which is authorised by a licence granted in accordance with any provision made under the Export Control Act 2002; or

593. (b) an export which is authorised by or under the relevant provision of the European regulation setting up a Community regime for the control of exports of dual-use items and technology¹³; or

594. (c) a transfer which is authorised under the relevant provision¹⁴ of that regulation; or

595. (d) anything which is the subject of a prohibition imposed by an Order in Council under the specified provision of the United Nations Act 1946¹⁵ but which is permitted or authorised by means of the exercise of a power conferred by such an order; or

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4300 (7) it is authorised¹⁶ by the Secretary of State¹⁷.

Furthermore, that prohibition does not prohibit disclosure of equipment or software by parting with possession of it to the extent that the person making the disclosure:

4301 (i) has the intention of assisting or enabling, or is reckless¹⁸ as to whether the disclosure might assist or enable, another person to undertake a specified activity¹⁹; and

4302 (ii) both believes and has reasonable cause to believe that the undertaking of the specified activity by that other person is supported or approved by the Secretary of State²⁰.

Nor does it prohibit:

4303 (A) disclosure of information which, at the time of the disclosure, has previously been made available to the general public anywhere in the world otherwise than in contravention of the relevant statutory prohibition²¹ or of any other prohibition breach of which was an offence at the time when it was so made available, including, in a case in which it was made available outside but not within the United Kingdom, an offence under the law of one or more of the places where it was made available²²;

4304 (B) the doing of any thing the prohibition of which would be contrary to a Community obligation of the United Kingdom²³.

1 Ie the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 2: see PARA 1563 ante.

2 For the meanings of 'equipment' and 'enrichment equipment' see PARA 1563 notes 15-16 ante.

3 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

5 As to Euratom see PARAS 1337-1339 ante.

6 As to the IAEA see PARA 1354 ante.

7 Ie whether under the Patents Act 1977 or under any treaty or international convention to which the United Kingdom is a party. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

8 As to the Comptroller General of Patents, Designs and Trade Marks see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 577.

- 9 For the meaning of 'information' see PARA 1563 note 19 ante.
- 10 Ie under the Patents Act 1977 s 22 (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 335.
- 11 Ie under ibid s 23(1) (as amended): see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 337.
- 12 For the meaning of 'United Kingdom person' see PARA 1562 note 10 ante.
- 13 Ie which is authorised by or under EC Council Regulation 1334/2000 (OJ L159, 30.6.2000, p 1) art 6.
- 14 Ie which is authorised under ibid art 21.
- 15 Ie under the United Nations Act 1946 s 1(1): see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 526.
- 16 Ie under the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 4(1): see PARA 1565 post.
- 17 Ibid reg 3(1).
- 18 For the meaning of 'reckless' for these purposes see PARA 1563 note 17 ante.
- 19 For the meaning of 'specified activity' see PARA 1563 note 17 ante.
- 20 Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 3(2).
- 21 Ie in contravention of the Anti-terrorism, Crime and Security Act 2001 s 80(3): see PARA 1563 ante.
- 22 Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 3(3).
- 23 Ibid reg 3(4).

Notwithstanding the Electronic Commerce (EC Directive) Regulations 2002, SI 2002/2013, reg 3(2) (substituted by SI 2004/1178), those 2002 Regulations apply for the purposes of the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818: reg 8.

UPDATE

1564 Exempt disclosures

NOTE 13--Regulation 1334/2000 replaced in relation to export authorisation applications made on or after 27 August 2009: EC Council Regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L134, 29.5.2009 p 1); references to the repealed regulation should be construed as references to Regulation 428/2009: art 27.

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1565. Authorisation of disclosures.

On the application¹ of any person or otherwise, the Secretary of State² may authorise any individual disclosure, or any class of disclosure, which would otherwise be prohibited by the statutory prohibition³ on the disclosure of prescribed equipment, software and information⁴. In the case of an application, an authorisation is to be granted by written notice to the applicant, and such other persons as the Secretary of State thinks fit⁵; and in any other case, it is to be granted by written notice to such persons as the Secretary of State thinks fit⁶. In any case, an authorisation may be granted for such duration and subject to such conditions as the Secretary of State thinks fit⁷.

The Secretary of State may require:

- 4305 (1) the provision in writing by the applicant for an authorisation of such additional information as he may consider necessary to enable him to decide whether to grant the authorisation; and
- 4306 (2) the verification of any information provided by the applicant in connection with the application in such manner as the Secretary of State may specify⁸.

Where on an application for an authorisation the Secretary of State proposes not to grant the authorisation, he must give the applicant written notice of his proposal and of the reasons for it⁹. The applicant may make written representations to the Secretary of State within the period of 28 days following the date on which that notice is given¹⁰; and the Secretary of State must take into account any such representations before deciding whether to grant the authorisation¹¹.

If the Secretary of State decides not to grant the authorisation, he must give the applicant written notice of his decision and of the reasons for it¹².

Where the applicant for an authorisation:

- 4307 (a) makes any statement or provides any information which is false or misleading in a material particular; or
- 4308 (b) omits any information which is material to his application;

and the authorisation is granted, then in any such circumstances the authorisation is void, as regards the applicant, from the time it was granted, and as regards any other person, it is void from the time he knew or should reasonably have become aware of those circumstances¹³.

The Secretary of State may withdraw or vary an authorisation by written notice to each person to whom notice of the authorisation was given¹⁴ (an 'interested party')¹⁵. Such a notice must specify the reasons for the decision to withdraw or vary the authorisation, as the case may be¹⁶. The withdrawal or variation of an authorisation is to take effect for each interested party upon the receipt by him of the notice so given¹⁷. An interested party may make representations to the Secretary of State within 28 days of the date on which that notice is given to him¹⁸; and the Secretary of State must take into account any such representations before reaching a decision

whether to set aside or vary the notice so given, and must give written notice to every interested party of his decision¹⁹. Such a decision has immediate effect²⁰. A decision²¹ to vary a notice withdrawing or varying an authorisation²² does not cause any disclosure not to be authorised which would have been authorised if the notice had not been varied²³. Where an interested party, in making representations under the above provisions:

- 4309 (i) makes any statement or provides any information which is false or misleading in a material particular; or
- 4310 (ii) omits any information which is material to his representations,

and the notice withdrawing or varying an authorisation²⁴ is set aside or varied²⁵, then in any such circumstances any decision by the Secretary of State²⁶ to set aside or vary the notice is void, as regards the interested party, from the time the decision was made, and as regards any other person, it is void from the time that person knew or should reasonably have become aware of those circumstances²⁷.

1 A 'written document' (ie an application, information, a representation or a notice under the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 4 or 5: see the text and notes 2-27 *infra*) may be sent or given to the intended recipient by (1) delivering it to him; or (2) leaving it at his proper address; or (3) sending it to him at that address by post or other means: reg 6(1), (2). No written document may be sent or given by means of an electronic communication unless either the intended recipient has indicated that he is willing to receive it in that form, or it is sent in response to a previous electronic communication and the intended recipient has not indicated that it should not be given or sent in that form: reg 6(3). A written document may be sent or given (a) to a body corporate by being sent or given to its secretary or clerk; (b) to a firm by being given or sent to a partner in the firm or a person having management or control of the partnership business; (c) to an unincorporated body by being sent or given to a member of its governing body: reg 6(4).

For these purposes and the purposes of the Interpretation Act 1978 s 7 in its application to these provisions, the proper address (except in a case falling within the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 6(7)) of (i) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under regs 4, 5; (ii) a body corporate is the address of its registered or principal office; (iii) a firm or unincorporated body is the address of its principal office; (iv) any other person is his last known address: reg 6(5). Where, by virtue of reg 6(1)-(5), the proper address of the intended recipient of a written document is outside the United Kingdom, references in reg 6 to the proper address of (A) a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom; (B) any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom): reg 6(6). Where a written document is to be given or sent by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication: reg 6(7). 'Electronic communication' means a communication transmitted either by means of an electronic communications network, or by other means but while in electronic form: reg 6(1). For the meaning of 'United Kingdom' see PARA 602 note 7 *ante*.

2 As to the Secretary of State see PARA 601 note 1 *ante*.

3 Ie by the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 2: see PARA 1563 *ante*.

4 *Ibid* reg 4(1). For the meanings of 'equipment' and 'information' see PARA 1563 notes 15, 19 *ante*.

5 *Ibid* reg 4(2)(a). As to the notice see note 1 *supra*.

6 *Ibid* reg 4(2)(b). As to the notice see note 1 *supra*.

7 *Ibid* reg 4(2)(c).

8 *Ibid* reg 4(3). As to provision of the information see note 1 *supra*.

9 *Ibid* reg 4(4). As to the notice see note 1 *supra*.

10 *Ibid* reg 4(5). As to the representations see note 1 *supra*.

- 11 Ibid reg 4(6).
- 12 Ibid reg 4(7). As to the notice see note 1 supra.
- 13 Ibid reg 4(8), (9).
- 14 Ie under ibid reg 4(2): see the text and notes 5-7 supra.
- 15 Ibid reg 5(1). As to the notice see note 1 supra.
- 16 Ibid reg 5(2).
- 17 Ibid reg 5(3).
- 18 Ibid reg 5(4). As to the representations see note 1 supra.
- 19 Ibid reg 5(5). As to the notice see note 1 supra.
- 20 Ibid reg 5(6).
- 21 Ie under ibid reg 5(5): see the text and note 19 supra.
- 22 Ie a notice given under ibid reg 5(1): see the text and notes 14-15 supra.
- 23 Ibid reg 5(7).
- 24 See note 21 supra.
- 25 See note 20 supra.
- 26 Ie any decision under the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004, SI 2004/1818, reg 5(5).
- 27 Ibid reg 5(8), (9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1566. Power to obtain information under the Atomic Energy Act 1946.

(iii) Other Provisions relating to Security, Secrecy and Information

A. OBTAINING AND DISCLOSURE OF INFORMATION

1566. Power to obtain information under the Atomic Energy Act 1946.

The Secretary of State¹ may by written notice² require a person to make such periodical and other returns, at such times and containing such particulars and accompanied by such plans, drawings and other documents as may be specified in the notice:

- 4311 (1) of any prescribed substance³ specified in the notice which is in his possession or under his control⁴;
- 4312 (2) of any minerals⁵ so specified in his possession or under his control or present in or on land owned or occupied by him, being minerals from which in the Secretary of State's opinion any of the prescribed substances can be obtained⁶;
- 4313 (3) of any plant⁷ in his possession or under his control designed or adapted for the production or use of atomic energy⁸ or research into matters connected with it⁹;
- 4314 (4) of any contract entered into by him or any licence granted by or to him relating to the production or use of atomic energy or research into matters connected with it¹⁰; and
- 4315 (5) of any other information in his possession relating to any work carried out by him or on his behalf or under his direction in connection with the production or use of atomic energy or research into matters connected with it¹¹.

Any person who fails to comply with any such notice served on him or knowingly or recklessly makes any untrue statement in any return made in pursuance of any such notice is guilty of an offence¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 The notice must be served upon the person required to make the returns etc: Atomic Energy Act 1946 s 4(1). As to the service of notices see PARA 1589 post.

3 For the meaning of 'prescribed substance' see PARA 1425 note 3 ante.

4 Atomic Energy Act 1946 s 4(1)(a).

5 For the meaning of 'minerals' see PARA 1366 note 14 ante.

6 Atomic Energy Act 1946 s 4(1)(b).

7 For the meaning of 'plant' see PARA 1427 note 11 ante.

8 For the meaning of 'atomic energy' see PARA 1357 note 1 ante; and as to its production or use see PARA 1366 note 3 ante.

9 Atomic Energy Act 1946 s 4(1)(c).

10 Ibid s 4(1)(d).

11 Ibid s 4(1)(e).

12 Ibid s 4(2). As to prosecutions and penalties see s 14 (as amended); and PARAS 1582, 1586, 1588 post; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11. As to the power of the Environment Agency to require information as a condition of allowing premises to be registered under the Radioactive Substances Act 1993 see s 7(1) (as amended); and PARA 1442 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1567. Public access to documents and records under the Radioactive Substances Act 1993.

1567. Public access to documents and records under the Radioactive Substances Act 1993.

The Environment Agency ('the Agency')¹ must keep copies of:

- 4316 (1) all applications made to it under any provision of the Radioactive Substances Act 1993²;
- 4317 (2) all documents issued by it under any provision of that Act³;
- 4318 (3) all other documents sent by it to any local authority⁴ in pursuance of directions of the Secretary of State or the Welsh Ministers⁵; and
- 4319 (4) such records of convictions⁶ as may be prescribed⁷ in regulations⁸.

The Agency must make copies of those documents available to the public except to the extent that this would involve the disclosure of information relating to any relevant process⁹ or trade secret or would involve the disclosure of applications or certificates as respects which the Secretary of State has directed, or he and the Welsh Ministers have jointly directed¹⁰, that knowledge should be restricted on grounds of national security¹¹.

Each local authority must keep and make available to the public copies of all documents sent to the authority under any provision of the Radioactive Substances Act 1993 unless directed by the Agency that all or any part of any such document is not to be available for inspection¹².

Copies of documents so required to be made available to the public by the Agency¹³ or by a local authority¹⁴ need not be kept in documentary form¹⁵. The public has the right to inspect such documents at all reasonable times and, on payment of a reasonable fee, to be provided with a copy of any such document¹⁶.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 Radioactive Substances Act 1993 s 39(1)(a) (s 39(1) amended by the Environment Act 1995 s 120, Sch 22 paras 200, 223(1)).

3 Radioactive Substances Act 1993 s 39(1)(b) (as amended: see note 2 supra).

4 For the meaning of 'local authority' see PARA 1442 note 10 ante.

5 Radioactive Substances Act 1993 s 39(1)(c) (as amended: see note 2 supra). As to the power of the Secretary of State or the Welsh Ministers to direct the Agency to send certain particulars to specified local authorities under s 23(4) (as amended) see PARA 1468 ante; and as to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante.

6 Ie under ibid ss 32-34 (as amended) (see PARAS 1571, 1584 post) or s 35 (repealed).

7 Ie prescribed by regulations: see PARA 1439 note 19 ante. See also note 8 infra. The prescribed records are records specifying in relation to each conviction the offence, the name of the offender, the date of conviction,

the penalty imposed and the name of the court: Radioactive Substances (Records of Convictions) Regulations 1992, SI 1992/1685, reg 2; and see note 8 *infra*.

8 Radioactive Substances Act 1993 s 39(1)(d) (as amended: see note 2 *supra*). At the date at which this title states the law, no such regulations had been made, but the Radioactive Substances (Records of Convictions) Regulations 1992, SI 1992/1685 (see note 7 *supra*) have effect as if so made by virtue of the Radioactive Substances Act 1993 s 49(2), Sch 5 paras 1, 4; and the Interpretation Act 1978 s 17(2)(b). The power to make regulations under the Radioactive Substances Act 1993 s 39(1) (as amended) is exercisable by the Welsh Ministers concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 *ante*.

9 'Relevant process' means any process applied for the purposes of, or in connection with, the production or use of radioactive material: Radioactive Substances Act 1993 s 34(3) (definition applied by s 39(6)). For the meaning of 'radioactive material' see PARA 1439 *ante*.

10 *Ie* directed under *ibid* s 25 (as amended): see PARA 1572 *post*.

11 *Ibid* s 39(1) (as amended: see note 2 *supra*).

12 *Ibid* s 39(2) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 223(2), Sch 24). Directions under the Radioactive Substances Act 1993 s 39(2) (as amended) may only be given for the purpose of preventing disclosure of relevant processes or trade secrets and may be given generally in respect of all, or any description of, documents or in respect of specific documents: s 39(3).

13 *Ie* required to be made available under *ibid* s 39(1) (as amended).

14 *Ie* required to be made available under *ibid* s 39(2) (as amended).

15 *Ibid* s 39(4).

16 *Ibid* s 39(5). As to the application of s 39 to Northern Ireland see s 39(7).

UPDATE

1567-1568 Public access to documents and records under the Radioactive Substances Act 1993, Site records and disposal records

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1568. Site records and disposal records.

1568. Site records and disposal records.

The Environment Agency (the Agency')¹ may, by notice served on any person to whom a registration relates² or who holds an authorisation³, impose on him such requirements in relation to site records⁴, source transfer records⁵ or disposal records⁶ kept by that person as the Agency may specify in the notice⁷. The requirements that may be so imposed on a person are:

- 4320 (1) to retain copies of the records for a specified⁸ period after he has ceased to carry on the activities regulated by his registration or authorisation⁹; or
- 4321 (2) to furnish the Agency with copies of the records in the event of his registration being cancelled or his authorisation being revoked or in the event of his ceasing to carry on the activities regulated by his registration or authorisation¹⁰.

1 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

2 I.e. a registration under the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended): see PARAS 1442-1448 ante.

3 I.e. an authorisation under ibid s 13 or s 14: see PARAS 1450, 1452 ante.

4 'Records' means records required to be kept by virtue of the conditions attached to the registration or authorisation relating to the activities regulated by the registration or authorisation; and 'site records' means records relating to the condition of the premises on which those activities are carried on or, in the case of registration in respect of mobile radioactive apparatus, of any place where the apparatus is kept: ibid s 20(4). 'The activities regulated' by his registration or authorisation means (1) in the case of registration under s 7 (as amended), the keeping or use of radioactive material; (2) in the case of registration under s 10 (as amended), the keeping, using, lending or hiring of the mobile radioactive apparatus; (3) in the case of an authorisation under s 13, the disposal of radioactive waste; and (4) in the case of an authorisation under s 14, the accumulation of radioactive waste: s 20(4)(a)-(d). For the meaning of 'premises' see PARA 1439 note 1 ante; for the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante; for the meaning of 'radioactive waste' see PARA 1450 note 3 ante; and for the meaning of 'disposal' see PARA 1450 note 2 ante.

5 'Source transfer records' means records relating to the transfer of control of high-activity sources: ibid s 20(4) (definition added by the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 14(b)). For the meaning of 'high-activity source' see PARA 1439 note 3 ante.

6 'Disposal records' means records relating to the disposal of radioactive waste on or from the premises on which the activities are carried on: Radioactive Substances Act 1993 s 20(4).

7 Ibid s 20(1) (amended by the Environment Act 1995 s 120, Sch 22 para 200; the Energy Act 2004 s 75, Sch 15 paras 1, 4; the High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005, SI 2005/2686, reg 14(a)). As to the service of notices see PARA 1590 post.

8 'Specified' means specified in a notice under the Radioactive Substances Act 1993 s 20 (as amended): s 20(4).

9 Ibid s 20(2)(a).

10 Ibid s 20(2)(b) (amended by the Environment Act 1995 s 120, Sch 22 para 200).

UPDATE

1567-1568 Public access to documents and records under the Radioactive Substances Act 1993, Site records and disposal records

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1569. Public information for radiation emergencies.

1569. Public information for radiation emergencies.

Health and safety regulations¹ have been made by the Secretary of State under the Health and Safety at Work etc Act 1974 which implement a Euratom Council Directive laying down basic safety standards for the protection of the health of workers and the general public arising from ionising radiation². Those regulations make provision, among other matters, for giving prior information to members of the public likely to be affected by a radiation emergency³ and for every local authority to prepare, and keep up to date, arrangements to give information to members of the public in their area in the case of a radiation emergency⁴. The Secretary of State for Defence may disapply all or any provisions of the regulations with respect to the armed forces, visiting forces or any person working with ionising radiation for, or on behalf of, the Secretary of State for Defence⁵.

The relevant regulations are discussed in detail elsewhere in this work⁶.

1 See the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 668 et seq.

2 Ie Euratom Council Directive 96/29 (OJ L159, 29.6.96, p 1).

3 See the Radiation (Emergency Preparedness and Public Information) Regulations 2001, SI 2001/2975, reg 16.

4 See *ibid* reg 17.

5 See *ibid* reg 18 (as amended).

6 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 668 et seq.

UPDATE

1569 Public information for radiation emergencies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1570. Communication of information by the European Commission.

1570. Communication of information by the European Commission.

The European Commission must communicate to member states, persons¹ and undertakings² information³ acquired by the European Atomic Energy Community ('Euratom'), whether such information is derived from Euratom's own research programme or communicated to the Commission with authority to make free use of it. The Commission may, however, make the disclosure of such information conditional on its being treated as confidential and not passed on to third parties. The Commission may not disclose information which has been acquired subject to restrictions on its use or dissemination (such as information known as classified information) unless it ensures compliance with these restrictions⁴. These provisions do not apply to information subject to a security grading⁵.

From the date of accession⁶, such information as has been communicated to member states, persons and undertakings in accordance with these provisions must be placed at the disposal of the United Kingdom, which must give it limited distribution within its territory under the conditions referred to above⁷.

1 'Person' means any natural person who pursues all or any of his activities in the territories of member states within the field specified in the relevant chapter of the Euratom Treaty: art 196(a). As to citation of the Euratom Treaty see PARA 1337 note 3 ante.

2 'Undertaking' means any undertaking or institution which pursues all or any of its activities in the territories of member states within the field specified in the relevant chapter of the Euratom Treaty, whatever its public or private legal status: art 196(b).

3 I.e. information which is not covered by the provisions of *ibid* art 12 (information over which the Community has power of disposal): art 13.

4 *Ibid* art 13. As to Euratom see PARAS 1337-1339 ante.

5 *Ibid* art 24(3).

6 The date of accession of the United Kingdom was 1 January 1973. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 Act of Accession Protocol 28 art 1(1).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1571. Unauthorised communication and disclosure of information.

1571. Unauthorised communication and disclosure of information.

Apart from anything done by or to the United Kingdom Atomic Energy Authority ('the UKAEA')¹, the communication of information concerning any existing or proposed plant² used or proposed to be used for the production or use of atomic energy³ to an unauthorised person is an offence unless it is done with the consent of the Secretary of State⁴.

Any person is guilty of an offence who, without the authority of the Secretary of State or the UKAEA, discloses any information obtained in the exercise of powers under the Atomic Energy Act 1946⁵, or, in contravention of certain provisions of the Health and Safety at Work etc Act 1974⁶, uses or discloses any information obtained in the exercise of powers under the Nuclear Installations Act 1965⁷.

Any person disclosing any information relating to any relevant process⁸ or trade secret used in carrying on any particular undertaking⁹ which has been given to or obtained by him under the Radioactive Substances Act 1993 or in connection with the execution of that Act is guilty of an offence unless the disclosure was made:

- 4322 (1) with the consent of the person carrying on that undertaking; or
- 4323 (2) in accordance with any general or special directions given by the Secretary of State or, in relation to Wales, by the Welsh Ministers¹⁰; or
- 4324 (3) under or by virtue of the specified provision of the Environment Act 1995¹¹; or
- 4325 (4) in connection with the execution of the Radioactive Substances Act 1993; or
- 4326 (5) for the purposes of any legal proceedings arising out of that 1993 Act, or of any report of any such proceedings¹².

1 Atomic Energy Authority Act 1954 s 6(4), Sch 3. As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

2 For the meaning of 'plant' see PARA 1427 note 11 ante.

3 For the meaning of 'atomic energy' see PARA 1357 note 1 ante.

4 See the Atomic Energy Act 1946 s 11; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 499. The Secretary of State may by order grant exemption from s 11 in such classes of cases, and to such extent and subject to such conditions, as may be specified in the order: s 11(3). The communication of information about plant used or proposed to be used for certain scientific purposes, the method of operation of such plant, and the process operated therein, is so exempted: see the Atomic Energy (Disclosure of Information) (No 1) Order 1947, SR & O 1947/100. As to the restriction on publication of information in the case of all inventions relating to the production or use of atomic energy for which an application for a patent is made see the Patents Act 1977 s 22 (as amended); and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 335-336. As to the Secretary of State see PARA 601 note 1 ante.

5 Atomic Energy Act 1946 s 13 (amended by the Atomic Energy Authority Act 1954 s 6(4), Sch 3). For the penalties for offences under the Atomic Energy Act 1946 see PARA 1588 post.

6 le the provisions of the Health and Safety at Work etc Act 1974 s 28 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 382.

7 See the Nuclear Installations Act 1965 s 24(2) (as substituted); and PARA 1518 ante. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or to both: Health and Safety at Work etc Act 1974 s 33(1)(j), (3)(a), (b)(i), (4)(e) (s 33(3)(a) amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante.

8 For the meaning of 'relevant process' see PARA 1567 note 9 ante.

9 For the meaning of 'undertaking' see PARA 1439 note 2 ante.

10 As to the Secretary of State's or the Welsh Ministers' powers to give directions see PARAS 1468-1469 ante.

11 le the Environment Act 1995 s 113 (as amended) (disclosure of information): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 153.

12 Radioactive Substances Act 1993 s 34(1) (amended by the Environment Act 1995 s 120, Sch 22 para 220). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or to both: Radioactive Substances Act 1993 s 34(2). As to the statutory maximum see PARA 689 note 2 ante. As to the application of s 34 (as amended) to Northern Ireland see s 34(4).

UPDATE

1571-1572 Unauthorised communication and disclosure of information, Power to restrict knowledge of applications etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1571 Unauthorised communication and disclosure of information

NOTE 7--1974 Act s 33(3), (4) substituted: see further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 353.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/A. OBTAINING AND DISCLOSURE OF INFORMATION/1572. Power to restrict knowledge of applications etc.

1572. Power to restrict knowledge of applications etc.

The Secretary of State or, in relation to Wales, the Secretary of State and the Welsh Ministers acting concurrently¹ may direct the Environment Agency ('the Agency')² that in his or their opinion, on grounds of national security, it is necessary that knowledge of such information as may be specified or described in the directions, being information contained in or relating to:

- 4327 (1) any particular application for registration as a user of radioactive material or mobile radioactive apparatus³ or applications of any description specified in the directions; or
- 4328 (2) any particular registration or registrations of any description so specified,

should be restricted⁴. He, or he and they, may also direct the Agency that in his or their opinion, on grounds of national security, it is necessary that knowledge of such information as may be specified or described in the directions, being information contained in or relating to:

- 4329 (a) any particular application for authorisation⁵ or for the transfer (in whole or in part) or variation of an authorisation or applications of any description specified in the directions; or
- 4330 (b) any particular authorisation⁶ or authorisations of any description so specified,

should be restricted⁷.

Where it appears to the Agency that an application, registration or authorisation is the subject of any such directions, the Agency must not send a copy of so much of the application or the certificate of registration or authorisation or notice of variation as contains the information specified or described in the directions to any local authority⁸ or to any public or local authority⁹, as the case may be¹⁰. No such direction, however, affects any power or duty of the Agency to consult the Food Standards Agency¹¹ or the information which is to be sent by the Agency to the Food Standards Agency¹².

¹ As to the Secretary of State and the Welsh Ministers, and the transfer of functions under the Radioactive Substances Act 1993 in relation to Wales, see PARA 601 note 1 ante. The functions of the Secretary of State under s 25 (as amended) are exercisable, in relation to Wales, concurrently with the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

² The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

³ I.e. under the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended): see PARAS 1442-1448 ante.

⁴ Ibid s 25(1) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 213(1)).

⁵ I.e. under the Radioactive Substances Act 1993 s 13 (as amended) or s 14: see PARAS 1450, 1452 ante.

6 See note 5 *supra*.

7 Radioactive Substances Act 1993 s 25(2) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 213(2); the Energy Act 2004 s 75, Sch 15 paras 1, 9(1)).

8 le under any provision of the Radioactive Substances Act 1993 s 7 (as amended) or s 10 (as amended). For the meaning of 'local authority' see PARA 1442 note 10 *ante*.

9 le under any provision of *ibid* s 16 (as amended) (see PARAS 1453-1456 *ante*), s 16A (as added) (see PARA 1457 *ante*) or s 17 (as amended) (see PARA 1459 *ante*). For the meaning of 'public or local authority' see PARA 1439 note 2 *ante*.

10 *Ibid* s 25(3) (amended by the Environment Act 1995 s 120, Sch 22 paras 200, 213(3); the Energy Act 2004 s 75, Sch 15 paras 1, 9(2)).

11 As to the Food Standards Agency see FOOD vol 18(2) (Reissue) PARA 225 *et seq*.

12 Radioactive Substances Act 1993 s 25(3A) (added by the Environment Act 1995 s 120, Sch 22 para 213(4); amended by the Food Standards Act 1999 s 40(1), Sch 5 para 43(1), (5)(a)). As to the application of the Radioactive Substances Act 1993 s 25 (as amended) to Northern Ireland see s 25(4).

UPDATE

1571-1572 Unauthorised communication and disclosure of information, Power to restrict knowledge of applications etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/B. OFFICIAL SECRETS AND NATIONAL SECURITY/1573. Prohibited places and protected sites.

B. OFFICIAL SECRETS AND NATIONAL SECURITY

1573. Prohibited places and protected sites.

For the purposes of the provision of the Official Secrets Act 1911 which provides that places belonging to or used for the purposes of Her Majesty may be declared by order of the Secretary of State to be prohibited places for the purposes of that Act¹, any place belonging to or used for the purposes of the United Kingdom Atomic Energy Authority ('the UKAEA')², and any site to which a permit applies³, is deemed to be a place belonging to or used for the purposes of Her Majesty⁴. No person other than:

- 4331 (1) a constable acting in the execution of his duty as such; or
 - 4332 (2) an officer of her Majesty's Revenue and Customs, acting in the execution of his duty as such; or
 - 4333 (3) a person designated as an inspector of the International Atomic Energy Agency ('the IAEA')⁵ for the application of safeguards in the United Kingdom⁶ in connection with the Treaty on the Non-Proliferation of Nuclear Weapons⁷; or
 - 4334 (4) an officer of any government department specially authorised in that behalf by or on behalf of a Minister of the Crown or a member of staff of the Scottish Administration specially authorised in that behalf by or on behalf of the Scottish Ministers; or
 - 4335 (5) with respect only to a site to which a permit applies, an inspector appointed:
- 409
- 596. (a) under the Nuclear Installations Act 1965⁸; or
 - 597. (b) under the Health and Safety at Work etc Act 1974⁹ and specially authorised in that behalf by or on behalf of a Minister of the Crown,
- 410

is entitled to exercise any right of entry (whether arising by virtue of any statutory provision or otherwise) upon any place belonging to or used for the purposes of the Authority, or any such site, which is for the time being declared to be such a prohibited place, except with the consent of the Authority or a specified body corporate¹⁰ and in accordance with any conditions imposed by that Authority or that body¹¹. Any person aggrieved by a refusal by the Authority or the specified body corporate to consent to, or by such conditions imposed on, the exercise of any such right of entry may apply to the Secretary of State who may, if he thinks fit, himself authorise the exercise of the right subject to such conditions, if any, as he may think fit to impose¹².

Nuclear sites¹³ are protected sites for the purposes of the relevant provision of the Serious Organised Crime and Police Act 2005¹⁴ and trespassing on them is an offence under that Act¹⁵.

1 le the provisions of the Official Secrets Act 1911 s 3(c) (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 479. For offences in relation to prohibited places see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 478.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 'Site to which a permit applies' means a site in respect of which a permit granted to the specified body corporate (see note 10 infra) by the Secretary of State as mentioned in the Nuclear Installations Act 1965 s 2(1B) (as added) (see PARA 1489 the text and note 4 ante) is for the time being in force: s 2(1B) (as added), Sch 1 para 1 (Sch 1 added by the Atomic Energy Authority Act 1971 s 17(6), Schedule). As to the Secretary of State see PARA 601 note 1 ante.

4 Atomic Energy Authority Act 1954 s 6(3); Nuclear Installations Act 1965 Sch 1 para 3(1) (as added: see note 3 supra). The following places and sites have been declared by the Secretary of State to be prohibited places: (1) the British Nuclear Fuels plc site at Sellafield, Seascale, Cumbria, CA20 1PG; (2) the British Nuclear Fuels plc site at Capenhurst, near Chester, Cheshire, CH1 6ER; (3) the Urenco (Capenhurst) Limited site at Capenhurst, near Chester, Cheshire, CH1 6ER; (4) the UKAEA site at Harwell, Didcot, Oxfordshire, OX11 0RA; and (5) the UKAEA site at Windscale, Seascale, Cumbria, CA20 1PF: see the Official Secrets (Prohibited Places) Order 1994, SI 1994/968, art 3, Schedule Pts I, II.

5 Ie a person designated under the Safeguards Agreement made at Vienna on 6 September 1976 (Cmnd 6730) art 85 or under the Additional Protocol signed at Vienna on 22 September 1998 (Cm 4282) art 11: see PARA 1341 ante. As to the IAEA see PARA 1354 ante.

6 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

7 As to the Treaty on the Non-Proliferation of Nuclear Weapons see PARA 1341 ante.

8 Ie an inspector appointed under the Nuclear Installations Act 1965 s 24 (as substituted and amended): see PARAS 1362, 1518 ante.

9 Ie an inspector appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375. As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

10 In relation to an order made under the Nuclear Installations Act 1965 s 2 (as amended) (see PARA 1489 ante), 'specified body corporate' means the body corporate specified in that order, as being a body to whom the Secretary of State has granted a permit as mentioned in s 2(1B) (as added): Sch 1 para 1 (as added: see note 3 supra).

11 Atomic Energy Authority Act 1954 s 6(3) (amended by the Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(3); the Nuclear Safeguards Act 2000 s 11(1); and by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 28); Nuclear Installations Act 1965 Sch 1 para 3(2) (as added (see note 3 supra); amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 1(1)(b), Sch 2 para 7; the Nuclear Safeguards and Electricity (Finance) Act 1978 s 2(3); the Nuclear Safeguards Act 2000 s 11(2); and by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 38(1), (5)).

12 Atomic Energy Authority Act 1954 s 6(3) proviso; Nuclear Installations Act 1965 Sch 1 para 3(2) proviso (as added: see note 3 supra).

13 For the meaning of 'nuclear site' for these purposes see the Serious Organised Crime and Police Act 2005 s 128(1B), (1C) (as added); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2007 Reissue) PARA 554.

14 Ie for the purposes of the Serious Organised Crime and Police Act 2005 s 128 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 554.

15 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 554.

UPDATE

1573 Prohibited places and protected sites

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/B. OFFICIAL SECRETS AND NATIONAL SECURITY/1574. Official secrets.

1574. Official secrets.

For the purposes of the provisions of the Official Secrets Act 1989 relating to the wrongful disclosure of information, documents or other articles¹, the following are Crown servants:

- 4336 (1) members, officers and employees of the United Kingdom Atomic Energy Authority ('the UKAEA')²;
- 4337 (2) the board members and employees of British Nuclear Fuels plc³, Urenco Limited, Urenco (Capenhurst) Limited, Enrichment Technology Company Limited, Enrichment Technology UK Limited, and Urenco Enrichment Company Limited;
- 4338 (3) the members and employees of the Nuclear Decommissioning Authority ('the NDA')⁴ and the employees and board members of any subsidiary of the NDA⁵.

Any constable and any other person employed or appointed in or for the purposes of the Civil Nuclear Constabulary⁶ is also a Crown servant for those purposes⁷, as are the members and employees of the Independent Police Complaints Commission⁸.

¹ I.e. the provisions of the Official Secrets Act 1989 ss 1-5, 7, 8 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 483 et seq.

² As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

³ As to British Nuclear Fuels plc see PARA 1377 et seq ante.

⁴ As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 post.

⁵ See the Official Secrets Act 1989 ss 12(1)(f), 13(1); the Official Secrets Act 1989 (Prescription) Order 1990, SI 1990/200, art 2, Sch 1 (amended by SI 1993/847; SI 2003/1918; SI 2007/2148).

⁶ As to the Civil Nuclear Constabulary see PARA 1520 et seq ante.

⁷ See the Official Secrets Act 1989 s 12(1)(e) (as amended), s 12(4A) (added by the Energy Act 2004 s 69(1), Sch 14 para 6).

⁸ See the Official Secrets Act 1989 (Prescription) Order 1990, SI 1990/200, art 2, Sch 1 (amended for these purposes by SI 2007/2148).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/B. OFFICIAL SECRETS AND NATIONAL SECURITY/1575. Byelaws as to land used for atomic energy purposes.

1575. Byelaws as to land used for atomic energy purposes.

The Secretary of State¹ may make byelaws for regulating the use of any land vested in or under the management of the United Kingdom Atomic Energy Authority ('the UKAEA')² and for securing the public against danger arising from that use, as if it were land vested in him or under his management, but no right of common may be taken away or prejudicially affected by such a byelaw³. The Secretary of State also has power to make such byelaws in relation to any land vested in another person which the Authority has the right to use, but nothing in any byelaws made by virtue of this power may injuriously affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land⁴.

The power to make such byelaws also applies in relation to land in designated premises for the purposes of the Atomic Weapons Establishment Act 1991⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 See the Military Lands Act 1892 s 14(1) (applied by the Atomic Energy Authority Act 1954 s 6(4), Sch 3); and ARMED FORCES. See also *DPP v Hutchinson* [1990] 2 AC 783, [1990] 2 All ER 836, HL (byelaw made under the Military Lands Act 1892 s 14(1) purporting to limit rights of common by a total prohibition of all unauthorised access invalid; invalidity could not be cured by severance).

4 See *ibid* s 14(1); the Emergency Laws (Miscellaneous Provisions) Act 1953 s 1, Sch 1 para 8(1); the Atomic Energy Authority Act 1954 Sch 3; and ARMED FORCES.

5 See the Atomic Weapons Establishment Act 1991 s 3(1), Schedule para 2; and PARA 1387 ante. For the meaning of 'designated premises' see PARA 1387 note 11 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/B. OFFICIAL SECRETS AND NATIONAL SECURITY/1576. Directions in the interests of national security.

1576. Directions in the interests of national security.

At the date at which this title states the law, the following provisions have effect. A specified body corporate¹ must comply with any directions which the Secretary of State² may give to it for the purpose of safeguarding information in the interests of national security; and such a direction may in particular require it to terminate the employment of any person specified in the direction who is an officer of, or employed by, that body or may require that body not to appoint a person so specified to be an officer of, or to any employment under, that body³. The specified body corporate must also comply with any directions given to it by the Secretary of State with respect to the safekeeping of material of any description specified in the directions, whether in the interests of national security or of safety⁴. As from a date to be appointed⁵, however, these provisions are repealed by the Anti-terrorism, Crime and Security Act 2001⁶. The provision made by that Act regulating the security of the civil nuclear industry has already been discussed⁷.

1 For the meaning of 'specified body corporate' see PARA 1573 note 10 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Nuclear Installations Act 1965 s 2(1B), Sch 1 para 5(1) (added by the Atomic Energy Authority Act 1971 s 17, Schedule; the Nuclear Installations Act 1965 Sch 1 para 5 (as added) prospectively repealed, as from a day to be appointed (see note 5 infra) by the Anti-terrorism, Crime and Security Act 2001 ss 78(1), 125, Sch 8 Pt 5). The Secretary of State may with Treasury approval make grants out of money provided by Parliament for reimbursing to the specified body corporate, in whole or in part, any expenses incurred by it in complying with (1) any such directions; and (2) any directions given with respect to the safekeeping of material in the interests of national security (see the text and note 4 infra): Nuclear Installations Act 1965 Sch 1 para 5(3) (as so added and prospectively repealed).

4 Ibid Sch 1 para 5(2) (as added and prospectively repealed: see note 3 supra). As to the reimbursement of expenses incurred by the specified body corporate in complying with certain of those directions see note 3 supra.

The provisions set out in the text were also applied, as they applied in relation to the specified body corporate, in relation to any company designated by the Secretary of State in connection with the international agreement on the gas centrifuge process for producing enriched uranium: see the Atomic Energy Authority Act 1971 s 19(1) (repealed with savings by the Energy Act 2004 s 197(9), (10), Sch 23 Pt 1, Pt 2 para 1). That repeal does not affect so much of any such designation as identifies a person for the purposes of obligations imposed by regulations made under the Anti-terrorism, Crime and Security Act 2001 s 77 (as amended) (see PARA 1544 et seq ante): Energy Act 2004 Sch 23 Pt 2 para 1.

5 ie as from a day to be appointed under the Anti-terrorism, Crime and Security Act 2001 s 127(1). At the date at which this title states the law, no such day had been appointed.

6 See note 3 supra.

7 See PARA 1544 et seq ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/B. OFFICIAL SECRETS AND NATIONAL SECURITY/1577. Termination of employment on security grounds.

1577. Termination of employment on security grounds.

Except with the consent of the Secretary of State¹ the United Kingdom Atomic Energy Authority ('the UKAEA')² may not terminate on security grounds³ the employment of any officer of, or person employed by, the UKAEA⁴. At the date at which this title states the law, a specified body corporate⁵ may not, except with the like consent, terminate on such grounds the employment of any person employed by that body⁶. As from a date to be appointed⁷, however, the latter provision is repealed by the Anti-terrorism, Crime and Security Act 2001⁸. The provision made by that Act regulating the security of the civil nuclear industry has already been discussed⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

3 'Security grounds' means grounds which are grounds for dismissal from the civil service in accordance with any arrangements for the time being in force relating to dismissals from that service for reasons of national security: Atomic Energy Authority Act 1954 s 1(9), Sch 1 para 7(4).

4 Ibid Sch 1 para 7(4).

5 For the meaning of 'specified body corporate' see PARA 1573 note 10 ante.

6 Nuclear Installations Act 1965 s 2(1B), Sch 1 para 6(1) (added by the Atomic Energy Authority Act 1971 ss 17(6), 19(1), Schedule; the Nuclear Installations Act 1965 Sch 1 para 6 (as added) prospectively repealed, as from a day to be appointed (see note 7 infra) by the Anti-terrorism, Crime and Security Act 2001 ss 78(1), 125, Sch 8 Pt 5). For these purposes, 'security grounds' means grounds which are grounds for dismissal from the civil service of Her Majesty in accordance with any arrangements for the time being in force relating to dismissals from that service for reasons of national security: Nuclear Installations Act 1965 Sch 1 para 6(2) (as so added and prospectively repealed).

The provisions set out in the text to notes 5-6 supra were also applied, as they applied in relation to the specified body corporate, in relation to any company designated by the Secretary of State in connection with the international agreement on the gas centrifuge process for producing enriched uranium: see the Atomic Energy Authority Act 1971 s 19(2) (repealed with savings by the Energy Act 2004 s 197(9), (10), Sch 23 Pt 1, Pt 2 para 1). That repeal does not affect so much of any such designation as identifies a person for the purposes of obligations imposed by regulations made under the Anti-terrorism, Crime and Security Act 2001 s 77 (as amended) (see PARA 1544 et seq ante): Energy Act 2004 Sch 23 Pt 2 para 1.

7 Ie as from a day to be appointed under the Anti-terrorism, Crime and Security Act 2001 s 127(1). At the date at which this title states the law, no such day had been appointed.

8 See note 6 supra.

9 See PARA 1544 et seq ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(8) SECURITY, SECRECY AND INFORMATION/(iii) Other Provisions relating to Security, Secrecy and Information/C. ADDITIONAL PROTOCOL INFORMATION/1578. Information and records for the purposes of the Additional Protocol to the Safeguards Agreement.

C. ADDITIONAL PROTOCOL INFORMATION

1578. Information and records for the purposes of the Additional Protocol to the Safeguards Agreement.

No obligation as to secrecy or other restriction on disclosure, whether imposed by statute or otherwise, prevents a person voluntarily giving information to the Secretary of State¹ if that person has reasonable cause to believe that it is Additional Protocol information². The Secretary of State may serve notice³ on any person requiring him to give information, or information of a description, specified in the notice, within a period or at times specified in the notice and, if the notice so provides, in such form as the notice may require⁴. The information required by a notice must be information which the Secretary of State has reasonable cause to believe is Additional Protocol information⁵. A person who refuses or fails without reasonable excuse to comply with a notice is guilty of an offence⁶. A person on whom a notice is served must keep and retain such records of information in his possession, and retain any existing records, as may be necessary to enable him to comply with the notice; and a failure to do so will be taken into account in proceedings for an offence⁷ in determining whether a reasonable excuse exists for a refusal or failure to comply with the notice⁸.

The Secretary of State may make regulations⁹ requiring persons of any description specified in the regulations to inform him that they are of such a description and to give such supplementary particulars as may be so specified¹⁰. The regulations may require persons to notify the Secretary of State of changes in their circumstances¹¹, and may include incidental and supplementary provisions¹². A person who fails without reasonable excuse to comply with a requirement imposed by such regulations is guilty of an offence¹³.

A person who knowingly or recklessly makes a statement which is false or misleading in a material particular in giving:

- 4339 (1) any information to the Secretary of State or an authorised officer¹⁴;
- 4340 (2) any information to the Secretary of State in response to a requirement of regulations¹⁵; or
- 4341 (3) any information to an International Atomic Energy Agency ('IAEA') inspector¹⁶, is guilty of an offence¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Nuclear Safeguards Act 2000 s 2(1). The duty to comply with a notice is not affected by any such obligation or restriction: s 2(6). 'Additional Protocol information' means information which the Secretary of State needs or will need in order to enable obligations of the United Kingdom under the Additional Protocol art 2, or Annex III paras 3, 4 to be met: Nuclear Safeguards Act 2000 s 1(1). The 'Additional Protocol' means the Protocol signed at Vienna on 22 September 1998 additional to the Safeguards Agreement; and 'Safeguards Agreement' means the agreement made on 6 September 1976 between the United Kingdom, the European Atomic Energy Community ('Euratom') and the International Atomic Energy Agency ('the IAEA') for the application of Safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons: Nuclear Safeguards Act 2000 s 1(1). See further PARA 1341 ante. As to the IAEA see PARA 1354 ante.

Her Majesty may by Order in Council direct that any of the provisions of the 2000 Act or of the Nuclear Safeguards and Finance (Electricity) Act 1978 are to extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man or any colony: Nuclear Safeguards Act 2000 Act s 12(4). As to such extension see PARA 1341 note 15 ante.

3 Any notice under the Nuclear Safeguards Act 2000 may be served on a person by delivering it to him, by leaving it at his proper address or by sending it by post to him at that address: s 10(1). Any such notice may be served (1) in the case of a body corporate, on the secretary or clerk of that body; (2) in the case of a partnership, on any partner or a person having control or management of the partnership business; and (3) in the case of an unincorporated association, on any member of its governing body: s 10(2). For the purposes of s 10 and of the Interpretation Act 1978 s 7 in its application to the Nuclear Safeguards Act 2000 s 10, the proper address of a person is (a) in the case of a body corporate, its secretary or clerk, the address of its registered or principal office in the United Kingdom; (b) in the case of an unincorporated association (other than a partnership) or a member of its governing body, the address of its principal office in the United Kingdom; and (c) in any other case, his usual or last-known address, whether of his residence or of a place where he carries on business or is employed: s 10(3). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Ibid s 2(2).

5 Ibid s 2(3)(a). Such information may relate to a state of affairs subsisting before the coming into force of the 2000 Act or the Additional Protocol: Nuclear Safeguards Act 2000 s 2(3)(b). A notice may not require a person to give information which is required only for the purposes of the Additional Protocol art 2.a.(ii) unless the notice sets out the terms, agreed by the United Kingdom, in which the Agency has identified information for the purposes of art 2.a.(ii): Nuclear Safeguards Act 2000 s 2(4).

6 Ibid s 2(5). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

7 Ie an offence under ibid s 2(5): see the text and note 6 supra.

8 Ibid s 2(7); and see note 6 supra.

9 Any such regulations must be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament: ibid s 3(4). If the Secretary of State makes any such regulations, he must arrange for a statement of the fact that they have been made to be published in such a manner as is likely to bring them to the attention of persons affected by them: s 3(5).

10 Ibid s 3(1). Any such description must be framed so that persons within it are persons about whose activities the United Kingdom is or will be obliged under the Additional Protocol to provide information to the IAEA, or other persons likely to be in possession of information which the Secretary of State has reasonable cause to believe is Additional Protocol information: Nuclear Safeguards Act 2000 s 3(2). In the exercise of the power under s 3(1), the Secretary of State has made the Nuclear Safeguards (Notification) Regulations 2004, SI 2004/1255, which came into force on 5 May 2004: reg 1.

Subject to reg 5, a person: (1) was to notify the Secretary of State not later than two months after the commencement date (ie 5 May 2004) if at any time during the period of six months ending on the commencement date he had carried out in the United Kingdom any of the activities specified in Schedule para 1 (specific nuclear and nuclear-related activities); (2) was to notify the Secretary of State not later than two months after the commencement date if at any time during the period of six months ending on the commencement date he had carried out in the United Kingdom any nuclear fuel cycle-related research and development activities which were (a) carried out in co-operation with, or otherwise relevant to, a non-nuclear-weapon state; and (b) not funded, specifically authorised or controlled by, or carried out on behalf of, Her Majesty's Government; (3) must notify the Secretary of State on or before 15 January in each year if at any time during the previous calendar year he has carried out in the United Kingdom any of the activities specified in Schedule para 1; and (4) must notify the Secretary of State on or before 15 January in each year if at any time during the previous calendar year he has carried out in the United Kingdom any nuclear fuel cycle-related research and development activities which were (a) carried out in co-operation with, or otherwise relevant to, a non-nuclear-weapon state; and (b) not funded, specifically authorised or controlled by, or carried out on behalf of, Her Majesty's Government: regs 3, 4. For the form of notification see reg 6.

'Non-nuclear-weapon state' means a state other than China, France, Russia, the United Kingdom and the United States of America; 'nuclear fuel cycle-related research and development activities' means research and development activities which are specifically related to any process or system development aspect of (i) the enrichment of nuclear material; (ii) the reprocessing of nuclear fuel; or (iii) the processing of intermediate or high level waste containing plutonium, high enriched uranium, or uranium-233, but does not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological or agricultural applications, health or environmental effects or improved maintenance; 'nuclear material' means any source material (other than ore or ore residue) or any special fissionable material; 'processing of intermediate or high level waste' does not include (A) repackaging of the waste for storage or disposal; (B) conditioning of the waste not involving the separation of elements, for storage

or disposal; 'high enriched uranium' means uranium containing 20% or more of the isotope uranium-235; 'source material' means uranium containing the mixture of isotopes occurring in nature, uranium depleted in the isotope 235, thorium, and any of the foregoing in the form of metal, alloy, chemical compound or concentrate; and 'special fissionable material' means plutonium-239, uranium-233, uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature, and any material containing one or more of the above: reg 2.

The Secretary of State may serve on a person a written notice setting out particulars which the Secretary of State already has in relation to that person: reg 5(1). A person on whom such a notice has been served was not required to notify the Secretary of State under reg 3 and is not required to notify him under reg 4 if the particulars set out in the notice are accurate at the time the notice is received by that person and are all the particulars which that person would otherwise be required to provide: reg 5(2). Such a person must, within 14 days of any change in any of the particulars which were set out in the notice so served on him, give to the Secretary of State notice of the new particulars: reg 5(3). The Nuclear Safeguards Act 2000 s 10 (see note 3 supra) applies in relation to the service by the Secretary of State of notices under the Nuclear Safeguards (Notification) Regulations 2004, SI 2004/1255, reg 5(1): reg 5(4).

11 Nuclear Safeguards Act 2000 s 3(3)(a).

12 Ibid s 3(3)(b).

13 Ibid s 3(6). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

14 Ie for the purposes of the 2000 Act or the Additional Protocol: Nuclear Safeguards Act 2000 s 7(a). 'Authorised officer' means a person authorised by the Secretary of State for the purpose of exercising powers under the Nuclear Safeguards Act 2000: s 1(1).

15 Ie regulations made under ibid s 3: s 7(b).

16 Ie an Agency inspector exercising powers under ibid s 5 (see PARA 1579 post): s 7(c). 'Agency inspector' means a person designated under the Safeguards Agreement art 85 or the Additional Protocol art 11: Nuclear Safeguards Act 2000 s 1(1).

17 Ibid s 7. As to penalties for offences, and offences by bodies corporate, see PARA 1581 post; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

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1579. Powers of entry and search in relation to Additional Protocol information; rights of access for International Atomic Energy Agency inspectors.

If a justice of the peace is satisfied, on information on oath, that a person served with a notice under the relevant provisions of the Nuclear Safeguards Act 2000¹ has refused to give all or any of the information required by the notice, or has failed to give all or any of that information within the period or at the time required by the notice, and that there are reasonable grounds for believing:

- 4342 (1) that the Secretary of State² is not in possession of all or any of the information which that person has refused or failed to give³; and
- 4343 (2) that a document or other thing containing any of the information⁴ which that person has refused or failed to give and which is not in the possession of the Secretary of State, is to be found on any premises⁵,

he may issue a warrant⁶ authorising an authorised officer⁷ to enter the premises, if necessary by force, at any reasonable hour within one month from the time of issue of the warrant and to search them⁸.

If a justice of the peace is satisfied, on information on oath, that the Secretary of State has specified information, or information of a description, in a notice or in a certificate⁹, and that there are reasonable grounds for believing:

- 4344 (a) that the Secretary of State is not in possession of all or any of the information so specified or all or any information of the description so specified;
- 4345 (b) that a document or other thing containing any of the information so specified or any information of the description so specified is to be found on any premises; and
- 4346 (c) that the document or other thing is likely to be altered, destroyed or otherwise disposed of without all the information so specified or all the information of the description so specified which is contained in it and is not in the possession of the Secretary of State having been given to him,

he may issue a warrant authorising an authorised officer to enter the premises, if necessary by force, at any reasonable hour within one month from the time of issue of the warrant and to search them¹⁰. A person who wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant, or fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a constable for the purpose of facilitating the exercise of such a power, is guilty of an offence¹¹.

If a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under any of the above provisions is to be found on any premises, he may issue a warrant¹² authorising an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the

issue of the warrant and to search them¹³. A person who wilfully obstructs an authorised officer in the exercise of a power conferred by such a warrant or fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a constable for the purpose of facilitating the exercise of such a power is guilty of an offence¹⁴.

International Atomic Energy Agency ('IAEA')¹⁵ inspectors ('Agency inspectors') may exercise the Agency's right¹⁶ in the United Kingdom:

- 4347 (i) of access to locations of a specified description¹⁷, for purposes permitted¹⁸ in relation to locations of that description¹⁹;
- 4348 (ii) of access to locations specified by the Agency²⁰, for the purpose of carrying out wide-area environmental sampling²¹; and
- 4349 (iii) to carry out activities at those locations²².

An Agency inspector may, at any location falling within heads (i) to (iii) above, exercise such rights of access and entry as are required²³ and do anything which the Agency is entitled to do²⁴, but only in accordance with and subject to the specified²⁵ provisions²⁶. An authorised officer may accompany an Agency inspector while he is exercising his powers²⁷ and a constable may give such assistance as an Agency inspector, or an authorised officer accompanying that inspector, may request for the purpose of facilitating the exercise of powers under these provisions²⁸, and may use such reasonable force as he considers necessary for that purpose²⁹. A person who wilfully obstructs an Agency inspector or authorised officer in the exercise of a power under these provisions, fails without reasonable excuse to comply with a reasonable request made by an Agency inspector, an authorised officer or a constable for the purpose of facilitating the exercise of such a power, or interferes without reasonable excuse with anything placed on the land in exercise of such a power, is guilty of an offence³⁰.

1 le under the Nuclear Safeguards Act 2000 s 2(2): see PARA 1578 the text and notes 3-4 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Nuclear Safeguards Act 2000 s 4(1)(a).

4 For these purposes, any reference to information contained in a document or other thing includes a reference to information which may be obtained from that document or other thing: *ibid* s 4(10).

5 *Ibid* s 4(1)(b).

6 The powers conferred by a warrant under *ibid* s 4 are only exercisable, if the warrant so provides, in the presence of a constable: s 4(8).

7 'Authorised officer' means a person authorised by the Secretary of State for the purpose of exercising powers under the Nuclear Safeguards Act 2000: s 1(1).

8 *Ibid* s 4(1).

9 For the purposes of *ibid* s 4(2), there may be specified in a certificate only information, or information of a description, which could be specified in a notice under s 2(2): s 4(3).

10 *Ibid* s 4(2). The powers of an authorised officer who enters premises under the authority of such a warrant include the power (1) to take with him such other persons and such equipment as appear to him to be necessary; (2) to inspect anything found on the premises; (3) to require any information which is held in electronic form and is accessible from the premises to be produced in a form in which he can read and copy it; and (4) to copy, or to seize and remove, any document or other thing which he has reasonable cause to believe is something which contains Additional Protocol information: Nuclear Safeguards Act 2000 s 4(5). A constable entering premises under the authority of a warrant or by virtue of s 4(5)(a) (see head (1) *supra*) may give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under s 4, and may search or cause to be searched any person on the premises who he has reasonable cause to believe may have in his possession any document or other thing which contains Additional Protocol information: s 4(6). No constable may search a person of the opposite sex: s 4(7). For the meaning of 'Additional Protocol information' see PARA 1578 note 2 ante.

11 Ibid s 4(9). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

12 The powers conferred by such a warrant are only exercisable, if the warrant so provides, in the presence of a constable: *ibid* s 8(5).

13 Ibid s 8(1). The powers of an authorised officer to enter the premises under the authority of the warrant include power (1) to take with him such other persons and such equipment as appear to be necessary; (2) to inspect anything found on the premises; (3) to require any information which is held in electronic form and is accessible from the premises to be produced in a form in which he can read and copy it; (4) to copy, or to seize and remove, any document or other thing which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence; and (5) to sample any substance found on the premises which he has reasonable cause to believe may be required as such evidence: s 8(2). A constable entering premises under the authority of a warrant or by virtue of s 8(2)(a) (see head (1) *supra*) may give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under s 8, and may search or cause to be searched any person on the premises who he has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under the 2000 Act: s 8(3). No constable may search a person of the opposite sex: s 8(4).

14 Ibid s 8(6). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

15 As to the IAEA see PARA 1354 *ante*.

16 *Ie* under the Additional Protocol (the Protocol signed at Vienna on 22 September 1998 additional to the Safeguards Agreement). For the meaning of 'the Safeguards Agreement' see PARA 1578 note 2 *ante*.

17 *Ie* a description mentioned in the Additional Protocol art 5.

18 *Ie* by *ibid* art 4 or any other provision.

19 Nuclear Safeguards Act 2000 Act s 5(1)(a).

20 *Ie* for the purposes of the Additional Protocol art 9.

21 Nuclear Safeguards Act 2000 s 5(1)(b) (not in force). 'Wide-area environmental sampling' has the meaning given by the Additional Protocol art 18.g: Nuclear Safeguards Act 2000 s 5(8).

22 Ibid s 5(1)(c).

23 *Ie* for the purposes of the Additional Protocol.

24 *Ie* by virtue of *ibid* art 6 (for a location falling within head (i) in the text) or art 9 (for a location falling within head (ii) in the text): Nuclear Safeguards Act 2000 s 5(2)(b) (text relating to the Additional Protocol art 9 not in force).

25 *Ie* the provisions of the Additional Protocol and the Safeguards Agreement, including any arrangements for managed access made under the Additional Protocol art 7, procedural arrangements for wide-area environmental sampling approved under art 9, or subsidiary arrangements agreed under art 13: Nuclear Safeguards Act 2000 s 5(2) (text from 'procedural arrangements' to 'art 9' not in force). For the purposes of s 5(2), the reference to 'other objective measures' in any paragraph of the Additional Protocol art 6 is to be taken to refer only to measures specified by the Secretary of State in relation to that paragraph in an order made by statutory instrument, and the reference to procedural arrangements for wide-area environmental sampling in art 9 is to be taken to refer only to arrangements specified by the Secretary of State in an order made by statutory instrument: Nuclear Safeguards Act 2000 s 5(3).

26 Ibid s 5(2).

27 Ibid s 5(4).

28 Ibid s 5(5)(a).

29 Ibid s 5(5)(b). If in any proceedings any question arises as to whether a person at any time when purporting to exercise powers under s 5 was or was not an Agency inspector, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question is conclusive evidence of that fact: s 5(6).

30 Ibid s 5(7). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

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1580. Restriction on disclosure.

Where information is obtained by any person under, or in connection with anything done under, the Nuclear Safeguards Act 2000 or the Additional Protocol¹, and that information relates to a particular business or other activity carried on by any person, then so long as the business or activity continues to be carried on the information must not be disclosed except:

- 4350 (1) with the consent of the person for the time being carrying on the business or activity;
- 4351 (2) in connection with anything done for specified purposes²;
- 4352 (3) in connection with the investigation of a criminal offence or for the purposes of criminal proceedings;
- 4353 (4) in connection with the enforcement of a restriction on imports or exports;
- 4354 (5) in dealing with an emergency involving danger to the public; or
- 4355 (6) with a view to ensuring the security of the United Kingdom³.

A person who discloses information in contravention of this restriction is guilty of an offence⁴. However, it is not an offence under these provisions to disclose information which has been previously disclosed to the public otherwise than in contravention of this restriction⁵.

1 For the meaning of 'the Additional Protocol' see PARA 1578 note 2 ante.

2 Ie for the purposes of the Nuclear Safeguards Act 2000, the Additional Protocol or the Safeguards Agreement: Nuclear Safeguards Act 2000 Act s 6(2)(b). For the meaning of 'the Safeguards Agreement' see PARA 1578 note 2 ante.

3 Nuclear Safeguards Act 2000 s 6(1), (2). A disclosure of any information to which s 6 applies may be made in circumstances in which any of heads (1)-(6) in the text prevents there being a contravention of s 6, notwithstanding any obligation as to secrecy or other restriction on disclosure that would otherwise apply: s 6(5).

4 Ibid s 6(3). As to penalties for offences, and offences by bodies corporate, see PARA 1581 post.

5 Ibid s 6(4).

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1581. Penalties for offences; offences by bodies corporate.

A person guilty of an offence under any of the provisions of the Nuclear Safeguards Act 2000 except those relating to the restriction on disclosure or giving false or misleading information¹ is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine²; and a person guilty of an offence under the provisions relating to the restriction on disclosure or giving false or misleading information is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to imprisonment for a term not exceeding two year or a fine, or to both³. Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director⁴, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and may be proceeded against and punished accordingly⁵.

¹ ie under any provision of the Nuclear Safeguards Act 2000 except s 6 (see PARA 1580 ante) or s 7 (see PARA 1578 ante): s 9(1).

² Ibid s 9(1). As to the statutory maximum see PARA 689 note 2 ante.

³ Ibid s 9(2).

⁴ 'Director', in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate: ibid s 9(4).

⁵ Ibid s 9(3). Where an offence under the 2000 Act committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly: s 9(5).

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(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES

(i) Offences and Penalties

1582. Offences relating to atomic energy and nuclear installations.

The contravention of certain provisions of the Atomic Energy Act 1946 and of the Nuclear Installations Act 1965 constitutes an offence¹.

Offences under the 1946 Act concern the failure to supply true information as to certain materials, plant and processes², obstruction of inspectors³, obstruction of or interference with the statutory power to search for minerals⁴, the production and use of atomic energy without a licence⁵, and the disclosure of information as to plant or of information obtained in the exercise of powers under the Act⁶.

Offences under the 1965 Act concern the failure to obtain a nuclear site licence⁷ or a permit⁸ where either is necessary, contravention of any condition attached to a nuclear site licence⁹, failure to post certain documents on the site¹⁰ or pulling down, injuring or defacing documents so posted¹¹, contravention of directions¹², failure to insure against liabilities¹³, failure to report dangerous occurrences¹⁴, and the unauthorised disclosure of information obtained in the exercise of powers under the Act¹⁵.

1 For the meaning of 'contravention' in relation to any provision of the Nuclear Installations Act 1965 see PARA 1487 note 8 ante.

2 See PARA 1566 ante.

3 See PARA 1515 note 9 ante.

4 See PARA 1425 ante.

5 See PARA 1429 ante.

6 See PARA 1571 ante.

7 See PARA 1487 ante.

8 See PARA 1489 ante.

9 See PARA 1492 ante.

10 See note 9 supra.

11 See PARAS 1492, 1494 ante.

12 See PARA 1494 ante.

13 See PARA 1510 ante.

14 See PARA 1499 ante.

15 See PARA 1571 ante.

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1583. Offences in relation to nuclear material and radioactive devices.

If a person, whatever his nationality, does outside the United Kingdom¹, in relation to or by means of nuclear material², any act³ which, had he done it in any part of the United Kingdom, would have made him guilty of certain serious offences⁴, he is in any part of the United Kingdom guilty of such of those offences as are offences of which he would have been guilty had he done the act in that part of the United Kingdom⁵.

If a person, whatever his nationality, in the United Kingdom or elsewhere:

- 4356 (1) receives, holds or deals with nuclear material:
- 411
- 598. (a) intending, or for the purpose of enabling another, to do by means of that material an act which is an offence⁶; or
- 599. (b) being reckless whether another would do such an act⁷; or
- 412
- 4357 (2) makes a threat to another person that he or any other person will do by means of nuclear material such an act as is mentioned in head (1)(a) above and intends the person to whom the threat is made to fear that it will be carried out⁸; or
- 4358 (3) threatens, in order to compel a state, international governmental organisation or person to do, or abstain from doing, any act, that he or any other person will obtain nuclear material by an act which is an offence⁹,

he is guilty of an offence¹⁰.

Proceedings for offences under the Nuclear Material (Offences) Act 1983 which would not otherwise¹¹ be an offence require the consent of the Attorney General¹². Such offences are extradictable¹³.

Her Majesty may by Order in Council make provision for extending these provisions, with such exceptions, adaptations or modifications as may be specified in the order, to any of the Channel Islands, the Isle of Man or any colony¹⁴.

Under the Terrorism Act 2006 a person commits an offence if he makes or has in his possession a radioactive device¹⁵, or he has in his possession radioactive material¹⁶, with the intention of using the device or material in the course of or in connection with the commission or preparation of an act of terrorism or for the purposes of terrorism, or of making it available to be so used¹⁷; and it is irrelevant for these purposes whether the act of terrorism to which an intention relates is a particular act of terrorism, an act of terrorism of a particular description or an act of terrorism generally¹⁸. A person also commits an offence under that Act if:

- 4359 (i) he uses a radioactive device, or radioactive material, in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism¹⁹;
- 4360 (ii) in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism, he uses or damages a nuclear facility²⁰ in a manner

- which causes a release of radioactive material, or creates or increases a risk that such material will be released²¹;
- 4361 (iii) he makes a terrorist threat with regard to a radioactive device, radioactive material or a nuclear facility²².

These offences under the Terrorism Act 2006 are discussed in more detail elsewhere in this work²³.

1 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 'Nuclear material' for the purposes of the Nuclear Material (Offences) Act 1983 means material which, within the meaning of the Convention on Physical Protection of Nuclear Material opened for signature at Vienna and New York on 3 March 1980 (Cmnd 8112) (see PARA 1350 ante) is nuclear material used for peaceful purposes, ie: (1) plutonium except that with isotopic concentration exceeding 80% in plutonium-238; (2) uranium-233; (3) uranium enriched in the isotope 235 or 233; (4) uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; and (5) any material containing one or more of the above: Nuclear Material (Offences) Act 1983 s 6(1), (4), (5), Schedule para (a) (s 6(5) added by the Extradition Act 1989 s 36(9)). 'Uranium enriched in the isotope 235 or 233' means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature: Nuclear Material (Offences) Act 1983 Schedule para (b). If in any proceedings a question arises whether any material was used for peaceful purposes, a certificate issued by or with the authority of the Secretary of State and stating that it was, or was not, so used is conclusive of that question; and a document purporting to be such a certificate is to be taken to be such unless the contrary is proved: s 6(2), (3).

3 The expression 'act' includes omission: *ibid* s 1(2).

4 Ie (1) the offence of murder, manslaughter, culpable homicide, assault to injury, malicious mischief or causing injury, or endangering the life of the lieges, by reckless conduct; or (2) an offence under the Offences against the Person Act 1861 s 18 (as amended) or s 20 (as amended), or the Criminal Damage Act 1971 s 1; or (3) the offence of theft, embezzlement, robbery, assault with intent to rob, burglary or aggravated burglary; or (4) the offence of fraud or extortion or an offence under the Theft Act 1968 s 21 (blackmail): Nuclear Material (Offences) Act 1983 s 1(1)(a)-(d) (amended by the Fraud Act 2006 s 14(1), (3), Sch 1 para 20, Sch 3). As to the offences listed in heads (1)-(4) *supra* see further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

5 Nuclear Material (Offences) Act 1983 s 1(1). An offence under s 1(1) which is committed (whether in the United Kingdom or elsewhere) in relation to or by means of nuclear material is a 'Convention offence' for the purposes of the Terrorism Act 2006: see s 20, Sch 1 para 6(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 384. The Convention referred to is the International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the United Nations General Assembly in April 2005 and opened for signature in New York from 14 September 2005.

6 Ie an offence mentioned in the Nuclear Material (Offences) Act 1983 s 1(1)(a) or (b): see note 4 *supra*.

7 See *ibid* s 2(1), (2)(a), (b).

8 *Ibid* s 2(1), (3)(a), (b).

9 *Ibid* s 2(1), (4).

10 *Ibid* s 2(1). Any person guilty of an offence under s 2 (as amended) is liable on conviction on indictment to imprisonment for life: s 2(5) (substituted by the Terrorism Act 2006 s 14(1)). An offence under s 2 is a 'Convention offence' for the purposes of the Terrorism Act 2006: see s 20, Sch 1 para 6(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 384.

11 Ie apart from the Nuclear Material (Offences) Act 1983 ss 1, 2 (as amended); and disregarding the provisions of the Internationally Protected Persons Act 1978, the Suppression of Terrorism Act 1978, the United Nations Personnel Act 1997 and the Terrorism Act 2000: Nuclear Material (Offences) Act 1983 s 3(1) (amended by the United Nations Personnel Act 1997 s 7, Schedule para 4; the Crime (International Co-operation) Act 2003 s 91(1), Sch 5 paras 7, 8).

12 Nuclear Material (Offences) Act 1983 s 3(1)(a). As to consent for proceedings in Northern Ireland see s 3(1)(b) (prospectively amended by the Justice (Northern Ireland) Act 2002 s 28(2), Sch 7 para 30, as from a day to be appointed under s 87(1); at the date at which this title states the law, no such day had been appointed).

13 See the Extradition Act 2000 s 148(2); and EXTRADITION.

14 Nuclear Material (Offences) Act 1983 s 7(2). Provision has been made by Order in Council for extending certain provisions of the Act to Guernsey, Jersey and the Isle of Man: see the Nuclear Material (Offences) Act 1983 (Guernsey) Order 1991, SI 1991/1717; the Nuclear Material (Offences) Act 1983 (Jersey) Order 1991, SI 1991/1718; and the Nuclear Material (Offences) Act 1983 (Isle of Man) Order 1991, SI 1991/1719.

15 For the meaning of 'radioactive device' see the Terrorism Act 2006 s 9(4), (5); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 444.

16 For the meaning of 'radioactive material' for these purposes see *ibid* s 9(4), (5); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 444.

17 *Ibid* s 9(1).

18 *Ibid* s 9(2). A person guilty of an offence under s 9 is liable, on conviction on indictment, to imprisonment for life: s 9(3).

19 See *ibid* s 10(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 445. A person guilty of an offence under s 10 is liable, on conviction on indictment, to imprisonment for life: s 10(3).

20 For the meaning of 'nuclear facility' for these purposes see *ibid* s 10(4); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 445.

21 See *ibid* s 10(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 445. As to the penalty for such an offence see note 19 *supra*.

22 See *ibid* s 11(1)-(3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 446. A person guilty of an offence under s 11 is liable, on conviction on indictment, to imprisonment for life: s 11(4).

23 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 444-446.

UPDATE

1583 Offences in relation to nuclear material and radioactive devices

TEXT AND NOTES--See also Nuclear Material (Offences) Act 1983 s 1A (ss 1A-1D added by Criminal Justice and Immigration Act 2008 Sch 17 para 3) which increases the penalty for a number of offences committed in relation to nuclear material. The Nuclear Material (Offences) Act 1983 s 1B deals with offences relating to damage to the environment. The Nuclear Material (Offences) Act 1983 s 1C creates the new extraterritorial offences of (without lawful authority) importing or exporting nuclear material or shipping such material as stores. The Nuclear Material (Offences) Act 1983 s 1D applies enforcement and procedural provisions of the Customs and Excise Management Act 1979 to the offence created by the Nuclear Material (Offences) Act 1983 s 1C.

See also Nuclear Material (Offences) Act 1983 s 3A (added by Criminal Justice and Immigration Act 2008 Sch 17 para 5) (application to activities of armed forces).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--Nuclear Material (Offences) Act 1983 s 6 amended and repealed in part: Criminal Justice and Immigration Act 2008 Sch 17 para 6, Sch 28 Pt 5.

NOTE 3--Nuclear Material (Offences) Act 1983 s 1(2) repealed: Criminal Justice and Immigration Act 2008 Sch 17 para 2(4), Sch 28 Pt 5.

TEXT AND NOTE 5--Nuclear Material (Offences) Act 1983 s 1(1) amended: Criminal Justice and Immigration Act 2008 Sch 17 para 2(2).

If (1) a person, whatever his nationality, does outside the United Kingdom an act directed at a nuclear facility, or which interferes with the operation of such a facility, (2) the act causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material, and (3) had he done that act in any part of the United Kingdom, it would have made him guilty of an offence mentioned in s 1(1)(a) or (b), the person will in any part of the United Kingdom be guilty of such of the offences mentioned in s 1(1)(a) and (b) as are offences of which the act would have made him guilty had he done it in that part of the United Kingdom: Nuclear Material (Offences) Act 1983 s 1(1A) (added by Criminal Justice and Immigration Act 2008 Sch 17 para 2(3)).

TEXT AND NOTES 7-10--Nuclear Material (Offences) Act 1983 s 2 substituted: Criminal Justice and Immigration Act 2008 Sch 17 para 4. See further Nuclear Material (Offences) Act 1983 s 2A (added by Criminal Justice and Immigration Act 2008 Sch 17 para 4) (inchoate and secondary offences: extended jurisdiction).

TEXT AND NOTE 14--Nuclear Material (Offences) Act 1983 s 7(2) amended: Criminal Justice and Immigration Act 2008 Sch 17 para 7. SI 1991/1719 replaced: Nuclear Material (Offences) Act 1983 (Isle of Man) Order 2009, SI 2009/3203.

NOTES 18, 19, 22--On convicting a person of an offence under the Terrorism Act 2006 s 9, 10 or 11, the court may make a forfeiture order in respect of the radioactive device, radioactive material or nuclear facility: see s 11A (added by the Counter-Terrorism Act 2008 s 38(3)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(i) Offences and Penalties/1584. Offences under the Radioactive Substances Act 1993.

1584. Offences under the Radioactive Substances Act 1993.

Any person who:

- 4362 (1) contravenes the provisions of the Radioactive Substances Act 1993 concerning the requirements for registration of radioactive material¹ or of mobile radioactive apparatus² or concerning the disposal or accumulation of radioactive waste³; or
- 4363 (2) is registered in respect of radioactive material or mobile radioactive apparatus⁴ or is wholly or partly exempted from such registration⁵, and does not comply with a limitation or condition subject to which he is so registered or exempted; or
- 4364 (3) holds an authorisation in respect of the disposal or accumulation of radioactive waste⁶, and does not comply with any limitation or condition subject to which that authorisation has effect; or
- 4365 (4) is registered as described in head (2) above, or holds an authorisation as described in head (3) above, and fails to comply with any requirement of an enforcement or prohibition notice served on him⁷,

is guilty of an offence⁸. A person guilty of such an offence is liable on summary conviction to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both, and on conviction on indictment to a fine or to imprisonment for a term not exceeding five years, or to both⁹. If the Environment Agency ('the Agency')¹⁰ is of the opinion that proceedings for an offence under head (4) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a notice served on him as described in that head, that Agency may take proceedings in the High Court for the purpose of securing compliance with the notice¹¹.

Any person who:

- 4366 (a) fails to keep posted a certificate of registration or authorisation as required under the Radioactive Substances Act 1993¹², is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine¹³;
- 4367 (b) without reasonable cause pulls down, injures or defaces any document which has been posted in pursuance of the statutory requirements referred to in head (a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale¹⁴;
- 4368 (c) fails to comply with a requirement imposed on him under the provision of that Act concerning the retention or furnishing of copies of records¹⁵, is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or to both¹⁶;
- 4369 (d) makes a statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a

material particular for the purpose of obtaining for himself or another any registration¹⁷, any authorisation¹⁸, any transfer of such an authorisation¹⁹ or any variation of such an authorisation²⁰, is guilty of an offence²¹ and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or to both²²;

- 4370 (e) intentionally makes a false entry in any record which is required to be kept by virtue of a registration²³, an authorisation²⁴ or a transfer of an authorisation²⁵ or which is kept in purported compliance with a condition which must be complied with if a person is to have the benefit of an exemption²⁶, is guilty of an offence²⁷ and liable to the same penalties as a person convicted of an offence under head (d) above²⁸.

Copies of records of convictions under certain provisions of the Act²⁹ must be kept by the Agency³⁰.

Subject to the provisions of the Radioactive Substances Act 1993 relating to the disregarding of radioactivity for certain statutory purposes³¹ and to the provisions of the Interpretation Act 1978 which relate to offences under two or more laws³², nothing in the 1993 Act is to be construed as:

- 4371 (i) conferring a right of action in any civil proceedings, other than proceedings for the recovery of a fine, in respect of any contravention of that Act, or
 4372 (ii) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
 4373 (iii) derogating from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under that Act³³.

1 le the Radioactive Substances Act 1993 s 6: see PARA 1439 ante. For the meaning of 'radioactive material' see PARA 1439 ante.

2 le ibid s 9: see PARA 1445 ante. For the meaning of 'mobile radioactive apparatus' see PARA 1445 note 1 ante.

3 le ibid ss 13, 14: see PARAS 1450, 1452 ante. For the meaning of 'radioactive waste' see PARA 1450 note 3 ante.

4 le under ibid s 7 (as amended) or s 10 (as amended): see PARAS 1442-1448 ante.

5 As to exemption from registration see PARAS 1440-1446 ante.

6 le under ibid s 13 or s 14: see PARAS 1450, 1452 ante.

7 le a notice served under ibid s 21 (as amended) or s 22 (as amended): see PARA 1470 ante.

8 Ibid s 32(1) (amended by the Energy Act 2004 s 75, Sch 15 paras 1, 11).

9 Radioactive Substances Act 1993 s 32(2).

10 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

11 Radioactive Substances Act 1993 s 32(3) (added by the Environment Act 1995 s 120, Sch 22 para 219).

12 As to the requirement to keep such a certificate posted see the Radioactive Substances Act 1993 s 19; and PARAS 1444, 1456 ante.

13 Ibid s 33(1). As to the statutory maximum see PARA 689 note 2 ante.

- 14 Ibid s 33(2). As to the standard scale see PARA 613 note 11 ante.
- 15 Ie a requirement under ibid s 20 (as amended): see PARA 1568 ante.
- 16 Ibid s 33(3).
- 17 See note 4 supra.
- 18 See note 6 supra.
- 19 Ie under the Radioactive Substances Act 1993 s 16A (as added and amended): see PARA 1457 ante.
- 20 Ie under ibid s 17 (as amended): see PARA 1459 ante.
- 21 Ibid s 34A(1) (s 34A added by the Environment Act 1995 s 112, Sch 19 para 6; the Radioactive Substances Act 1993 s 34A(1), (2) amended by the Energy Act 2004 s 75, Sch 15 paras 1, 12). For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.
- 22 Radioactive Substances Act 1993 s 34A(3) (as added: see note 21 supra).
- 23 See note 4 supra.
- 24 See note 6 supra.
- 25 See note 19 supra.
- 26 Ie an exemption under the Radioactive Substances Act 1993 s 8 (as amended) (see PARA 1440 ante), s 11 (see PARA 1446 ante) or s 15 (as amended) (see PARA 1450 ante).
- 27 Ibid s 34A(2) (as added and amended: see note 21 supra).
- 28 See ibid s 34A(3) (as added: see note 21 supra).
- 29 Ie under ibid ss 32, 33 (as amended) (see the text and notes 1-16 supra), s 34 (as amended) (disclosure of trade secrets: see PARA 1571 ante) or s 35 (repealed).
- 30 See ibid s 39(1)(d) (as amended); and PARA 1567 ante.
- 31 Ie ibid s 40 (as amended): see PARA 1463 ante.
- 32 Ie the Interpretation Act 1978 s 18: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272.
- 33 Radioactive Substances Act 1993 s 46.

UPDATE

1584 Offences under the Radioactive Substances Act 1993

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(i) Offences and Penalties/1585. Offences relating to the transfrontier shipment of radioactive waste.

1585. Offences relating to the transfrontier shipment of radioactive waste.

Any person who fails to comply with certain provisions¹ concerning shipments² of radioactive waste³ commits an offence⁴. It is also an offence for a person to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made in purported compliance with a requirement to furnish any information⁵ or for the purpose of obtaining the grant⁶ of any authorisation or approval to, or for the benefit of, himself or any other person⁷.

Where the commission by any person of any such offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of such an offence whether or not proceedings are taken against the first-mentioned person⁸.

Where such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly⁹. Similarly, where the affairs of a body corporate are managed by its members, a member is guilty of an offence and liable to be proceeded against by reason of his acts or defaults as if he were a director of the body corporate¹⁰.

1 Ie the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 6 (requirement for authorisation for shipments of radioactive waste: see PARA 1477 ante), reg 8(2) (requirement to take back certain shipments: see PARA 1481 ante), reg 9(2) (notification of receipt of shipments to the chief inspector: see PARA 1482 ante), reg 10 (requirement for authorisation and approval of shipments: see PARA 1477 ante) and reg 15(1), (2) (documents and receipts: see PARA 1485 ante).

2 For the meaning of 'shipment' see PARA 1477 note 1 ante.

3 For the meaning of 'radioactive waste' see PARA 1477 note 1 ante.

4 Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031, reg 18(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or to both, and on summary conviction to a fine not exceeding the statutory maximum: reg 18(7). As to the statutory maximum see PARA 689 note 2 ante.

5 Ie a requirement imposed by or under any provision of the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031 (see PARA 1477 et seq ante): reg 18(2)(a).

6 Ie under the Transfrontier Shipment of Radioactive Waste Regulations 1993, SI 1993/3031 (see PARA 1477 et seq ante): reg 18(2)(b). As to authorisations and approvals see PARAS 1479, 1483 ante.

7 Ibid reg 18(2). For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

8 Ibid reg 18(3).

9 Ibid reg 18(4).

10 Ibid reg 18(5).

UPDATE

1585 Offences relating to the transfrontier shipment of radioactive waste

TEXT AND NOTES--SI 1993/3031 replaced: Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008, SI 2008/3087.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(i) Offences and Penalties/1586. Consents for prosecutions.

1586. Consents for prosecutions.

Proceedings in respect of an offence under the Atomic Energy Act 1946 relating to the communication of information concerning plants for the production or use of atomic energy¹ cannot be instituted in England or Wales except by or with the consent of the Director of Public Prosecutions². Proceedings in respect of any offence under the Radioactive Substances Act 1993 or certain offences under the Nuclear Installations Act 1965³ cannot be instituted in England and Wales except by the Secretary of State⁴, by the Environment Agency⁵ (in the case of offences under the Radioactive Substances Act 1993), or by or with the consent of the Director of Public Prosecutions⁶.

1 Ie an offence under the Atomic Energy Act 1946 s 11: see PARA 1571 the text and note 4 ante.

2 Ibid s 14(4).

3 Ie any offence under the Nuclear Installations Act 1965 s 2(2) (as amended: see PARA 1489 ante) or s 19(5) (as amended: see PARA 1510 the text and note 14 ante): s 25(3) (amended by the Nuclear Installations Act 1965, etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 5).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 The statutory wording is 'the appropriate Agency'; and the Environment Agency is the appropriate Agency in relation to England and Wales: see PARA 1440 note 8 ante. As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

6 Radioactive Substances Act 1993 s 38(1) (amended by the Environment Act 1995 s 120, Sch 22 para 222); Nuclear Installations Act 1965 s 25(3) (as amended: see note 3 supra). As to proceedings in Northern Ireland see the Radioactive Substances Act 1993 s 38(2); the Nuclear Installations Act 1965 s 27(5) (amended by the Energy Act 2004 s 78(2), (5)). As to consents to prosecutions generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1071-1072.

UPDATE

1586 Consents for prosecutions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(i) Offences and Penalties/1587. Liability of officers and employees of corporate bodies.

1587. Liability of officers and employees of corporate bodies.

Where any offence under the Atomic Energy Act 1946 has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, is deemed to be guilty of that offence unless he proves that it was committed without his consent or connivance and that he exercised all such diligence to prevent its commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances¹.

Where a body corporate is guilty of an offence under any provision of the Radioactive Substances Act 1993 or under certain provisions of the Nuclear Installations Act 1965², and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director³, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly⁴. Similar provision is made with regard to offences under the Nuclear Safeguards Act 2000⁵.

If the commission by any person of an offence under the Radioactive Substances Act 1993 is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person⁶.

1 Atomic Energy Act 1946 s 14(3). See also PARA 1588 note 1 post. As to the criminal liability of bodies corporate see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

2 In the provisions of the Nuclear Installations Act 1965 ss 2(2), 19(5) (as amended) (see PARAS 1489, 1510 ante): s 25(1) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(b), Sch 2 para 5(a)). See also PARA 1588 note 4 post.

3 'Director', in relation to a body corporate established by or under any enactment for the purposes of carrying on under national ownership any industry or part of an industry or undertaking, the affairs of which body are managed by its members, means a member of that body corporate: Radioactive Substances Act 1993 s 36(2); Nuclear Installations Act 1965 s 25(1) (as amended: see note 2 supra).

4 Ibid s 25(1) (as amended: see note 2 supra); Radioactive Substances Act 1993 s 36(1).

5 See the Nuclear Safeguards Act 2000 s 9(3)-(5); and PARA 1581 ante.

6 Radioactive Substances Act 1993 s 37.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(i) Offences and Penalties/1588. Penalties for offences.

1588. Penalties for offences.

All offences under the Atomic Energy Act 1946 are punishable on summary conviction by a term of imprisonment not exceeding three months or a fine not exceeding the prescribed sum, or both, and on conviction on indictment by imprisonment for a term not exceeding five years or a fine, or both¹.

The penalties which may be imposed for offences under the Radioactive Substances Act 1993² and the Nuclear Installations Act 1965³ and other relevant legislation are not uniform and vary according to the nature of the offence⁴, as do the penalties which may be imposed for offences under the Nuclear Safeguards Act 2000⁵.

1 Atomic Energy Act 1946 s 14(1) (amended by virtue of the Criminal Justice Act 1948 s 1(1), (2); the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 613 note 20 ante. Where, however, a person convicted on indictment of such an offence is a body corporate, the provision so limiting the amount of the fine which may be imposed does not apply and the body corporate is liable to a fine of such amount as the court thinks just: Atomic Energy Act 1946 s 14(2). As to offences by bodies corporate see PARA 1587 ante.

2 As to offences under the Radioactive Substances Act 1993 see PARA 1584 ante.

3 As to offences under the Nuclear Installations Act 1965 see PARA 1582 ante.

4 For the penalties applicable under the Radioactive Substances Act 1993 see PARA 1584 ante. Penalties applicable under the Nuclear Installations Act 1965 and other enactments are mentioned in this title wherever the offences giving rise to them are considered. Where a body corporate is convicted on indictment of an offence under s 2(2) (as amended: see PARA 1489 ante) or s 19(5) (as amended: see PARA 1510 ante), so much of the provision in question as limits the amount of the fine which may be imposed does not apply, and the body corporate is liable to a fine of such amount as the court thinks just: s 25(2) (amended by the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974, SI 1974/2056, reg 2(1)(a), Sch 1).

5 For the penalties applicable under the Nuclear Safeguards Act 2000 see PARA 1581 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(ii) Service of Notices/1589. Service of notices under the Atomic Energy Act 1946.

(ii) Service of Notices

1589. Service of notices under the Atomic Energy Act 1946.

Any notice required or authorised by or under the Atomic Energy Act 1946 to be served on any person may be served either (1) by delivering it to that person; or (2) by leaving it, or sending it in a registered letter or by the recorded delivery service to him, at his usual or last known residence or place of business; or (3) in the case of an incorporated company or body, by delivering it to the clerk or secretary at that company's or body's registered or principal office, or by sending it in a registered letter or by the recorded delivery service addressed to him at that office¹. In the case of a notice to be served on an owner, lessee or occupier of land, if it is not practicable after reasonable inquiry to ascertain his name or address, the notice may be served by addressing it to him, by the description of 'owner', 'lessee' or 'occupier' of the land to which it relates, describing the land, and delivering it to some person on the premises or, if there is no such person to whom it may be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises².

1 Atomic Energy Act 1946 s 17(a)-(c); Recorded Delivery Service Act 1962 s 1(1). As to service by post see also the Interpretation Act 1978 s 7.

2 Atomic Energy Act 1946 s 17(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(ii) Service of Notices/1590. Service of notices under the Radioactive Substances Act 1993.

1590. Service of notices under the Radioactive Substances Act 1993.

Any notice required or authorised by or under the Radioactive Substances Act 1993 to be served on or given to any person may be served or given by delivering it to him, or by leaving it at his proper address¹, or by sending it by post to him at that address². In the case of a body corporate, any such notice may be served on or given to the secretary or clerk of that body³; and in the case of a partnership, any such notice may be served on or given to a partner or a person having the control or management of the partnership business⁴.

These provisions apply to the sending or giving of a document as they apply to the giving of a notice⁵.

1 For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (service of documents by post) as it applies to the Radioactive Substances Act 1993 s 41 (see the text and notes 2-5 infra), the proper address of any person on or to whom any such notice is to be served or given is his last known address, except that (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body; (2) in the case of a partnership or person having the control or management of the partnership business, it is the principal office of the partnership: s 41(3)(a), (b). For these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 41(3). If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of heads (1)-(2) supra as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address is also treated for these purposes and for the purposes of the Interpretation Act 1978 s 7 as his proper address: Radioactive Substances Act 1993 s 41(4). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 Ibid s 41(1).

3 Ibid s 41(2)(a).

4 Ibid s 41(2)(b).

5 Ibid s 41(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(9) OFFENCES AND PENALTIES; SERVICE OF NOTICES/(ii) Service of Notices/1591. Service of notices under the Energy Act 2004.

1591. Service of notices under the Energy Act 2004.

The general provision made by the Energy Act 2004 for service of notices¹ has been discussed in an earlier part of this title². Where:

- 4374 (1) that provision authorises the giving or sending of a notification or other document³ by its delivery to a particular person ('the recipient'); and
- 4375 (2) the notification or other document is transmitted to the recipient:
- 413
- 600. (a) by means of an electronic communications network⁴; or
- 601. (b) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible,
- 414

the transmission has effect for the purposes of that Act as a delivery of the notification or other document to the recipient, but only if the relevant statutory requirements⁵ are complied with⁶. Where the recipient is the Nuclear Decommissioning Authority ('the NDA')⁷:

- 4376 (i) it must have indicated its willingness to receive the notification or other document in a manner mentioned in head (2) above;
- 4377 (ii) the transmission must be made in such manner, and satisfy such other conditions, as it may require; and
- 4378 (iii) the notification or other document must take such form as it may require⁸.

Where the person making the transmission is the NDA, it may determine⁹ the manner in which the transmission is made and the form in which the notification or other document is transmitted¹⁰.

1 Ie the Energy Act 2004 s 193: see PARA 739 note 2 ante.

2 See PARA 739 note 2 ante.

3 For the meaning of 'notification' for these purposes see PARA 739 note 2 ante; and for the meaning of 'document' see PARA 733 note 4 ante.

4 For these purposes, 'electronic communications network' has the same meaning as in the Communications Act 2003 (see TELECOMMUNICATIONS vol 97 (2010) PARA 60): Energy Act 2004 s 196(1).

5 Ie the requirements of ibid s 194: see the text and notes 7-10 infra; and PARA 739 note 2 ante.

6 Ibid s 194(1), (2).

7 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

8 Energy Act 2004 s 194(3). An indication, requirement or determination given, imposed or made by the NDA for these purposes is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it: s 194(7).

9 le subject to *ibid* s 194(5); see *PARA 739* note 2 ante.

10 *Ibid* s 194(4). See also note 9 *supra*.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/(i) Functions of the Nuclear Decommissioning Authority/A. PRINCIPAL FUNCTION/1592. Designated responsibilities.

(10) NUCLEAR DECOMMISSIONING

(i) Functions of the Nuclear Decommissioning Authority

A. PRINCIPAL FUNCTION

1592. Designated responsibilities.

The principal function of the Nuclear Decommissioning Authority ('the NDA')¹ is to have responsibility for securing:

- 4379 (1) the operation, pending the commencement of their decommissioning², of designated nuclear installations³;
- 4380 (2) the decommissioning of those and other designated nuclear installations;
- 4381 (3) the cleaning up⁴ of designated nuclear sites⁵;
- 4382 (4) the operation of designated facilities for treating⁶, storing, transporting or disposing of hazardous material⁷;
- 4383 (5) the treatment, storage, transportation and disposal, in designated circumstances, of hazardous material; and
- 4384 (6) the decommissioning of designated installations comprised in NDA facilities⁸.

The responsibilities of the NDA under these provisions are responsibilities to be discharged by the performance of its specified⁹ statutory duties¹⁰.

A designation for these purposes of an installation, site or facility, and of the circumstances in which the NDA is to have responsibility for securing the treatment, storage, transportation or disposal of matter or waste, has¹¹ to be in the form of a direction given by the Secretary of State to the NDA¹². A direction must not, however, give the NDA a responsibility mentioned above in relation to an installation, site or facility unless the person with control¹³ of it at the time when the direction is given is:

- 4385 (a) a Crown appointee¹⁴;
- 4386 (b) the United Kingdom Atomic Energy Authority ('the UKAEA')¹⁵;
- 4387 (c) a publicly owned company¹⁶;
- 4388 (d) the NDA itself; or
- 4389 (e) a person who has consented to the giving of the direction¹⁷.

A direction designating an installation, site or facility must specify the provision or provisions of heads (1) to (6) above for the purposes of which it is being designated¹⁸; but, except in so far as the direction containing the designation otherwise provides, the designation of a principal nuclear site¹⁹ for cleaning up is to have effect for the statutory purposes²⁰ as including a designation, as an installation to be decommissioned, of every installation situated in or on that site²¹.

The Secretary of State must:

- 4390 (i) lay before Parliament a copy of every direction containing a designation;
- 4391 (ii) publish the contents of every such direction in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it; and
- 4392 (iii) send a copy of every direction giving the NDA a responsibility in relation to an installation, site or facility to the person with control of that installation, site or facility²².

He may, however exclude from what he lays before Parliament and publishes under these provisions, and from what is to be laid before the Scottish Parliament by the Scottish Ministers²³, anything the publication of which he considers to be against the interests of national security²⁴.

A direction under the above provisions comes into force at the time which is specified in the direction or determined in accordance with provision contained in it²⁵. A direction giving the NDA responsibilities in relation to an installation, site or facility which is a nuclear installation, a principal nuclear site or a facility situated in or on a principal nuclear site, but is not one in relation to which the NDA is to have a financial responsibility²⁶, may require the person with control of the installation, site or facility to make payments to the Secretary of State²⁷; and the Secretary of State must pay sums so received by him into the Consolidated Fund²⁸. A direction may also impose requirements with respect to the charges which²⁹ are to be imposed by the NDA in connection with the discharge of responsibilities given to the NDA by the direction³⁰.

A direction may³¹ be modified or revoked by a subsequent direction³²; but a direction must not modify or revoke a direction relating to the responsibility of the NDA in relation to an installation, site or facility unless the person with control of the installation, site or facility is, at the time when the modification or revocation comes into force, a person such as is described in heads (a) to (d) above or a person who has consented to the modification or revocation³³.

A direction in so far as it gives the NDA responsibility for the decommissioning of an installation, or for the cleaning up of a principal nuclear site, may be revoked only if the following condition is satisfied³⁴, namely:

- 4393 (A) in the case of a direction given by the Secretary of State, that he is satisfied that the NDA has discharged all its responsibilities in relation to the decommissioning or cleaning up of the installation or site; and
- 4394 (B) in the case of a direction given jointly by the Secretary of State and the Scottish Ministers³⁵, that he and those Ministers are so satisfied³⁶.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

2 'Cleaning up' and 'decommissioning', in relation to a site or installation, includes (1) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and (2) the construction of buildings and other structures to be used in connection with the cleaning up or decommissioning of the site or installation: Energy Act 2004 s 37(1). For the meaning of 'site' see PARA 1420 note 2 ante; for the meaning of 'installation' see PARA 1416 note 8 ante; for the meaning of 'treatment' see note 6 infra; and for the meaning of 'hazardous material' see note 5 infra.

3 'Nuclear installation' means (1) an installation which is situated in or on a principal nuclear site (for the meaning of which see note 19 infra) but is not comprised in an NDA facility (for the meaning of which see note 8 infra); (2) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within head (1) supra; and 'apparatus' includes machinery, equipment, appliances, tanks, containers, pipes and conduits: *ibid* s 37(1). An installation, site or facility is designated for these purposes if (1) it is designated by a direction under s 3 (see the text and notes 4-24 infra); or (2) the NDA

otherwise has responsibilities in relation to it by virtue of such a direction: s 37(1), (2). For the meaning of 'facility' see PARA 1420 note 2 ante.

4 See note 2 supra.

5 For these purposes, 'nuclear site' means a principal nuclear site (see note 19 infra) or a contaminated site: Energy Act 2004 ss 36(1), 37(1). 'Contaminated site' means the whole or a part of a site which is not a principal nuclear site but (1) has been and remains contaminated (whether radioactively or chemically) as a result of nuclear activities; or (2) is the location of hazardous material: ss 36(2), 37(1). 'Hazardous material' means (a) nuclear matter; (b) radioactive waste (within the meaning of the Radioactive Substances Act 1993: see PARA 1450 note 3 ante); and (c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of the Energy Act 2004 s 36) of nuclear activities: ss 37(1), (7), 196(1). 'Nuclear matter' means material which (i) is nuclear matter within the meaning of the Nuclear Installations Act 1965 (see PARA 1492 note 4 ante); or (ii) would be such matter if it did not fall within an exception prescribed by regulations under that Act: Energy Act 2004 ss 37(7), 196(1).

For the purposes of s 36, something is contaminated as a result of nuclear activities if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following: (A) activities carried on in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility; (B) the storage or disposal of any matter or substance in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility; (C) an incident occurring in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility; (D) the discharge of anything from an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility; (E) the transportation of hazardous material to or from a principal nuclear site or an installation or facility in or on such a site; (F) an incident affecting hazardous material being transported to or from a principal nuclear site or an installation or facility in or on such a site: s 36(5).

6 For these purposes, 'treat', in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly: *ibid* s 37(1).

7 For the meaning of 'hazardous material' see note 5 supra.

8 Energy Act 2004 s 3(1). 'NDA facility' means a facility which (1) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and (2) is a facility for the operation of which the NDA has or has had a responsibility: s 37(1).

9 *le* its duties under *ibid* ss 15, 16: see PARA 1602-1603 post.

10 *Ibid* s 3(2).

11 *le* subject to *ibid* s 6 (designations relating to Scotland). A direction under s 3 which gives the NDA responsibilities falling within s 6(2), or removes or varies any such responsibilities, may be given only by the Secretary of State and the Scottish Ministers, acting jointly: s 6(1). The following responsibilities fall within s 6(2): (1) responsibility for the cleaning up of a site in Scotland which is a principal nuclear site without being a licensable site; (2) responsibility for the cleaning up of a contaminated site in Scotland; (3) responsibility for the operation of facilities for treating or storing hazardous material in or on a site in Scotland which is a principal nuclear site without being a licensable site; (4) responsibility for the operation in or on a nuclear site in Scotland of a facility for the disposal of hazardous material; (5) responsibility, in specified circumstances, for the disposal at a site in Scotland of hazardous material; (6) responsibility for the treatment or storage of hazardous material that may, in the discharge of that responsibility, be treated or stored in or on a site in Scotland which is not a licensable site; (7) responsibility for the decommissioning of an installation comprised in NDA facilities that are situated in or on a site in Scotland which is a principal nuclear site without being a licensable site: s 6(2). Before giving a direction under s 3 which (a) gives the NDA responsibilities for the operation in or on a licensable site in Scotland of a facility for the non-processing treatment of hazardous material; (b) gives it responsibilities not falling within s 6(2)(f) (see head (6) supra) for the non-processing treatment or the storage of hazardous material the treatment or storage of which, in the discharge of those responsibilities, may take place in or on a site in Scotland; (c) gives it responsibilities for the operation in or on a licensable site in Scotland of a facility for the storage of hazardous material; or (d) removes or varies any responsibilities mentioned in head (a) or head (c) supra, the Secretary of State must consult the Scottish Ministers: s 6(3). For these purposes, 'licensable site' means a site that falls within PARA (a), (b) or (d) of the definition of a 'principal nuclear site' in s 36(2) (see note 19 infra); and 'non-processing treatment' means treatment that does not consist in the processing or reprocessing of spent or irradiated nuclear fuel: s 6(4).

As to the Secretary of State see PARA 601 note 1 ante.

12 *Ibid* s 3(3).

13 References in *ibid* Pt 1 Ch 1 (ss 1-37, Schs 1-4) (as amended) (see PARAS 1414-1417 *ante*, the text and notes 1-12 *supra*, 14-36 *infra*; and PARA 1593 *et seq post*) to the person with control of an installation, site or facility are references: (1) in the case of a site in relation to which a nuclear site licence is held by a person whose period of responsibility (within the meaning of the Nuclear Installations Act 1965: see PARA 1494 note 7 *ante*) is still current, or a nuclear installation in or on such a site, to that person; (2) in the case of an installation or site which (a) is an installation in or on a site occupied by or on behalf of the Crown or is itself such a site, and (b) is an installation or site in the case of which there is a person appointed by an order made by the Secretary of State to be the person with control, to that person; (3) in the case of a facility which is not an installation to which head (1) or head (2) *supra* applies, but is operated on a single site to which one of those heads does apply, to the person with control of the site; (4) in the case of an installation or facility which is not an installation or facility to which head (1), head (2) or head (3) *supra* applies, but is operated on a single site by a person who (without being the owner of the site) is in occupation of it, to the occupier of the site; (5) in the case of a facility which is operated otherwise than on a single site, to the operator of the facility; (6) in the case of anything in or under the territorial sea adjacent to the United Kingdom, to the Secretary of State; (7) in the case of a site to which none of heads (1)-(6) *supra* applies, to the owner of the site; (8) in the case of an installation or facility to which none of heads (1)-(7) *supra* applies, to the occupier of the site where the installation or facility is located: ss 36(3), 37(1), 196(1). An order for the purposes of s 36(3)(b) (see head (2)(b) *supra*) is subject to the negative resolution procedure: s 36(4). As to the negative resolution procedure see PARA 602 note 2 *ante*. As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

14 'Crown appointee', in relation to an installation, site or facility, means (1) a Minister of the Crown; or (2) a person for the time being holding an appointment under *ibid* s 36(3)(b) (see note 13 *supra*) as the person with control of it: s 37(1).

15 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 *et seq ante*; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 *ante*.

16 For the meaning of 'publicly owned company' see PARA 1412 note 11 *ante*.

17 Energy Act 2004 s 3(4).

18 *Ibid* s 3(5).

19 'Principal nuclear site' means the whole or a part of a site of any of the following descriptions: (1) a site in respect of which a nuclear site licence is or is required to be in force; (2) a site in respect of which such a licence would be required to be in force if the licensing requirements of the Nuclear Installations Act 1965 applied to the Crown; (3) a site not falling within head (1) or head (2) above in or on which there is an NDA facility; (4) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei; (5) a site which has been a site falling within heads (1)-(4) *supra* but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one: Energy Act 2004 ss 37(1), 36(2), 196(1).

20 *Ie* for the purposes of *ibid* Pt 1 Ch 1 (as amended).

21 *Ibid* s 3(6).

22 *Ibid* s 3(7).

23 The Scottish Ministers must lay before the Scottish Parliament a copy of every direction which by virtue of *ibid* s 6 (see note 11 *supra*) is given jointly by them and the Secretary of State: s 3(8).

24 *Ibid* s 3(9).

25 *Ibid* s 5(1), (9).

26 *Ie* under *ibid* s 21: see PARA 1607 *post*.

27 *Ibid* s 5(2). Every amount received by the Secretary of State in pursuance of a requirement under s 5(2) must be shown in the Nuclear Decommissioning Funding Account as a credit: s 31(4)(a). As to that account see PARAS 1612-1613 *post*.

28 *Ibid* s 5(8). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 *et seq*; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

29 *Ie* subject to *ibid* s 21.

- 30 Ibid s 5(3).
- 31 le subject to ibid s 5(5), (6): see the text and notes 33-34 infra.
- 32 Ibid s 5(4).
- 33 Ibid s 5(5).
- 34 Ibid s 5(6).
- 35 See note 11 supra.
- 36 Energy Act 2004 s 5(7).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/(i) Functions of the Nuclear Decommissioning Authority/A. PRINCIPAL FUNCTION/1593. Additional responsibilities under designating directions.

1593. Additional responsibilities under designating directions.

Where the Nuclear Decommissioning Authority ('the NDA')¹ is given a responsibility²:

- 4395 (1) for securing the operation of an installation³ or facility⁴, a direction⁵ may also give the NDA further responsibilities in relation to the management of the site⁶ where that installation or facility is situated⁷;
- 4396 (2) in relation to a principal nuclear site⁸, a direction⁹ may give the NDA further responsibilities in relation to the operation or management of any one or more of the following:
- 415
602. (a) research facilities situated in or on that site;
603. (b) facilities other than research facilities which are situated in or on that site and are neither nuclear installations¹⁰ nor NDA facilities¹¹;
604. (c) other land, whether or not adjacent to that site, which is owned or occupied, together with it, by the person with control¹² of the principal nuclear site; and
605. (d) facilities of any description situated in or on such other land¹³.
- 416

The NDA is not, however, to be given further responsibilities under head (1) or head (2) above except where the Secretary of State¹⁴ considers it appropriate to do so:

- 4397 (i) for the purpose of facilitating the carrying out by the NDA of any of its functions; or
- 4398 (ii) for a purpose otherwise incidental to the carrying out of those functions¹⁵.

Where a direction gives the NDA a responsibility for securing the treatment¹⁶, storage, transportation or disposal of matter or waste, it may also give the NDA responsibility for securing the design, construction and operation of a facility for that purpose¹⁷.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

2 The Energy Act 2004 s 3(4) (see PARA 1592 ante) applies to giving the NDA a responsibility mentioned in s 4 (see the text and notes 3-17 infra) as it applies to giving it a responsibility mentioned in s 3: s 4(5).

3 For the meaning of 'installation' see PARA 1416 note 8 ante.

4 For the meaning of 'facility' see PARA 1420 note 2 ante.

5 Is a direction under the Energy Act 2004 s 3 (see PARA 1592 ante): s 4(6).

6 For the meaning of 'site' see PARA 1420 note 2 ante.

7 Energy Act 2004 s 4(1).

8 For the meaning of 'principal nuclear site' see PARA 1592 note 19 ante.

- 9 See note 5 supra.
- 10 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.
- 11 For the meaning of 'NDA facility' see PARA 1592 note 8 ante.
- 12 For the meaning of 'person with control' see PARA 1592 note 13 ante.
- 13 Energy Act 2004 s 4(2).
- 14 As to the Secretary of State see PARA 601 note 1 ante.
- 15 Energy Act 2004 s 4(3).
- 16 For the meaning of 'treatment' see PARA 1592 note 6 ante.
- 17 Energy Act 2004 s 4(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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B. OTHER FUNCTIONS

1594. Supplemental functions.

In addition to its principal function¹, the Nuclear Decommissioning Authority ('the NDA')² has the function, to the extent that it considers it appropriate to do so, of:

- 4399 (1) carrying out research into matters relating to the decommissioning³ of nuclear installations⁴, the cleaning up⁵ of nuclear sites⁶ and the other activities in relation to which it has functions;
- 4400 (2) promoting the carrying out of research by others into those matters;
- 4401 (3) distributing information about those matters;
- 4402 (4) educating and training persons about those matters;
- 4403 (5) giving encouragement and other support to activities that benefit the social or economic life of communities living near designated⁷ installations⁸, designated sites⁹ or designated facilities¹⁰ or that produce other environmental benefits for such communities¹¹.

The NDA also has the function, to the extent that it is required to do so by the Secretary of State¹², of acting on his behalf in relation to agreements to which he is a party and which relate to expenditure incurred, or to be incurred, by him or by others:

- 4404 (a) on the decommissioning of nuclear installations;
- 4405 (b) on the cleaning up of nuclear sites; or
- 4406 (c) on the treatment¹³, storage, transportation or disposal of hazardous material¹⁴.

Such a requirement of the Secretary of State may require the NDA to meet, in whole or part, the cost of discharging liabilities of his under the agreements in relation to which the NDA acts on his behalf¹⁵.

The NDA's functions further include:

- 4407 (i) to the extent that it is required to do so by the Secretary of State, giving advice to the Secretary of State or to others, whether generally or in relation to a particular installation, site or facility, or particular hazardous material, about any of the things in which the NDA requires an expertise for the purpose of carrying out its functions¹⁶;
- 4408 (ii) to the extent that it is required to do so by the Scottish Ministers, giving advice to them, whether generally or in relation to a particular installation, site or facility, or particular hazardous material, about any of those things so far as they concern Scotland; and
- 4409 (iii) giving to the Secretary of State and the Scottish Ministers such further general advice about the things in which the NDA requires an expertise for the purpose of carrying out its functions as it considers appropriate¹⁷.

It is the duty of the NDA to secure that the discharge of its responsibilities under its principal function¹⁸ is not adversely affected by the doing of anything mentioned in heads (1) to (5) above or by the carrying out of its functions by virtue of head (iii) above¹⁹.

Where the NDA provides advice to the Scottish Ministers in pursuance of a requirement imposed by them under these provisions, and the requirement is not one imposed with the agreement of the Secretary of State, the NDA may charge for the provision of the advice²⁰. The amount of the charge is to be such sum as may be either agreed between the NDA and the Scottish Ministers or, in the absence of agreement, determined by the Secretary of State²¹.

1 le its function under the Energy Act 2004 s 3: see PARA 1592 ante.

2 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

3 For the meaning of 'decommissioning' see PARA 1592 note 3 ante.

4 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.

5 For the meaning of 'cleaning up' see PARA 1592 note 3 ante.

6 For the meaning of 'nuclear site' see PARA 1592 note 5 ante.

7 For the meaning of 'designated' see PARA 1592 note 3 ante.

8 For the meaning of 'installation' see PARA 1416 note 8 ante.

9 For the meaning of 'site' see PARA 1420 note 2 ante.

10 For the meaning of 'facility' see PARA 1420 note 2 ante.

11 Energy Act 2004 s 7(1).

12 As to the Secretary of State see PARA 601 note 1 ante.

13 For the meaning of 'treatment' see PARA 1592 note 6 ante.

14 Energy Act 2004 s 7(2). For the meaning of 'hazardous material' see PARA 1592 note 5 ante.

15 Ibid s 7(3).

16 The references in ibid s 7(4) to the things in which the NDA requires an expertise for the purpose of carrying out its functions include, in particular (1) the operation and decommissioning of nuclear installations; (2) the cleaning up of nuclear sites; and (3) the treatment, storage, transportation and disposal of hazardous material: s 7(5).

17 Ibid s 7(4).

18 le under ibid s 3(1): see PARA 1592 ante.

19 Ibid s 7(6).

20 Ibid s 7(7).

21 Ibid s 7(8).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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1595. Special functions in relation to pensions etc.

The Nuclear Decommissioning Authority ('the NDA')¹ has the function, to the extent that it considers it appropriate to do so, of:

- 4410 (1) establishing schemes for the payment of pensions, allowances or gratuities² to or in respect of one or more different descriptions of relevant employees³;
- 4411 (2) maintaining such schemes, whether or not established by the NDA; and
- 4412 (3) administering a scheme for the payment of compensation in respect of personal injuries or death caused to relevant employees or to others employed in the nuclear industry⁴.

For these purposes, 'relevant employees' means:

- 4413 (a) employees of the United Kingdom Atomic Energy Authority ('the UKAEA')⁵;
- 4414 (b) persons the duties of whose employment with any other person relate, in whole or in part, to activities carried on for purposes connected with the carrying out by the NDA of any of its functions; or
- 4415 (c) a person employed in the nuclear industry who is of such a description as may be designated for these purposes by the Secretary of State⁶;

and before making a designation for the purposes of head (c) above, the Secretary of State must consult the NDA⁷.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

2 For the meaning of references to pensions, allowances or gratuities and their payment see PARA 1396 note 10 ante.

3 As to relevant employees see heads (a)-(c) in the text.

4 Energy Act 2004 s 8(1).

5 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

6 Energy Act 2004 s 8(2). As to the Secretary of State see PARA 601 note 1 ante.

7 Ibid s 8(3).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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(ii) General Duties and Powers of the Nuclear Decommissioning Authority

1596. General duties of the Nuclear Decommissioning Authority when carrying out its functions.

It is the duty of the Nuclear Decommissioning Authority ('the NDA')¹, in carrying out its functions², to have particular regard to each of the following:

- 4416 (1) relevant government policy³;
- 4417 (2) the need to safeguard the environment;
- 4418 (3) the need to protect persons from risks to their health and safety from activities involving the use, treatment⁴, storage, transportation or disposal of hazardous material⁵; and
- 4419 (4) the need to preserve nuclear security⁶.

It is also the duty of the NDA, in carrying out its functions:

- 4420 (a) to promote, and to ensure, the maintenance and development in the United Kingdom⁷ of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
- 4421 (b) to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
- 4422 (c) to secure the adoption of what it considers to be good practice by the persons with control of designated⁸ installations⁹, designated sites¹⁰ and designated facilities¹¹; and
- 4423 (d) subject to heads (1) to (4) and to heads (a) to (c) above, to secure value for money in all its dealings with others¹².

In the carrying out of its functions with respect to the operation of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA, and the management of designated sites, the NDA has the further duty to act in the manner that it considers is most beneficial to the public¹³.

In the case of each designated installation, designated site or designated facility, it is the duty of the NDA, in carrying out its function of giving encouragement and other support to activities that benefit the social or economic life of the communities living near that installation, site or facility or that produce other environmental benefits for those communities¹⁴:

- 4424 (i) to have regard, in particular, to the extent to which the person with control¹⁵ of the installation, site or facility was doing anything done for the purpose of giving encouragement and other support to activities benefiting the social or economic life of communities living near the installation, site or facility, or activities producing other environmental benefits for those communities¹⁶, prior to its designation; and

- 4425 (ii) to consider what obligations in relation to the doing of anything such as is described in head (i) above should be imposed on any person with whom the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to the installation, site or facility, to enter into a contract for that person to provide services¹⁷.

Where the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to a designated installation, designated site or designated facility, to enter into a contract with any person for him to provide any services, it is the duty of the NDA, before entering into that contract:

- 4426 (A) to require that person to produce his proposed strategy for the procurement of the goods and services that he will need to procure for the purpose of carrying out his obligations under the contract; and
- 4427 (B) to consider the likely effect of the implementation of that strategy on the economic life of communities living near the installation, site or facility¹⁸.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

2 As to the functions of the NDA see PARAS 1592-1595 ante.

3 For these purposes, 'relevant government policy' means all current policies which (1) relate to the decommissioning of nuclear installations, the cleaning up of nuclear sites or other activities in relation to which the NDA has functions; and (2) have been published by or on behalf of Her Majesty's Government in the United Kingdom or a devolved administration, have been notified to the NDA by the Secretary of State or have been notified both to the NDA and to the Secretary of State by a devolved administration: Energy Act 2004 s 9(7). 'Devolved administration' means the Scottish Ministers, the National Assembly for Wales or the Welsh Ministers or a department in Northern Ireland: s 9(8). For the meanings of 'cleaning up', 'decommissioning' and 'nuclear installation' see PARA 1592 note 3 ante; and for the meaning of 'nuclear site' see PARA 1592 note 5 ante. As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'treatment' see PARA 1592 note 6 ante.

5 For the meaning of 'hazardous material' see PARA 1592 note 5 ante.

6 Energy Act 2004 s 9(1). In Pt 1 Ch 1 (ss 1-37, Schs 1-4) (as amended) (see PARAS 1394-1397, 1592-1595 ante; the text and notes 1-5 supra, 7-19 infra, and PARA 1597 et seq post), 'nuclear security' means the security of each of the following: (1) nuclear installations and nuclear sites; (2) hazardous material; (3) apparatus and software used or stored in or on a nuclear installation or nuclear site; (4) apparatus and software used in connection with the treatment, storage, transportation or disposal of hazardous material; (5) sensitive nuclear information: ss 9(9), 37(1). 'Sensitive nuclear information' means (a) information relating to a treatment of uranium that increases the proportion of the isotope 235 contained in the uranium; (b) information capable of being used in connection with such a treatment of uranium; (c) information relating to activities carried out in, on or in relation to (i) nuclear installations or nuclear sites, or (ii) hazardous material, which the NDA has been notified by the Secretary of State is information that needs to be protected in the interests of national security; and (d) information about nuclear security: s 9(10). For the meaning of 'apparatus' see PARA 1592 note 3 ante.

7 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

8 For the meaning of 'designated' see PARA 1592 note 3 ante.

9 For the meaning of 'installation' see PARA 1416 note 8 ante.

10 For the meaning of 'site' see PARA 1420 note 2 ante.

11 For the meaning of 'facility' see PARA 1420 note 2 ante.

12 Energy Act 2004 s 9(2).

13 Ibid s 9(3).

14 Ie its function by virtue of ibid s 7(1)(e): see PARA 1594 ante at head (5) in the text.

15 For the meaning of 'person with control' see PARA 1592 note 13 ante.

16 ie anything falling within the Energy Act 2004 s 9(5).

17 Ibid s 9(4), (5).

18 Ibid s 9(6).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (ii) General Duties and Powers of the Nuclear Decommissioning Authority/1597. Powers for carrying out functions.

1597. Powers for carrying out functions.

The Nuclear Decommissioning Authority ('the NDA')¹ has power, for the purpose of carrying out its functions², to do all such things as appear to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out³. The powers of the NDA include, in particular:

- 4428 (1) power to operate electricity generating stations;
- 4429 (2) power to apply for and hold nuclear site licences⁴, registrations under the Radioactive Substances Act 1993⁵ and authorisations under the specified provisions⁶ of that Act;
- 4430 (3) power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities living near designated installations⁷, designated sites⁸ or designated facilities⁹ or that produce other environmental benefits for such communities;
- 4431 (4) power to make grants or loans to persons carrying out research into matters relating to the decommissioning¹⁰ of nuclear installations¹¹, the cleaning up¹² of nuclear sites¹³ or other activities in relation to which the NDA has functions;
- 4432 (5) power to use its facilities, and facilities on designated sites, for the carrying out of research on behalf of others into any matter whatever;
- 4433 (6) power to use those facilities for the carrying on of any activities, in addition to such research, that it considers appropriate for generating funds for application towards the carrying out of its functions;
- 4434 (7) power to delegate to the United Kingdom Atomic Energy Authority ('the UKAEA')¹⁴ the maintenance of any specified pension scheme¹⁵;
- 4435 (8) power itself to do anything that the NDA has a function of securing others to do;
- 4436 (9) power to enter into contracts for others to secure the things that it has a function of securing;
- 4437 (10) power to enter into contracts for others to do anything else that it may do for the purpose of, or in connection with, the carrying out of its functions;
- 4438 (11) power to acquire or establish subsidiaries¹⁶ and to carry out its functions through subsidiaries¹⁷.

The NDA may impose charges in respect of the things that it does or secures in the discharge of its responsibilities:

- 4439 (a) on persons with control¹⁸ of installations, sites and facilities in the case of which it does not have a financial responsibility¹⁹; and
- 4440 (b) on other persons for whom it does or secures the doing of anything for which it does not have a financial responsibility²⁰.

Charges so imposed must not be imposed except in accordance with a designation direction²¹ or with the approval of the Secretary of State²².

- 1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.
- 2 As to the functions of the NDA see PARAS 1592-1595 ante.
- 3 Energy Act 2004 s 10(1).
- 4 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante (definition applied by the Energy Act 2004 s 196(1)).
- 5 Ie under the Radioactive Substances Act 1993 s 7 (as amended): see PARAS 1442-1444 ante.
- 6 Ie under ibid ss 13, 14: see PARAS 1450, 1452 ante.
- 7 For the meaning of 'designated' see PARA 1592 note 3 ante; and for the meaning of 'installation' see PARA 1416 note 8 ante.
- 8 For the meaning of 'site' see PARA 1420 note 2 ante.
- 9 For the meaning of 'facility' see PARA 1420 note 2 ante.
- 10 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.
- 11 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.
- 12 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.
- 13 For the meaning of 'nuclear site' see PARA 1592 note 5 ante.
- 14 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.
- 15 Ie any such scheme as is referred to in the Energy Act 2004 s 8(1)(a), (b): see PARA 1595 ante at heads (1)-(2) in the text.
- 16 For the meaning of 'subsidiary' see PARA 744 note 6 ante.
- 17 Energy Act 2004 ss 10(2), 196(1).
- 18 For the meaning of 'person with control' see PARA 1592 note 13 ante.
- 19 Ie under the Energy Act 2004 s 21: see PARA 1607 post.
- 20 Ibid s 10(3). As to financial responsibility see s 21; and PARA 1607 post.
- 21 Ie a direction under ibid s 3: see PARA 1592 ante.
- 22 Ibid s 10(4). As to the Secretary of State see PARA 601 note 1 ante.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iii) Strategies, Plans and Reports/1598. Nuclear Decommissioning Authority's duty to prepare and revise its strategy for carrying out its functions.

(iii) Strategies, Plans and Reports

1598. Nuclear Decommissioning Authority's duty to prepare and revise its strategy for carrying out its functions.

It is the duty of the Nuclear Decommissioning Authority ('the NDA')¹ to prepare its strategy for carrying out its functions² and from time to time to revise that strategy³.

On the NDA being given a new responsibility for securing the decommissioning⁴ or cleaning up⁵ of an installation⁶ or site⁷, it must consider:

- 4441 (1) whether the objectives and policy already contained in its current strategy apply in the case of that installation or site in a manner that it considers appropriate; and
- 4442 (2) if it considers that they do not, what revision of its strategy is required⁸.

Subject to an exception in the case of certain revisions⁹, a strategy prepared or revised by the NDA has effect only if it is approved by the Secretary of State¹⁰ and, to the extent that it relates to specified responsibilities of the NDA with regard to Scotland¹¹, also by the Scottish Ministers¹². The NDA was to prepare its first strategy, and submit a draft of it for approval, before the end of the 12 months beginning with 31 March 2005¹³. It must carry out and complete a review of its strategy before the end of each review period¹⁴. If, in consequence of such a review, the NDA decides that it is necessary to revise its strategy, it must submit the draft of its proposed revision for approval¹⁵; and if, in consequence of such a review, the NDA decides that it is unnecessary to revise its strategy, it must submit its current strategy for the renewal of the strategy's approval¹⁶. The obligation, following a review, to submit the draft revision of the NDA's strategy prepared in consequence of the review, or the strategy the approval of which is for renewal, is an obligation to submit it as soon as reasonably practicable after the completion of the review¹⁷. The NDA may, however, revise its strategy otherwise than in consequence of a review¹⁸. A revision otherwise than in consequence of a review takes effect without approval except to the extent that it contains modifications of the NDA's strategy which:

- 4443 (a) are likely to require a significant increase over its previous estimate in the money required for giving effect to the strategy;
- 4444 (b) significantly alter the priorities of the NDA as respects different installations or sites; or
- 4445 (c) relate to the objectives of the NDA for an installation or site¹⁹.

Accordingly, the NDA must submit for approval so much of every proposed revision which is made otherwise than in consequence of a review but which involves modifications falling within heads (a) to (c) above²⁰. The persons to whom a submission for approval, or for a renewal of approval, must be made are, in a case where what is submitted contains anything relating to the specified responsibilities of the NDA with regard to Scotland²¹, the Secretary of State and the Scottish Ministers, and in any other case, the Secretary of State²².

Except in the case of a revision made for the purpose only of giving effect to directions²³ given to the NDA²⁴, before preparing a strategy, revising a strategy in a manner requiring approval, or submitting a strategy to have the approval of the strategy renewed, the NDA must consult the following persons²⁵, namely:

- 4446 (i) the Health and Safety Executive²⁶;
- 4447 (ii) the Environment Agency²⁷;
- 4448 (iii) the Scottish Environment Protection Agency;
- 4449 (iv) such persons with responsibilities in relation to nuclear security²⁸ as have been nominated for these purposes by the Secretary of State;
- 4450 (v) every local authority whose area includes a designated²⁹ installation, designated site or designated facility³⁰ or a locality affected by activities at such an installation, site or facility;
- 4451 (vi) every person with control of such an installation, site or facility;
- 4452 (vii) the employees of every such person and the persons appearing to the NDA to represent them; and
- 4453 (viii) every body established either by the NDA, or by a person with control³¹ of a designated installation, designated site or designated facility, for the purpose of consulting persons about activities carried on at, or in connection with, such an installation, site or facility³².

In preparing, reviewing or revising its strategy the NDA must have regard to every representation made to it by or on behalf of such a person, and the representations made to it by members of the public³³.

Where anything is submitted for approval³⁴, or the NDA's current strategy is submitted for the renewal of the strategy's approval, the submission must be accompanied by a report by the NDA of the representations about the contents of its strategy, or of any revision of it, that it received in the course of the preparation of the strategy, or in connection with its proposal to revise it or to have the approval of the strategy renewed³⁵. Before determining whether or not to approve anything relating to certain responsibilities with regard to Scotland³⁶, the Secretary of State must consult the Scottish Ministers³⁷. He must also consult the Scottish Ministers before approving anything relating to proposals for the non-processing treatment³⁸, the storage or the disposal of hazardous materials³⁹ if it appears to him that the proposals would have an effect (notwithstanding that they relate only to England and Wales), on the management of hazardous materials located in Scotland or on the use of a site in England and Wales for the non-processing treatment, the storage or the disposal of hazardous materials that could be brought to that site from Scotland⁴⁰. If the Secretary of State approves a strategy or revised strategy submitted to him under these provisions, and the Scottish Ministers approve it so far as it relates to the specified responsibilities of the NDA with regard to Scotland⁴¹, it takes effect as the approved strategy of the NDA from the time of the giving of the approval⁴². If it is not so approved, the NDA must modify what was submitted and resubmit it for approval to the Secretary of State and (if the case so requires) to the Scottish Ministers⁴³. In preparing a modified strategy or revision for resubmission, the NDA must comply with every direction given to it⁴⁴ with respect to any of the following matters:

- 4454 (A) the NDA's objectives for a particular installation or site or for installations or sites of a particular description;
- 4455 (B) the NDA's strategy with respect to the operation of any particular installation or facility;
- 4456 (C) the period over which decommissioning or cleaning-up work is to be carried out in the case of a particular installation or site or in the case of installations or sites of a particular description;

4457 (D) the amounts to be defrayed by the NDA in a particular period in respect of expenditure on decommissioning or cleaning-up work in the case of a particular installation or site or in the case of installations or sites of a particular description⁴⁵.

The NDA must publish its approved strategy in the manner which, in its opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it⁴⁶; and where it revises that strategy, it must so publish the revised strategy⁴⁷. The Secretary of State must lay before Parliament a copy of anything that the NDA publishes in accordance with these provisions⁴⁸. Where the NDA so publishes a strategy or revised strategy it must, in the same manner, publish a report on the representations it received about what the strategy or revision should contain⁴⁹. The NDA must exclude from what it publishes under these provisions anything that it has been notified by the Secretary of State is a matter the publication of which he considers to be against the interests of national security⁵⁰. The NDA may also exclude from what it publishes anything relating to the private affairs of an individual the publication of which the NDA considers would seriously and prejudicially affect the interests of that individual⁵¹ and anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the NDA considers would seriously and prejudicially affect the interests of that body⁵².

The Secretary of State may by order modify the provisions set out above⁵³.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

2 As to the functions of the NDA see PARAS 1592-1595 ante.

3 Energy Act 2004 s 11(1).

4 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

5 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

6 For the meaning of 'installation' see PARA 1416 note 8 ante.

7 For the meaning of 'site' see PARA 1420 note 2 ante.

8 Energy Act 2004 s 11(2).

9 Ie subject to ibid s 11(3), Sch 2 para 3(6): see the text and note 19 infra.

10 As to the Secretary of State see PARA 601 note 1 ante.

11 Ie responsibilities falling within the Energy Act 2004 s 6(2), which relates to Scotland only: see PARA 1592 note 11 ante.

12 Ibid Sch 2 para 1.

13 Ibid Sch 2 para 2. Section 11 came into force on 31 March 2005: see the Energy Act 2004 (Commencement No 4) Order 2005, SI 2005/442, art 2(2), Sch 2.

14 Ibid Sch 2 para 3(1). For these purposes, 'review period' means (1) the period of five years beginning with the end of the 12 month period mentioned in Sch 2 para 2; or (2) a period of five years beginning with the day after the completion of a review under Sch 2 para 3: Sch 2 para 3(9).

15 Ibid Sch 2 para 3(2).

16 Ibid Sch 2 para 3(3).

17 Ibid Sch 2 para 3(4).

18 Ibid Sch 2 para 3(5).

19 Ibid Sch 2 para 3(6).

- 20 Ibid Sch 2 para 3(7).
- 21 See note 11 supra.
- 22 Energy Act 2004 Sch 2 para 3(8).
- 23 Ie directions under ibid Sch 2 para 5(7): see the text and notes 44-45 infra.
- 24 See ibid Sch 2 para 4(4).
- 25 Ibid Sch 2 para 4(1).
- 26 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 27 As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 28 For the meaning of 'nuclear security' see PARA 1596 note 6 ante.
- 29 For these purposes, references to a designated installation, designated site or designated facility include references to an installation, site or facility designated by a direction which is not yet in force: Energy Act 2004 Sch 2 para 4(5). For the meaning of 'designated' generally see PARA 1592 note 3 ante.
- 30 For the meaning of 'facility' see PARA 1420 note 2 ante.
- 31 For the meaning of 'person with control' see PARA 1592 note 13 ante.
- 32 Energy Act 2004 Sch 2 para 4(2).
- 33 Ibid Sch 2 para 4(3).
- 34 Ie under ibid Sch 2.
- 35 Ibid Sch 2 para 5(1), (2).
- 36 Ie responsibilities mentioned in ibid s 6(3) (which relates to Scotland only): see PARA 1592 note 11 ante.
- 37 Ibid Sch 2 para 5(3).
- 38 For these purposes, 'non-processing treatment' means treatment that does not consist in the processing or reprocessing of spent or irradiated nuclear fuel: ibid s 6(4) (definition applied by Sch 2 para 5(11)).
- 39 For the meaning of 'hazardous material' see PARA 1592 note 5 ante.
- 40 Energy Act 2004 Sch 2 para 5(4).
- 41 See note 11 supra.
- 42 Energy Act 2004 Sch 2 para 5(5).
- 43 Ibid Sch 2 para 5(6).
- 44 The persons by whom directions may be so given are: (1) in the case of directions given by virtue of ibid Sch 2 para 5(7)(a) or (b) (see heads (A)-(B) in the text) in relation to responsibilities of the NDA falling within s 6(2), the Secretary of State and the Scottish Ministers, acting jointly; and (2) in any other case, the Secretary of State: Sch 2 para 5(8). Before giving a direction under Sch 2 para 5(7), the Secretary of State and the Scottish Ministers or (as the case may be) the Secretary of State must consult (a) the NDA; (b) the Health and Safety Executive; (c) the Environment Agency; (d) the Scottish Environment Protection Agency; and (e) such persons with responsibilities in relation to nuclear security as have been nominated for these purposes by the Secretary of State: Sch 2 para 5(9). Nothing in Sch 2 para 5, however, with respect to the giving of directions restricts the grounds on which, or the circumstances in which, the Secretary of State or the Scottish Ministers may refuse approval without giving a direction: Sch 2 para 5(10).
- 45 Ibid Sch 2 para 5(7).
- 46 Ibid Sch 2 para 6(1).

47 Ibid Sch 2 para 6(2).

48 Ibid Sch 2 para 6(3). The Scottish Ministers must lay before the Scottish Parliament a copy of anything that is so published: Sch 2 para 6(3).

49 Ibid Sch 2 para 6(4).

50 Ibid Sch 2 para 6(5).

51 Ibid Sch 2 para 6(6)(a). In determining whether to exclude anything from publication under Sch 2 para 6(6) the NDA must have regard to whether the harm that would be caused by publication is likely to outweigh the benefits: Sch 2 para 6(7).

52 Ibid Sch 2 para 6(6)(b); and see note 51 supra.

53 See *ibid* s 35(1)(b). As to the making of such orders see *PARA 1395* note 14 ante.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see *PARA 1494A*.

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1599. Contents of strategy prepared by the Nuclear Decommissioning Authority.

The strategy prepared in pursuance of the statutory duty to do so¹ must include both:

- 4458 (1) the Nuclear Decommissioning Authority's ('the NDA's')² strategy for decommissioning³ and cleaning up⁴ the installations⁵ and sites⁶ designated⁷ as installations or sites to be decommissioned or cleaned up⁸; and
- 4459 (2) its strategy for the operation of the installations and facilities designated as installations or facilities whose operation it is to secure⁹.

The strategy must set out:

- 4460 (a) the priorities the NDA has adopted with respect to the discharge of its responsibilities;
- 4461 (b) how it proposes to ensure the maintenance and development in the United Kingdom¹⁰ of a skilled workforce able to undertake the work of decommissioning nuclear installations¹¹ and of cleaning up nuclear sites¹²;
- 4462 (c) how it proposes to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
- 4463 (d) its proposals for ensuring the adoption of what it considers to be good practice by the persons with control¹³ of designated installations, designated sites and designated facilities;
- 4464 (e) how it proposes to give encouragement or other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities; and
- 4465 (f) an explanation of how and why it arrived at the decisions and proposals which are set out in the strategy¹⁴.

The strategy must also set out the steps that the NDA proposes to take:

- 4466 (i) for giving appropriate publicity to its responsibilities and strategy;
- 4467 (ii) for explaining them both to persons having a particular interest in matters relating to the carrying out by the NDA of its functions and to the general public;
- 4468 (iii) for ensuring that the NDA is kept informed at all times of the opinions about such matters of persons having such a particular interest; and
- 4469 (iv) for facilitating the communication by such persons of their opinions to the NDA¹⁵.

The Secretary of State may by order modify the provisions set out above¹⁶.

¹ ie the strategy prepared under the Energy Act 2004 s 11: see PARA 1598 ante.

2 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARAS 1592-1595 ante.

3 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

4 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

5 For the meaning of 'installation' see PARA 1416 note 8 ante.

6 For the meaning of 'site' see PARA 1420 note 2 ante.

7 For these purposes, references, in relation to the preparation of a strategy, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which is not yet in force: Energy Act 2004 s 12(9). For the meaning of 'designated' generally see PARA 1592 note 3 ante; and for the meaning of 'facility' see PARA 1420 note 2 ante.

8 Ibid s 12(1)(a). The strategy required by s 12(1)(a) must contain: (1) objectives describing what the NDA intends decommissioning or cleaning up to achieve in the case of different installations and sites; and (2) the NDA's policy as to the means by which it intends those objectives to be achieved: s 12(4). In the case of a site which is to be cleaned up, those objectives must include, in particular, a statement of the condition to which the site needs to be restored: s 12(5). In setting out its policy as to the means of achieving the objectives mentioned in s 12(4), the NDA must describe: (a) the procedure it proposes to adopt for ensuring the preparation, and revision from time to time, of plans for the identification and carrying out of the decommissioning or cleaning-up work that is or continues to be needed in the case of each designated installation or designated site; (b) the manner in which it proposes to secure that the work identified by such plans is carried out in accordance with them; (c) an outline of the work that has been identified as needed in the case of each designated installation or designated site for which plans have been prepared; (d) the period over which that work is to be carried out in the case of each installation or site; and (e) the expenses it expects to incur in respect of the carrying out of the decommissioning and cleaning-up work for which it has a responsibility: s 12(6).

An objective or policy set out in the NDA's strategy may be framed in one or more of the following ways: (i) by reference to a particular installation or site; (ii) by reference to different descriptions of installation or site; (iii) so as to become applicable to an installation or site of a particular description on the NDA being given responsibility for an installation or site of that description: s 12(8).

9 Ibid s 12(1)(b). The strategy required by s 12(1)(b) must set out (1) the expenditure that the NDA expects to incur on the running costs of installations and facilities whose operation it has a responsibility to secure, and on the management of the sites where they are located; (2) capital expenditure that the NDA expects to incur in connection with the discharge of its responsibilities in relation to those installations and facilities, and with the management of those sites; and (3) the income that it considers it is likely to secure from the operation of those installations and facilities and from the management of those sites: s 12(7). See also s 12(8), cited in note 8 supra.

10 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

11 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.

12 For the meaning of 'nuclear site' see PARA 1592 note 5 ante.

13 For the meaning of 'person with control' see PARA 1592 note 13 ante.

14 Energy Act 2004 s 12(2).

15 Ibid s 12(3).

16 See ibid s 35(1)(b). As to the making of such orders see PARA 1395 note 14 ante.

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As to the duty to submit a funded decommissioning programme see PARA 1494A.

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1600. Annual plans of the Nuclear Decommissioning Authority.

The Nuclear Decommissioning Authority ('the NDA')¹ must, for each financial year², prepare a plan:

- 4470 (1) for the carrying out, during that year, of work towards decommissioning³ the installations⁴ designated⁵ as installations to be decommissioned;
- 4471 (2) for the carrying out, during that year, of work towards cleaning up⁶ the sites designated as sites to be cleaned up⁷;
- 4472 (3) for the operation, during that year, of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA⁸; and
- 4473 (4) for the carrying out during that year of its other functions⁹.

The plan must be prepared and, not less than three months before the commencement of the financial year to which it relates, submitted for approval to the Secretary of State¹⁰ or, in a case where it contains anything relating to specified responsibilities of the NDA with regard to Scotland¹¹, to the Secretary of State and the Scottish Ministers¹².

The plan for a financial year:

- 4474 (a) so far as it relates to decommissioning and cleaning up, must set out:
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 - 606. (i) a summary of the decommissioning and cleaning-up work which the NDA is intending should be carried out during that year;
 - 607. (ii) the arrangements that have been made, or are to be made, for securing that agreements for the carrying out of that work are entered into;
 - 608. (iii) the agreements, if any, that have already been entered into for that purpose or under which that work is to be carried out;
 - 609. (iv) an estimate of the expenditure that will be incurred by the NDA during that year in respect of decommissioning or cleaning-up work carried out during that year or previously or in respect of decommissioning and cleaning-up work to be carried out in subsequent years;
 - 610. (v) any proposals to which it intends to give effect during that year that relate to, or will affect, the management of installations or sites designated as installations or sites to be decommissioned or cleaned up; and
 - 611. (vi) the extent to which its plans for the year contribute to the achievement of the objectives set out in its strategy¹³;
- 418 4475 (b) so far as it relates to the operation of installations and facilities, must set out:
419
 - 612. (i) an estimate of the expenditure that will be incurred during that year on the running costs of the installations and facilities and on the management of the sites where they are located;

- 613. (ii) an estimate of the capital expenditure that will be incurred during that year in connection with the discharge of the NDA's responsibilities in relation to those installations and facilities and with the management of those sites;
 - 614. (iii) an estimate of the income it is likely to secure during that year from the operation of the installations and facilities and from the management of those sites; and
 - 615. (iv) any proposals to which the NDA intends to give effect during that year that relate to or will affect the operation of the installations or facilities, or the management of the sites where they are located¹⁴;
- 420
- 4476 (c) so far as it relates to the NDA's other functions, must:
- 421
- 616. (i) set out all the activities of significance that the NDA proposes to carry on during that year in the carrying out of those other functions; and
 - 617. (ii) an estimate of the expenditure that will be incurred in the carrying out of those other functions¹⁵;
- 422
- 4477 (d) must also set out any other matters that the Secretary of State directs the NDA to include in its plan for that year¹⁶.

A plan prepared or revised by the NDA has effect only if it is approved by the Secretary of State and, to the extent that it relates to specified responsibilities of the NDA with regard to Scotland¹⁷, also by the Scottish Ministers¹⁸. The NDA may revise its plan at any time before or during the year to which it relates¹⁹. Before preparing or revising a plan the NDA must consult:

- 4478 (A) the Health and Safety Executive²⁰;
- 4479 (B) the Environment Agency²¹;
- 4480 (C) the Scottish Environment Protection Agency;
- 4481 (D) such persons with responsibilities in relation to nuclear security²² as have been nominated for these purposes by the Secretary of State;
- 4482 (E) every local authority whose area includes a designated²³ installation, designated site or designated facility or a locality affected by activities at such an installation, site or facility;
- 4483 (F) every person with control²⁴ of such an installation, site or facility;
- 4484 (G) the employees of every such person and the persons appearing to the NDA to represent them; and
- 4485 (H) every body established by the NDA, or by a person with control of a designated installation, designated site or designated facility, for the purpose of consulting persons about activities carried on at, or in connection with, such an installation, site or facility²⁵.

In the case of a revision of a plan, however, the Secretary of State may allow the NDA to proceed without consulting one or more of the persons mentioned in heads (A) to (H) above²⁶. In preparing or revising a plan the NDA must have regard to every representation made to it by or on behalf of a person so mentioned and the representations made to it by members of the public²⁷.

Where a draft of the NDA's plan for a financial year, or of a revision of such a plan, is submitted for approval to the Secretary of State, or to the Secretary of State and the Scottish Ministers, the submission must be accompanied by a report by the NDA of the representations about the contents of its plan or revision that it received in the course of its preparation²⁸. Before determining whether or not to approve anything relating to certain responsibilities with regard to Scotland²⁹, the Secretary of State must consult the Scottish Ministers³⁰. The Secretary of State must also consult the Scottish Ministers before approving anything relating to proposals

for the non-processing treatment³¹, the storage or the disposal of hazardous materials³² if it appears to him that the proposals would have an effect, notwithstanding that they relate only to England and Wales, on the management of hazardous materials located in Scotland or on the use of a site in England and Wales for the non-processing treatment, the storage or the disposal of hazardous materials that could be brought to that site from Scotland³³. If the Secretary of State approves what has been submitted to him, and the Scottish Ministers approve it so far as it relates to specified responsibilities of the NDA with regard to Scotland³⁴, it takes effect, in relation to the financial year to which it relates, as an approved plan of the NDA³⁵. If it is not so approved, the NDA must modify what was submitted and resubmit it for approval to the Secretary of State and, if the case so requires, to the Scottish Ministers³⁶. Where the NDA makes modifications of a plan for the purpose of resubmitting it, it must do so in accordance with any directions given to it in relation to any matter other than specified responsibilities of the NDA with regard to Scotland³⁷, by the Secretary of State, or in relation to those responsibilities, by the Secretary of State and the Scottish Ministers, acting jointly³⁸.

The NDA must publish its plan for a financial year in the manner which, in its opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it³⁹; and where it revises that plan, it must so publish the revised plan⁴⁰. The Secretary of State must lay before Parliament a copy of anything that the NDA publishes in accordance with these provisions⁴¹. Where the NDA publishes a plan or revised plan under these provisions it must, in the same manner, publish a report on the representations it received about what the plan or revision should contain⁴². The NDA must exclude from what it publishes under these provisions anything that it has been notified by the Secretary of State is a matter the publication of which he considers to be against the interests of national security⁴³. It may also exclude from what it so publishes anything relating to the private affairs of an individual the publication of which the NDA considers would seriously and prejudicially affect the interests of that individual⁴⁴ and anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the NDA considers would seriously and prejudicially affect the interests of that body⁴⁵.

The Secretary of State may by order modify the provisions set out above⁴⁶.

1 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARAS 1592-1595 ante.

2 For the meaning of 'financial year' see PARA 763 note 17 ante.

3 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

4 For the meaning of 'installation' see PARA 1416 note 8 ante.

5 For these purposes, references, in relation to the preparation of a plan for a financial year, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which is not yet in force but is to come into force during that financial year: Energy Act 2004 s 13(7). For the meaning of 'designated' generally see PARA 1592 note 3 ante; and for the meanings of 'site' and 'facility' see PARA 1420 note 2 ante.

6 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

7 As to designation for these purposes see note 5 supra.

8 See note 7 supra.

9 Energy Act 2004 s 13(1).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 The responsibilities falling within the Energy Act 2004 s 6(2) (which relates to Scotland only): see PARA 1592 note 11 ante.

12 See *ibid* s 13(2).

- 13 Ibid s 13(3).
- 14 Ibid s 13(4).
- 15 Ibid s 13(5).
- 16 Ibid s 13(6).
- 17 See note 11 supra.
- 18 Energy Act 2004 s 11(8), Sch 3 para 1(1).
- 19 Ibid Sch 3 para 1(2).
- 20 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 21 As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 22 For the meaning of 'nuclear security' see PARA 1596 note 6 ante.
- 23 For the purposes of the Energy Act 2004 Sch 3 para 2, references, in relation to the preparation or revision of a plan, to a designated installation, designated site or designated facility include references to an installation, site or facility designated by a direction which (1) is not yet in force; but (2) is to come into force during the year to which the plan relates: Sch 2 para 2(4). For the meaning of 'designated' generally see PARA 1592 note 3 ante.
- 24 For the meaning of 'person with control' see PARA 1592 note 13 ante.
- 25 Energy Act 2004 Sch 3 para 2(1).
- 26 Ibid Sch 3 para 2(2).
- 27 Ibid Sch 3 para 2(3).
- 28 Ibid Sch 3 para 3(1), (2).
- 29 Ie responsibilities mentioned in ibid s 6(3) (which relates to Scotland only): see PARA 1592 note 11 ante.
- 30 Ibid Sch 3 para 3(3).
- 31 For the meaning of 'the non-processing treatment' see PARA 1598 note 38 ante (definition applied by ibid Sch 3 para 3(9)).
- 32 For the meaning of 'hazardous material' see PARA 1592 note 5 ante.
- 33 Energy Act 2004 Sch 3 para 3(4).
- 34 See note 11 supra.
- 35 Energy Act 2004 Sch 3 para 3(5).
- 36 Ibid Sch 3 para 3(6).
- 37 See note 11 supra.
- 38 Energy Act 2004 Sch 3 para 3(7). Before giving such a direction the Secretary of State or (as the case may be) the Secretary of State and the Scottish Ministers must consult (1) the NDA; (2) the Health and Safety Executive; (3) the Environment Agency; (4) the Scottish Environment Protection Agency; and (5) such persons with responsibilities in relation to nuclear security as have been nominated for these purposes by the Secretary of State: Sch 3 para 3(8).
- 39 Ibid Sch 3 para 4(1).
- 40 Ibid Sch 3 para 4(2).

41 Ibid Sch 3 para 4(3). The Scottish Ministers must lay before the Scottish Parliament a copy of anything that is so published: Sch 3 para 4(3).

42 Ibid Sch 3 para 4(4).

43 Ibid Sch 3 para 4(5).

44 Ibid Sch 3 para 4(6)(a). In determining whether to exclude anything from publication under Sch 3 para 4(6) the NDA must have regard to whether the harm that would be caused by publication is likely to outweigh the benefits: Sch 3 para 4(7).

45 Ibid Sch 3 para 4(6)(b); and see note 44 *supra*.

46 See *ibid* s 35(1)(c). As to the making of such orders see PARA 1395 note 14 *ante*.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iii) Strategies, Plans and Reports/1601. Annual reports of the Nuclear Decommissioning Authority.

1601. Annual reports of the Nuclear Decommissioning Authority.

As soon as reasonably practicable after the end of each financial year¹, the Nuclear Decommissioning Authority ('the NDA')² must prepare and send to the Secretary of State³ a report on the discharge of its responsibilities during that year and the carrying out of its other functions⁴. If during the year to which the report relates the NDA has had certain responsibilities with regard to Scotland⁵, it must also send a copy of that report to the Scottish Ministers⁶.

The report must contain:

- 4486 (1) a description of what has been done, during the year to which it relates, towards achieving the NDA's objectives, as set out in the approved strategy⁷ in force during that year;
- 4487 (2) a general description of the work carried out during that year for the purpose of decommissioning⁸ the installations⁹ designated¹⁰ as installations to be decommissioned;
- 4488 (3) a general description of the work carried out during that year for the purpose of cleaning up¹¹ the sites¹² designated as sites to be cleaned up;
- 4489 (4) a report on every change occurring during that year in the identity of persons with control¹³ of designated installations, designated sites and designated facilities¹⁴;
- 4490 (5) a report of every significant change during that year to the contractual arrangements of the NDA that are in force with respect to the carrying out, whether or not during that year, of decommissioning or cleaning-up work;
- 4491 (6) a report on the extent to which the NDA has implemented its plan¹⁵ for that year;
- 4492 (7) a report of the NDA's dealings during that year with the Health and Safety Executive¹⁶, the Environment Agency¹⁷ and the Scottish Environment Protection Agency;
- 4493 (8) a report containing an assessment of the performance in relation to safety and environmental matters of the persons, other than the NDA itself, who have control of designated installations, designated sites and designated facilities;
- 4494 (9) a report of the NDA's dealings during that year with such persons with responsibilities in relation to nuclear security¹⁸ as have been nominated for these purposes by the Secretary of State; and
- 4495 (10) any other matters which the NDA is directed by the Secretary of State¹⁹ to include in that report²⁰.

The report must deal separately with activities relating to the decommissioning of installations or the cleaning up of sites and the NDA's other activities²¹.

The Secretary of State must lay a copy of every report received by him under these provisions before Parliament²² and must also arrange for a copy of the report to be published in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it²³. The Scottish Ministers must lay a copy of every report received by

them under these provisions before the Scottish Parliament²⁴. The Secretary of State may, however, exclude from what he lays before Parliament or arranges to be published under these provisions, and from what is to be laid before the Scottish Parliament by the Scottish Ministers, anything falling within the following descriptions²⁵, namely:

- 4496 (a) anything the publication of which the Secretary of State considers to be against the interests of national security;
- 4497 (b) anything relating to the private affairs of an individual the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that individual; and
- 4498 (c) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that body²⁶.

1 For the meaning of 'financial year' see PARA 763 note 17 ante.

2 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 Energy Act 2004 s 14(1).

5 The responsibilities which either fall within *ibid* s 6(2) or are mentioned in s 6(3) (matters relating to Scotland only): see PARA 1592 note 11 ante.

6 *Ibid* s 14(2).

7 As to the NDA's strategy see PARAS 1598-1599 ante.

8 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

9 For the meaning of 'installation' see PARA 1416 note 8 ante.

10 For the meaning of 'designated' see PARA 1592 note 3 ante.

11 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

12 For the meaning of 'site' see PARA 1420 note 2 ante.

13 For the meaning of 'person with control' see PARA 1592 note 13 ante.

14 For the meaning of 'facility' see PARA 1420 note 2 ante.

15 As to the NDA's annual plan see PARA 1600 ante.

16 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

17 As to the Environment Agency see PARA 1390 ante; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

18 For the meaning of 'nuclear security' see PARA 1596 note 6 ante.

19 Before giving a direction for these purposes, the Secretary of State must consult the Scottish Ministers: Energy Act 2004 s 14(4).

20 *Ibid* s 14(3).

21 *Ibid* s 14(5).

22 *Ibid* s 14(6).

23 *Ibid* s 14(7).

24 Ibid s 14(8).

25 Ibid s 14(9).

26 Ibid s 14(10).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iv) Implementation of Strategies and Plans/1602. Duty to decommission and clean up installations and sites.

(iv) Implementation of Strategies and Plans

1602. Duty to decommission and clean up installations and sites.

Where the Nuclear Decommissioning Authority ('the NDA')¹ has a responsibility for securing the decommissioning² of an installation³ or the cleaning up⁴ of a site⁵, it is the duty of the NDA to take all such steps as it considers appropriate:

- 4499 (1) for securing the implementation in the case of that installation or site of the NDA's approved strategy⁶ for decommissioning and cleaning up;
- 4500 (2) for the achievement of the objectives set out in that strategy that are applicable to that installation or site; and
- 4501 (3) for giving effect in each financial year⁷ to its approved plan⁸ for that year, so far as it relates to the decommissioning of that installation or the cleaning up of that site⁹.

In the case of a designated¹⁰ site which is a contaminated site¹¹, that duty has effect subject to such general and specific directions relating to the manner in which the NDA is to discharge its responsibilities in relation to that site as may be given to it by the Secretary of State¹² or, in the case of a site in Scotland, by the Secretary of State and the Scottish Ministers, acting jointly¹³. The NDA must comply with all such directions¹⁴.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

2 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

3 For the meaning of 'installation' see PARA 1416 note 8 ante.

4 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

5 For the meaning of 'site' see PARA 1420 note 2 ante.

6 As to the NDA's strategy see PARAS 1598-1599 ante.

7 For the meaning of 'financial year' see PARA 763 note 17 ante.

8 As to the NDA's annual plan see PARA 1600 ante.

9 Energy Act 2004 s 15(1), (2).

10 For the meaning of 'designated' see PARA 1592 note 3 ante.

11 For the meaning of 'contaminated site' see PARA 1592 note 5 ante.

12 As to the Secretary of State see PARA 601 note 1 ante.

13 Energy Act 2004 s 15(3).

14 Ibid s 15(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iv) Implementation of Strategies and Plans/1603. Duties to operate installations and to provide treatment etc.

1603. Duties to operate installations and to provide treatment etc.

These provisions apply where the Nuclear Decommissioning Authority ('the NDA')¹ has a responsibility for securing:

- 4502 (1) the operation of a nuclear installation²;
- 4503 (2) the operation of a facility³ for treating⁴, storing, transporting or disposing of hazardous material⁵;
- 4504 (3) the operation of any other facility;
- 4505 (4) the treatment, storage, transportation or disposal, in designated⁶ circumstances, of hazardous material; or
- 4506 (5) the management of any land not comprised in a site⁷ designated as a site to be cleaned up⁸.

That responsibility is an obligation to secure that the installation or facility is operated, the hazardous material is treated, stored, transported or disposed of, or the land is managed, in accordance with general and specific directions⁹. The power to give such directions is exercisable by the Secretary of State¹⁰ or, in relation to any matter connected with specified responsibilities of the NDA with regard to Scotland¹¹, by the Secretary of State and the Scottish Ministers, acting jointly¹².

In discharging that responsibility the NDA must also act:

- 4507 (a) in accordance with the NDA's approved strategy¹³ for the operation of designated installations and designated facilities; and
- 4508 (b) in each financial year¹⁴, in accordance with the NDA's approved plan¹⁵ for that year¹⁶.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

2 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.

3 For the meaning of 'facility' see PARA 1420 note 2 ante.

4 For the meaning of 'treat' see PARA 1592 note 6 ante.

5 For the meaning of 'hazardous material' see PARA 1592 note 5 ante.

6 For the meaning of 'designated' see PARA 1592 note 3 ante.

7 For the meaning of 'site' see PARA 1420 note 2 ante.

8 Energy Act 2004 s 16(1). For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

9 Ibid s 16(2).

10 As to the Secretary of State see PARA 601 note 1 ante.

11 The responsibilities falling within the Energy Act 2004 s 6(2) (which relates to Scotland only): see PARA 1592 note 11 ante.

12 Ibid s 16(3).

13 As to the NDA's strategy see PARAS 1598-1599 ante.

14 For the meaning of 'financial year' see PARA 763 note 17 ante.

15 As to the NDA's annual plan see PARA 1600 ante.

16 Energy Act 2004 s 16(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iv) Implementation of Strategies and Plans/1604. Duty to use installations etc for purposes of the Nuclear Decommissioning Authority.

1604. Duty to use installations etc for purposes of the Nuclear Decommissioning Authority.

The following provisions apply:

- 4509 (1) in the case of every designated¹ nuclear installation² and every designated installation³ comprised in an NDA facility⁴;
- 4510 (2) in the case of every designated site⁵ which is a principal nuclear site⁶; and
- 4511 (3) in the case of every designated facility⁷ situated in or on a principal nuclear site⁸.

The person with control⁹ of the installation, site or facility must secure that neither the installation, site or facility nor any interest or right in relation to it¹⁰ is used or disposed of¹¹ except for purposes which:

- 4512 (a) facilitate the discharge of the Nuclear Decommissioning Authority's ('the NDA's')¹² responsibilities in relation to designated installations, designated sites and designated facilities¹³; and
- 4513 (b) secure that there is no contravention¹⁴, in relation to the discharge of those responsibilities, of any obligations imposed by or under any enactment¹⁵ on the person with control of the installation, site or facility¹⁶;

but this does not prevent the use or disposal of an installation, site or facility where the NDA has consented to that use or disposal¹⁷.

Where the NDA has an interest in the installation, site or facility, the person with control of it has the right, as against the NDA, to use it for the purposes authorised by heads (a) and (b) above and to put it to any use to which the NDA has consented¹⁸. Except where:

- 4514 (i) the NDA otherwise directs; or
- 4515 (ii) the person with control of the installation, site or facility is, has been or will be subject to charges by the NDA in respect of the discharge of its responsibilities in relation to that installation, site or facility,

that person must account for, and pay, to the NDA all sums and other benefits received by him in respect of the use or disposal¹⁹ by him of an interest or right in relation to the installation, site or facility²⁰.

1 For the meaning of 'designated' see PARA 1592 note 3 ante.

2 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.

3 For the meaning of 'installation' see PARA 1416 note 8 ante.

4 For the meaning of 'NDA facility' see PARA 1592 note 8 ante.

5 For the meaning of 'site' see PARA 1420 note 2 ante.

6 For the meaning of 'principal nuclear site' see PARA 1592 note 19 ante.

7 For the meaning of 'facility' see PARA 1420 note 2 ante.

8 Energy Act 2004 s 17(1).

9 For the meaning of 'person with control' see PARA 1592 note 13 ante.

10 For these purposes, a reference to an interest or right in relation to an installation or site includes a reference to any interest or right in relation to (1) anything located in or on the installation or site; (2) a facility operated from the installation or site; (3) a process carried on in or on the installation or site; or (4) information or documents relating to the installation or site or to anything mentioned in heads (1)-(3) supra: Energy Act 2004 s 17(8). For the meaning of 'documents' see PARA 733 note 4 ante.

11 For these purposes, references to the disposal of an interest in a site include references to (1) the granting of an estate or interest in the site, or of a licence to use it; or (2) entering into an agreement to grant such an estate, interest or licence: *ibid* s 17(9).

12 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

13 For these purposes, a reference to facilitating the discharge of the NDA's responsibilities in relation to an installation, site or facility includes a reference to doing anything which is required or authorised by or for the purposes of (1) an agreement between the NDA and the person with control of the installation, site or facility; or (2) an agreement between the NDA and a body corporate of which that person is a subsidiary: Energy Act 2004 s 17(6). For the meaning of 'subsidiary' see PARA 744 note 6 ante.

14 For the meaning of 'contravention' see PARA 761 note 7 ante.

15 For the meaning of 'enactment' see PARA 750 note 9 ante.

16 Energy Act 2004 s 17(2).

17 *Ibid* s 17(3).

18 *Ibid* s 17(4).

19 For these purposes, references to sums received in respect of a disposal of an interest in a site include references to sums that are paid periodically (by way of rent or otherwise) by a tenant or licensee or by a party to such an agreement: *ibid* s 17(9).

20 *Ibid* s 17(5). Nothing in s 17(5) prohibits the inclusion in such an agreement of provision for sums and benefits mentioned in that provision to be accounted for and paid to the NDA in a case falling within s 17(5)(b) (see head (ii) in the text): s 17(7).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (iv) Implementation of Strategies and Plans/1605. Directions by the Nuclear Decommissioning Authority to the person with control.

1605. Directions by the Nuclear Decommissioning Authority to the person with control.

The following provisions apply in every case where one of the following is designated¹:

- 4516 (1) a nuclear installation² or an installation³ comprised in an NDA facility⁴;
- 4517 (2) a principal nuclear site⁵; or
- 4518 (3) a facility⁶ situated in or on a principal nuclear site⁷.

It is the duty of the person with control⁸ of the installation, site or facility:

- 4519 (a) to prepare such plans⁹ for the decommissioning¹⁰ or operation of the installation, for the cleaning up¹¹ or management of the site or for the operation of the facility as the Nuclear Decommissioning Authority ('the NDA')¹² may direct;
- 4520 (b) to prepare such plans for the cleaning up of any related sites¹³ as the NDA may direct;
- 4521 (c) to submit his plans to the NDA for approval;
- 4522 (d) to comply with all such further directions¹⁴ as the NDA may give him from time to time with respect to the installation, site or facility; and
- 4523 (e) to comply with such directions as the NDA may give him for the purpose of securing or facilitating the discharge by the NDA of such of its specified statutory responsibilities¹⁵ as either were conferred on it by reference to the site, installation or facility or fall to be discharged in relation to it, or to anything in or on it¹⁶.

The directions that may be given by the NDA are directions:

- 4524 (i) in the case of an installation or site, requiring the carrying out, pending the preparation and approval of plans required by the NDA, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
- 4525 (ii) requiring the installation, site or facility to be operated or managed, pending the preparation and approval of such plans, in the specified manner;
- 4526 (iii) to modify in the specified manner, and to resubmit, a plan submitted to the NDA for approval, or approved by it, under these provisions;
- 4527 (iv) in the case of an installation or site, requiring the carrying out, pending the preparation and approval of modifications of a plan, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
- 4528 (v) requiring the implementation of a plan that the NDA has approved;
- 4529 (vi) requiring specified transactions to be entered into, and other specified steps to be taken, for the purposes of or in connection with the implementation of such a plan;
- 4530 (vii) requiring the provision to the NDA of all the information that it requires in order to discharge its responsibilities in relation to the installation, site or facility

and in relation to related sites or to enter into an agreement for the purpose of discharging those responsibilities¹⁷.

It is the duty of the person holding the majority of the voting rights¹⁸ in a company¹⁹ with control of the installation, site or facility to comply with such directions as may be given to it by the NDA for the purpose of securing that the company with control of the installation, site or facility complies with its obligations under these provisions²⁰. Directions must not, however, be given by the NDA under these provisions except for the purpose of giving effect to its annual plan²¹ for a particular financial year²² or of otherwise giving effect to its strategy²³ or achieving the objectives set out in that strategy²⁴. Furthermore, a direction under these provisions cannot authorise a contravention²⁵ in relation to an installation, site or facility of any obligation to which the person with control of it is subject by or under an enactment²⁶.

The duty of a person to whom a direction is given under the above provisions to comply with that direction is a duty owed to the NDA, and to no one else²⁷. That duty is to be enforceable by the NDA in civil proceedings for an injunction or for any other appropriate remedy or relief²⁸ and is subject to the obligation of the NDA²⁹ to discharge its financial responsibilities³⁰. A person with control of an installation, site or facility is not to be subject to that duty to the extent that he is relieved of it by the provisions of an agreement between the NDA and that person or between the NDA and a body corporate of which that person is a subsidiary³¹. Furthermore, the Secretary of State may by order provide, in the case of an installation, site or facility the person with control of which is a Crown appointee, that the Crown appointee is not to be subject, to the extent specified in the order, to the duty to comply with directions under the above provisions³².

1 For the meaning of 'designated' see PARA 1592 note 3 ante.

2 For the meaning of 'nuclear installation' see PARA 1592 note 3 ante.

3 For the meaning of 'installation' see PARA 1416 note 8 ante.

4 For the meaning of 'NDA facility' see PARA 1592 note 8 ante.

5 For the meaning of 'principal nuclear site' see PARA 1592 note 19 ante.

6 For the meaning of 'facility' see PARA 1420 note 2 ante.

7 Energy Act 2004 s 18(1).

8 For the meaning of 'person with control' see PARA 1592 note 13 ante.

9 A person required to prepare plans for these purposes must comply with the directions of the NDA as to the persons with whom, and the manner in which, he must consult before preparing the plans, or before submitting them to the NDA for approval: Energy Act 2004 s 18(6).

10 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

11 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

12 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

13 For these purposes, 'related site', in relation to a designated installation, designated site or designated facility, means a site the designation of which specifies, in accordance with the Energy Act 2004 s 19, that it is to be treated, by reference to that installation, site or facility, as a related site for these purposes: s 18(8). For the meaning of 'site' see PARA 1420 note 2 ante.

A direction designating a contaminated site (1) may specify that the site is to be treated for the purposes of s 18 as a related site; and (2) if it does so, must specify the installation, site or facility by reference to which the Secretary of State is satisfied as mentioned in s 19(2)(a) (see head (a) *infra*): s 19(1). A direction must not specify that a site is to be treated as a related site unless (a) the Secretary of State is satisfied that it has

become contaminated (whether radioactively or chemically) as a result of nuclear activities in or on a particular installation, site or facility; (b) that installation, site or facility was at the time of the contamination, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility; (c) the installation, site or facility is also designated (whether by that direction or as a consequence of a previous direction); and (d) the person with control of that installation, site or facility (i) is a Crown appointee, the United Kingdom Atomic Energy Authority ('the UKAEA'), a publicly owned company or the NDA itself; or (ii) has consented to the specification of the installation, site or facility for the purposes of s 19(1)(b) (see head (2) supra): s 19(2). On the giving by the Secretary of State of a direction specifying that a site is to be treated as a related site, he must send a copy of the direction to every person with control of an installation, site or facility by reference to which it is to be so treated: s 19(3). For these purposes, something is contaminated as a result of nuclear activities in or on a particular installation, site or facility if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following (i) activities carried on in or on that installation, site or facility; (ii) the storage or disposal of any matter or substance in or on that installation, site or facility; (iii) an incident occurring in or on that installation, site or facility; (iv) the discharge of anything from that installation, site or facility; (v) the transportation of hazardous material to or from that installation, site or facility; (vi) an incident affecting hazardous material being transported to or from that installation, site or facility: s 19(4).

For the meaning of 'contaminated site' see PARA 1592 note 5 ante; for the meaning of 'Crown appointee' see PARA 1592 note 14 ante; for the meaning of 'publicly owned company' see PARA 1422 note 4 ante; and for the meaning of 'hazardous material' see PARA 1592 note 5 ante. As to the Secretary of State see PARA 601 note 1 ante; as to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

14 le directions falling within ibid s 18(3): see heads (i)-(viii) in the text.

15 le its responsibilities by virtue of ibid s 3(1)(e) (see PARA 1592 ante) or s 4(1), (2) or (4) (see PARA 1593 ante) or any direction under s 16(2) (see PARA 1603 ante): s 18(2)(e).

16 Ibid s 18(2).

17 Ibid s 18(3).

18 For the meaning of references to holding voting rights see PARA 1422 note 4 ante.

19 For the meaning of 'company' see PARA 1422 note 4 ante.

20 Energy Act 2004 s 18(4).

21 le its plan under ibid s 13: see PARA 1600 ante.

22 For the meaning of 'financial year' see PARA 763 note 17 ante.

23 le its strategy under the Energy Act 2004 s 11: see PARA 1598 ante.

24 Ibid s 18(5).

25 For the meaning of 'contravention' see PARA 761 note 7 ante.

26 Energy Act 2004 s 18(7).

27 Ibid s 20(1).

28 See ibid s 20(2)(a), (c). In Scotland, it is enforceable in civil proceedings for specific performance of a statutory duty under the Court of Session Act 1988 s 45: see the Energy Act 2004 s 20(2)(b).

29 le under ibid s 21: see PARA 1607 post.

30 Ibid s 20(3).

31 Ibid s 20(4). For the meaning of 'subsidiary' see PARA 744 note 6 ante.

32 Ibid s 20(5). An order for these purposes is subject to the negative resolution procedure: s 20(6). As to the negative resolution procedure see PARA 602 note 2 ante.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/A. INTRODUCTION/1606. Financial provisions; in general.

(v) Financial Provisions and the Nuclear Decommissioning Funding Account

A. INTRODUCTION

1606. Financial provisions; in general.

The provisions of the Energy Act 2004 with regard to the expenditure and receipts of the Nuclear Decommissioning Authority ('the NDA')¹, borrowing of the NDA² and the NDA's accounts in general³ have already been discussed⁴. Its financial responsibilities⁵ and tax treatment⁶ are discussed below⁷, as is the Nuclear Decommissioning Funding Account⁸.

1 Ie the Energy Act 2004 s 22: see PARA 1398 ante. As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

2 Ie ibid ss 23-25: see PARA 1399 ante.

3 Ie ibid s 26: see PARA 1400 ante.

4 See PARAS 1398-1400 ante.

5 Ie under the Energy Act 2004 s 21: see PARA 1607 post.

6 Ie under ibid ss 27-30, Sch 4: see PARA 1608 et seq post.

7 See PARA 1607 et seq post.

8 As to the Nuclear Decommissioning Funding Account see the Energy Act 2004 ss 31-32: see PARAS 1612-1613 post.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/B. FINANCIAL RESPONSIBILITIES/1607. Financial responsibilities of the Nuclear Decommissioning Authority.

B. FINANCIAL RESPONSIBILITIES

1607. Financial responsibilities of the Nuclear Decommissioning Authority.

The following provisions apply to an installation¹, site² or facility³ which becomes a designated⁴ installation, site or facility at a time when the person with control⁵ of it is:

- 4531 (1) a Crown appointee⁶;
- 4532 (2) the United Kingdom Atomic Energy Authority ('the UKAEA')⁷;
- 4533 (3) a wholly-owned subsidiary⁸ of the UKAEA;
- 4534 (4) any other publicly owned company⁹ which was so owned on 4 July 2002; or
- 4535 (5) a wholly-owned subsidiary of such a company¹⁰.

The Nuclear Decommissioning Authority's ('the NDA's')¹¹ responsibility for securing the decommissioning¹² or operation of an installation or facility to which these provisions apply, or the cleaning up¹³ of a site to which they apply, or of a related site¹⁴, includes the financial responsibility for the decommissioning or operation of the installation or facility, or for the cleaning up¹⁵. Its financial responsibilities under these provisions are in addition to its other financial responsibilities¹⁶.

Where the NDA has financial responsibility for decommissioning, operating or cleaning up an installation, site or facility, and a person other than the NDA is the person with control of it, that other person is not to be, or to be capable of becoming, liable to meet any of the costs of doing the things that are required to be secured by the NDA in the discharge of its responsibilities in relation to that installation, site or facility¹⁷. Accordingly, where the NDA has the financial responsibility in the case of an installation, site or facility:

- 4536 (a) it must not impose charges on the person with control of the installation, site or facility in respect of anything mentioned above¹⁸;
- 4537 (b) it must meet the costs of the doing by that person of anything that he is authorised or required to do by virtue of the statutory duty to use installations etc for the purposes of the NDA¹⁹;
- 4538 (c) it must also meet the costs of the performance by him of his duty to comply with directions given by the NDA²⁰; and
- 4539 (d) that person is not to be required for any purpose to make, or to continue to make, financial provision for meeting costs which fall, by virtue of its financial responsibility, to be met by the NDA²¹.

However, nothing in so much of these provisions as:

- 4540 (i) restricts the extent to which a person is, or may become, liable to meet any costs in relation to a site, installation or facility; or
- 4541 (ii) requires any costs in relation to an installation, site or facility to be reimbursed or otherwise met by the NDA,

is to be construed as restricting the extent to which the person with control of the installation, site or facility may be or become subject, in relation to a person other than the NDA, to the liability or obligation in respect of which the costs arise²².

It is the duty of the NDA, for the purpose of discharging its financial responsibilities, to make all such arrangements as it thinks fit for securing that the person with control of the installation, site or facility is able to meet, as they become due, all his liabilities to persons other than the NDA in respect of matters for which the NDA has financial responsibility or that those liabilities are otherwise discharged²³. It is also the duty of the NDA to make all such arrangements as it thinks fit for securing that amounts paid under these provisions to that person include such sums, if any, as the NDA considers it appropriate to pay by way of incentives to that person to discharge his duty to comply with directions given by the NDA²⁴ in the manner that the NDA thinks most effective²⁵.

The NDA is to be taken to have discharged its responsibility for meeting costs under these provisions if it is satisfied that those costs have been met by another person directly or indirectly out of money provided by Parliament or are to be so met²⁶.

The above provisions have effect in relation to an installation, site or facility subject to the terms of any agreement between the NDA and the person with control of the installation, site or facility or any agreement between the NDA and a body corporate of which that person is a subsidiary²⁷.

1 For the meaning of 'installation' see PARA 1416 note 8 ante.

2 For the meaning of 'site' see PARA 1420 note 2 ante.

3 For the meaning of 'facility' see PARA 1420 note 2 ante.

4 For the meaning of 'designated' see PARA 1592 note 3 ante.

5 For the meaning of 'person with control' see PARA 1592 note 13 ante.

6 For the meaning of 'Crown appointee' see PARA 1592 note 14 ante.

7 As to the United Kingdom Atomic Energy Authority ('the UKAEA') see PARA 1363 et seq ante; and as to the use of the abbreviation 'the UKAEA' in this context see PARA 1363 the text and notes 4-5 ante.

8 For the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

9 For the meaning of 'publicly owned company' see PARA 1412 note 11 ante.

10 Energy Act 2004 s 21(2).

11 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

12 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

13 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

14 For these purposes, 'related site' has the same meaning as in the Energy Act 2004 s 18 (see PARA 1605 note 13 ante): s 21(11).

15 Ibid s 21(1).

16 Ibid s 21(10). As to the other financial responsibilities of the NDA see eg s 8(1)(b) (maintaining pension funds); and PARA 1595 ante; s 13(4) (estimates of expenditure in annual plans); and PARA 1600 ante; s 22(2) (payment of receipts to the Secretary of State); and PARA 1398 ante; s 24 (limits on borrowing); and PARA 1399 ante; s 26 (accounts); and PARA 1400 ante.

17 Ibid s 21(3).

- 18 le anything mentioned in *ibid* s 21(3).
- 19 le by virtue of *ibid* s 17: see PARA 1604 ante.
- 20 le directions under *ibid* s 18: see PARA 1605 ante.
- 21 *Ibid* s 21(4).
- 22 *Ibid* s 21(5).
- 23 *Ibid* s 21(6).
- 24 See note 20 *supra*.
- 25 Energy Act 2004 s 21(7).
- 26 *Ibid* s 21(8).
- 27 *Ibid* s 21(9). For the meaning of 'subsidiary' see PARA 744 note 6 ante.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/C. TAXATION/1608. Tax exemption for Nuclear Decommissioning Authority activities.

C. TAXATION

1608. Tax exemption for Nuclear Decommissioning Authority activities.

For the purposes of corporation tax:

- 4542 (1) trading income¹ arising or accruing to the Nuclear Decommissioning Authority ('the NDA')² or an NDA company³ from the carrying on of exempt activities⁴ is to be disregarded in computing the total profits of the NDA or that company; and
- 4543 (2) trading losses⁵ incurred by the NDA or an NDA company in the carrying on of exempt activities are to be disregarded in determining the amounts that may be set off under the relevant provisions of the Income and Corporation Taxes Act 1988⁶ or surrendered as trading losses for the purposes of the provision of that Act⁷ relating to group relief⁸.

Activities are exempt⁹ if they are activities carried on in connection with anything mentioned in the statutory definition of the NDA's principal function¹⁰ and are specified for these purposes in regulations made by the Treasury¹¹ with the concurrence of the Secretary of State¹². The activities so specified are the operation of designated¹³ facilities for the treatment¹⁴, storage, transportation or disposal of hazardous material¹⁵, carried on for the purpose of thermal oxide reprocessing or mixed oxide manufacture where that reprocessing or manufacture is undertaken at Sellafield in Cumbria¹⁶.

Exempt activities carried on by the NDA, or by a company while it is an NDA company, are to be treated for corporation tax purposes as a separate trade distinct from all other activities carried on by the NDA or, as the case may be, by that company¹⁷. An accounting period¹⁸:

- 4544 (a) of the NDA or of an NDA company ends, if it would not otherwise do so, where it begins to carry on exempt activities, immediately before it begins to carry them on, and where it ceases to carry on such activities, immediately after it so ceases¹⁹;
- 4545 (b) of a company which becomes an NDA company, and is carrying on exempt activities immediately after becoming such a company, ends (if it would not otherwise do so) when it becomes an NDA company²⁰;
- 4546 (c) of a company which ceases to be an NDA company, and is carrying on exempt activities immediately before ceasing to be such a company, ends (if it would not otherwise do so) when it ceases to be an NDA company²¹.

No charges on income incurred by the NDA, or by an NDA company, in connection with the carrying on of exempt activities are to be deductible from its total profits under the provision of the Income and Corporation Taxes Act 1988²² relating to the deduction of charges on income²³.

Where there is a finance lease²⁴ in the case of which:

- 4547 (i) the lessor is the NDA or an NDA company;

- 4548 (ii) the lessee is the NDA or an NDA company;
- 4549 (iii) the lessee is carrying on exempt activities; and
- 4550 (iv) the machinery or plant to which the lease relates is used by the lessee for the purposes of those activities,

no allowance under Part 2 of the Capital Allowances Act 2001²⁵ is to be available to the lessor in respect of qualifying expenditure²⁶ on the provision of the plant or machinery for leasing under the lease²⁷.

An identifiable part of a building or structure used for the purposes of exempt activities carried on by the NDA or an NDA company is to be treated for the purposes of Part 3 of the Capital Allowances Act 2001²⁸ as used otherwise than as an industrial building²⁹.

Where the NDA disposes of the relevant interest in an industrial building³⁰, or an NDA company carrying on exempt activities disposes of the relevant interest in an industrial building, the provisions of the Capital Allowances Act 2001 defining the residue of qualifying expenditure³¹ and providing for the writing off of qualifying expenditure³² apply to determine the residue of expenditure in the hands of the person who acquires the relevant interest as if:

- 4551 (A) exempt activities carried on by the NDA or the NDA company had not been exempt activities; and
- 4552 (B) all writing down allowances, and balancing allowances and charges, had been made as could have been made but for those activities being exempt activities³³.

1 For these purposes, 'trading income', in relation to the Nuclear Decommissioning Authority ('the NDA') or an NDA company, means (subject to the Energy Act 2004 s 27(9)) income which falls or (apart from s 27) would fall to be included (1) in respect of a trade; and (2) as chargeable to tax under the Income and Corporation Taxes Act 1988 s 18(1), (3), Schedule D, Case I (as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 95 et seq) in the total profits for the purposes of corporation tax of the NDA or that company: Energy Act 2004 s 27(8). For the purposes of s 27, income consisting in (a) anything giving rise to a credit that would fall to be brought into account for the purposes of the Finance Act 1996 Pt IV Ch II (ss 80-105) (as amended) (loan relationships: see INCOME TAXATION vol 23(1) (Reissue) PARA 849 et seq); or (b) a credit falling to be brought into account under the Finance Act 2002 s 83, Sch 26 (as amended) (derivative contracts: see INCOME TAXATION), is to be treated as trading income accruing to the NDA or an NDA company from the carrying on of exempt activities to the extent only that it would fall (apart from the Energy Act 2004 s 27) to be taken into account as trading income from a trade consisting in the carrying on of such activities by the NDA or that company: s 27(9). 'Trade' includes every trade, manufacture, adventure or concern in the nature of trade; and 'company' means, subject to the Income and Corporation Taxes Act 1988 s 832(2) (see INCOME TAXATION vol 23(1) (Reissue) PARA 1 note 11), any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association: s 832(1) (definition applied by the Energy Act 2004 s 27(10)). See also notes 2-4 *infra*.

2 As to the establishment and constitution of the NDA see PARAS 1394-1397 *ante*; and as to its functions see PARAS 1592-1595 *ante*.

3 For the purposes of the Energy Act 2004 s 27, Sch 4, 'NDA company' means (1) a company the whole of the ordinary share capital in which is owned directly or indirectly by the NDA; or (2) a company that is a relevant site licensee: s 27(4). A company is a relevant site licensee for these purposes if (a) it is not a company falling within s 27(4)(a) (see head (1) *supra*); (b) it holds a nuclear site licence for a site the whole or part of which is either a designated site or a site in or on which there is a designated installation or designated facility; (c) in a case where there is in force a management contract relating to the whole or a part of the site to which that licence relates, or to an installation or facility in or on that site, the parties to the contract include either (i) the company in question; or (ii) a company which owns directly or indirectly at least 90% of the ordinary share capital of that company; and (d) such further conditions that are required by regulations made by the Treasury to be satisfied have been satisfied: s 27(5). The concurrence of the Secretary of State is required for the making of any regulations under s 27 by the Treasury (s 27(6)); and a statutory instrument containing regulations under s 27 is subject to annulment in pursuance of a resolution of the House of Commons (s 27(7)).

'Ordinary share capital', in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company: Income and Corporation Taxes Act 1988 s 832(1) (definition applied by the Energy Act 2004 s 27(10)). For the meaning of 'nuclear site licence' see PARA 1487 note 1 *ante*.

(definition applied by the Energy Act 2004 s 196(1)); for the meaning of 'designated' see PARA 1592 note 3 ante; for the meanings of 'site' and 'facility' see PARA 1420 note 2 ante; and for the meaning of 'installation' see PARA 1416 note 8 ante. For these purposes, 'owned directly or indirectly' has the same meaning as in the Income and Corporation Taxes Act 1988 s 838 (as amended) (subsidiaries: see INCOME TAXATION vol 23(2) (Reissue) PARA 952), and 'owns directly or indirectly' is to be construed accordingly; and 'management contract' means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities: Energy Act 2004 s 27(8).

The further conditions referred to in s 27(5)(d) (conditions in respect of NDA company which is a relevant site licensee: see head (d) supra) are those in the Energy Act 2004 (Nuclear Decommissioning) (Exempt Activities and Further Conditions) Regulations 2005, SI 2005/644, reg 3(2), (3): reg 3(1). The condition in reg 3(2) is that all the ordinary share capital of the company must have been transferred from the NDA or a wholly owned subsidiary of the NDA ('the original transfer'): reg 3(2). The condition in reg 3(3) is that where (A) a management contract is in force which relates to the whole or part of the site, or to an installation or facility in or on that site, for which a nuclear site licence is in force and which is made between the NDA and the company, or between the NDA and a company which owns, directly or indirectly, at least 90% of the ordinary share capital of the company; or (B) the company has control of a designated installation, site or facility and directions have been given to the company under the Energy Act 2004 s 18(3) (see PARA 1605 ante) in respect of that installation, site or facility, the company's memorandum and articles must be such as to secure that the restrictions imposed by the Energy Act 2004 (Nuclear Decommissioning) (Exempt Activities and Further Conditions) Regulations 2005, SI 2005/644, reg 3(4), (5) will always be met: reg 3(3). The company may not declare dividends on its shares (reg 3(4)); and a transfer of the company's shares (aa) may only be made to the NDA, or a wholly owned subsidiary of the NDA; (bb) must comprise the whole of the company's share capital; and (cc) must be for a consideration which is no greater than that given for the original transfer (reg 3(5)). For the purposes of reg 3(5)(c) (see head (cc) supra), where consideration is given for share capital and for something else besides, a just and reasonable apportionment must be made between the amount given for the share capital and the amount given for the other thing: reg 3(6).

For the meaning of 'designated' for these purposes see note 13 infra.

4 As to what are exempt activities see notes 9-16 infra.

5 For these purposes, 'trading losses', in relation to the NDA or an NDA company, means losses incurred in a trade in respect of which the NDA or that company is or (apart from the Energy Act 2004 s 27) would be within the charge to corporation tax under the Income and Corporation Taxes Act 1988 s 18(1), (3), Schedule D, Case I (as amended): Energy Act 2004 s 27(8).

6 Ie under the Income and Corporation Taxes Act 1988 s 393 (as amended) or s 393A (as added and amended): see INCOME TAXATION vol 23(1) (Reissue) PARA 864.

7 Ie for the purposes of ibid s 403 (as substituted and amended): see INCOME TAXATION vol 23(2) (Reissue) PARA 961.

8 Energy Act 2004 s 27(1).

9 Ie for the purposes of ibid s 27, Sch 4.

10 Ie anything mentioned in ibid s 3(1): see PARA 1592 ante.

11 Ibid s 27(3).

12 See ibid s 27(6). As to the making of such regulations see note 3 supra.

13 For these purposes, 'designated' means designated by means of a direction given by the Secretary of State to the NDA under ibid s 3(3) (see PARA 1592 ante): Energy Act 2004 (Nuclear Decommissioning) (Exempt Activities and Further Conditions) Regulations 2005, SI 2005/644, reg 1(2).

14 For the meaning of 'treatment' see PARA 1592 note 6 ante (definition applied by ibid reg 1(2)).

15 For the meaning of 'hazardous material' see PARA 1592 note 5 ante (definition applied by ibid reg 1(2)).

16 Ibid reg 2.

17 Energy Act 2004 s 27(2), Sch 4 para 1.

18 For these purposes, 'accounting period' is to be construed in accordance with the Income and Corporation Taxes Act 1988 s 12 (as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 837): s 838(1) (definition applied by the Energy Act 2004 s 27(10)).

19 Ibid Sch 4 para 2(1).

20 Ibid Sch 4 para 2(2).

21 Ibid Sch 4 para 2(3).

22 Ie under the Income and Corporation Taxes Act 1988 s 338 (as substituted): see INCOME TAXATION vol 23(1) (Reissue) PARA 863.

23 Energy Act 2004 Sch 4 para 3.

24 For these purposes, 'finance lease' means any arrangements (1) which provide for plant or machinery to be leased or otherwise made available by a person ('the lessor') to another person ('the lessee'); and (2) which, under generally accepted accounting practice either fall (or would fall) to be treated, in the accounts of the lessor or a person connected with the lessor, as a finance lease or a loan, or are comprised in arrangements which fall (or would fall) to be so treated, and which are not a long funding lease in the case of the lessor: Capital Allowances Act 2001 s 219(1) (amended by the Finance Act 2002 s 103(4)(g); the Finance Act 2006 s 81(2), Sch 9 para 14(1), (2)) (definition applied by the Energy Act 2004 Sch 4 para 4(3)). For the purposes of that definition, 'accounts', in relation to a company, includes any accounts which relate to two or more companies of which that company is one, and are drawn up in accordance with generally accepted accounting practice: Capital Allowances Act 2001 s 219(2) (amended by the Finance Act 2005 s 80(1), Sch 4 Pt 2 para 33) (definition as so applied).

25 Ie under the Capital Allowances Act 2001 Pt 2 (ss 11-270) (as amended) (plant and machinery allowances): see INCOME TAXATION vol 23(1) (Reissue) PARA 296 et seq.

26 As to qualifying expenditure see ibid Pt 2 Ch 3 (ss 21-38) (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 298 et seq.

27 Energy Act 2004 Sch 4 para 4(1), (2).

28 Ie the Capital Allowances Act 2001 Pt 3 (ss 271-360) (industrial buildings allowances): see INCOME TAXATION vol 23(1) (Reissue) PARA 376 et seq.

29 Energy Act 2004 Sch 4 para 5.

30 For these purposes, references to the NDA or an NDA company disposing of a relevant interest in an industrial building include references to the transfer in accordance with a nuclear transfer scheme of such an interest (1) from the NDA or that company; (2) to a person who is neither the NDA nor an NDA company: ibid Sch 4 para 6(4). For the meaning of 'nuclear transfer scheme' see PARA 1402 ante. 'Relevant interest' and 'industrial building' have the same meanings as in the Capital Allowances Act 2001 Pt 3: Energy Act 2004 Sch 4 para 6(3).

31 Ie the Capital Allowances Act 2001 s 313: see INCOME TAXATION vol 23(1) (Reissue) PARA 391.

32 Ie ibid Pt 3 Ch 8 (ss 332-340): see INCOME TAXATION vol 23(1) (Reissue) PARA 396.

33 Energy Act 2004 Sch 4 para 6(1), (2).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/C. TAXATION/1609. Taxation of Nuclear Decommissioning Authority activities chargeable under Case VI of Schedule D.

1609. Taxation of Nuclear Decommissioning Authority activities chargeable under Case VI of Schedule D.

For the purposes of the Corporation Tax Acts¹ so much of any activity of the Nuclear Decommissioning Authority ('the NDA')² as is an activity the profits and gains from which would otherwise be chargeable to tax under Case VI of Schedule D³, and is not excluded from the operation of these provisions⁴, is to be treated as an activity carried on by it as part of a trade⁵ in respect of which it is within the charge to tax under Case I of Schedule D⁶. Any activity is, however, excluded from the operation of these provisions if:

- 4553 (1) it is carried on by the NDA otherwise than in connection with something mentioned in head (a), head (b) or head (c) below⁷, namely:
- 423
- 618. (a) the operation, pending the commencement of their decommissioning⁸, of designated nuclear installations⁹;
- 619. (b) the operation of designated facilities¹⁰ for treating¹¹, storing, transporting or disposing of hazardous material¹²;
- 620. (c) the treatment, storage, transportation and disposal, in designated circumstances, of hazardous material¹³; and
- 424
- 4554 (2) the profits and gains from it would, in the NDA's case, be chargeable to tax under Case VI of Schedule D by virtue of an enactment¹⁴ other than just the relevant provision¹⁵ of the Income and Corporation Taxes Act 1988¹⁶.

All activities treated under these provisions as carried on by the NDA as part of a trade are to be treated as carried on as part of the same trade and may be treated as carried on as part of another trade carried on by the NDA¹⁷; but this is subject to any other provision made by or under the Corporation Tax Acts that requires an activity to be treated as carried on as part of a separate trade (with or without any other activity)¹⁸.

1 'The Corporation Tax Acts' means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating to income tax): Interpretation Act 1978 s 5, Sch 1 (definition substituted by the Finance Act 1987 s 71, Sch 15 para 12).

2 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

3 I.e. under the Income and Corporation Taxes Act 1988 s 18(1), (3) Schedule D, Case VI (as amended): see INCOME TAXATION vol 23(1) (Reissue) PARA 560 et seq.

4 I.e. excluded by the Energy Act 2004 s 28(2): see the text and notes 7-16 infra.

5 For the meaning of 'trade' see PARA 1608 note 1 (definition applied by ibid s 28(5)).

6 Ibid s 28(1). As to the charge to tax under the Income and Corporation Taxes Act 1988 s 18(1), (3), Schedule D, Case I (as amended) see INCOME TAXATION vol 23(1) (Reissue) PARA 95 et seq.

- 7 le something mentioned in the Energy Act 2004 s 3(1)(a), (d) or (e): see PARA 1592 ante.
- 8 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.
- 9 See the Energy Act 2004 s 3(1)(a). For the meanings of 'designated' and 'nuclear installation' see PARA 1592 note 3 ante.
- 10 For the meaning of 'facility' see PARA 1420 note 2 ante.
- 11 For the meaning of 'treat' see PARA 1592 note 6 ante.
- 12 See the Energy Act 2004 s 3(1)(d). For the meaning of 'hazardous material' see PARA 1592 note 5 ante.
- 13 See *ibid* s 3(1)(e).
- 14 For the meaning of 'enactment' see PARA 750 note 9 ante.
- 15 le other than just the Income and Corporation Taxes Act 1988 s 18 (as amended).
- 16 Energy Act 2004 s 28(2).
- 17 *Ibid* s 28(3).
- 18 *Ibid* s 28(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/C. TAXATION/1610. Disregard for tax purposes of cancellation etc of provisions.

1610. Disregard for tax purposes of cancellation etc of provisions.

Where:

- 4555 (1) a relevant provision¹ is recognised in the accounts of a BNFL company² in accordance with generally accepted accounting practice³;
- 4556 (2) that provision:
- 425
621. (a) relates to decommissioning⁴ or cleaning up⁵ which the Nuclear Decommissioning Authority ('the NDA')⁶ acquires or has acquired responsibility for securing by virtue of a direction given by the Secretary of State⁷; but
622. (b) is not provision recognised in order to reflect the terms or effect of a management contract⁸ between the company and the NDA; and
- 426
- 4557 (3) the responsibility referred to in head (2)(a) above either includes the statutory financial responsibility⁹ or would do so but for the fact that the amount of the financial responsibility is for the time being subject to a limit imposed by a capping agreement¹⁰,

then in computing the profits, gains or losses of the company for the purposes of corporation tax, no amount is to be brought into account in respect of a credit or debit to which heads (i) to (iii) below apply¹¹. Those heads apply to a credit or debit if it arises from:

- 4558 (i) the recognition in the accounts of the company for a relevant period¹² beginning on or after 1 April 2005 of either the relevant provision, or an asset that, in accordance with generally accepted accounting practice, is recognised in connection with the relevant provision in order to reflect the acquisition of financial responsibility referred to in heads (1) to (3) above (a 'matching asset');
- 4559 (ii) an adjustment made in the accounts of the company for such a period of the relevant provision, or of a matching asset; or
- 4560 (iii) the removal from the accounts of the company for such a period of the relevant provision, a matching asset, or an asset or liability recognised in order to reflect the terms or effect of a contract such a contract as is described below¹³, namely a contract:
- 427
623. (A) which is a contract made before 1 April 2005 and having effect between two or more BNFL companies under which a party to the contract assumed responsibility for securing decommissioning or cleaning up; and
624. (B) the rights and obligations under which are extinguished by reason of a transfer made under a nuclear transfer scheme¹⁴.
- 428

Where a company ceases to be publicly owned otherwise than at the end of an accounting period, the accounting period during which it ceases to be publicly owned is treated for the

purposes of corporation tax as ending when it so ceases¹⁵ and its profits and losses are to be computed accordingly for those purposes¹⁶.

1 For these purposes, 'relevant provision' means a provision for liabilities or charges as defined in the Companies Act 1985 Sch 4 para 89 (as amended; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 15 (2009) PARA 730); Energy Act 2004 s 29(5).

2 For these purposes, 'BNFL company' means (1) the nuclear fuels company ('BNFL'); (2) a company that immediately before 1 April 2005 was a wholly-owned subsidiary of BNFL; or (3) a wholly-owned subsidiary of a company falling within head (2) supra: *ibid* ss 29(5), 196(1) (definition in s 29(5) substituted by the Finance Act 2006 s 99(1), (4)(a)). As to BNFL see PARA 1377 note 5 ante; and for the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

3 'Generally accepted accounting practice' has the meaning given by the Finance Act 2004 s 50(1) (as amended) (ie (1) in relation to the affairs of a company or other entity that prepares accounts in accordance with international accounting standards ('IAS accounts'), generally accepted accounting practice with respect to such accounts; (2) in any other case, United Kingdom generally accepted accounting practice: Income and Corporation Taxes Act 1988 s 832(1) (definition added by the Finance Act 2002 s 103(1), (6); amended by the Finance Act 2004 s 50(5)(a); applied by the Energy Act 2004 s 29(6)).

4 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

5 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

6 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante; and as to its functions see PARAS 1592-1595 ante.

7 *Ie* a direction under the Energy Act 2004 s 3: see PARA 1592 ante. As to the Secretary of State see PARA 601 note 1 ante.

8 For the meaning of 'management contract' see PARA 1608 note 3 ante (definition applied by *ibid* s 29(5) (amended for this purpose by the Finance Act 2006 s 99(1), (4)(b)).

9 *Ie* the financial responsibility under *ibid* s 21: see PARA 1607 ante.

10 For these purposes, 'capping agreement' means an agreement under *ibid* s 21(9), entered into on 1 April 2005, the sole or main effect of which is to impose a limit on the NDA's financial responsibility under s 21: s 29(5) (definition added by the Finance Act 2006 s 99(1), (4)(b)).

11 Energy Act 2004 s 29(1), (2) (amended by the Finance Act 2006 s 99(1), (2)).

12 For these purposes, 'relevant period', in relation to a company, means an accounting period during the whole of which the company is publicly owned: Energy Act 2004 s 29(5) (definition added by the Finance Act 2006 s 99(1), (4)(c)). For the meaning of 'accounting period' see PARA 1608 note 18 ante (definition applied by the Energy Act 2004 s 29(6)); and as to when a body corporate is a publicly owned company see PARA 1412 note 11 ante.

13 Energy Act 2004 s 29(3) (s 29(3) substituted, and s 29(3A) added, by the Finance Act 2006 s 99(1), (3)).

14 Energy Act 2004 s 29(3A) (as added: see note 13 supra). For the meaning of 'nuclear transfer scheme' see PARA 1402 ante.

15 *Ibid* s 29(5A)(a) (s 29(5A) added by the Finance Act 2006 s 99(1), (5)).

16 Energy Act 2004 s 29(5A)(b) (as added: see note 15 supra).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1610 Disregard for tax purposes of cancellation etc of provisions

NOTE 1--Definition of 'relevant provision' amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/C. TAXATION/1611. Disregard for tax purposes of provisions recognised by the Nuclear Decommissioning Authority.

1611. Disregard for tax purposes of provisions recognised by the Nuclear Decommissioning Authority.

Where:

- 4561 (1) by virtue of a direction given by the Secretary of State¹ the Nuclear
Decommissioning Authority ('the NDA')² acquires the responsibility for securing the
cleaning up³ of a site⁴:
- 429
625. (a) in relation to which, at the time that direction comes into force, there is a
nuclear site licence⁵ in force; and
626. (b) where the holder of that licence at that time is a BNFL company⁶ that is
publicly owned⁷,
- 430
- 4562 or the decommissioning⁸ of an installation⁹ or facility¹⁰ in or on such a site;
- 4563 (2) that responsibility:
- 431
627. (a) includes the statutory financial responsibility¹¹; or
628. (b) would do so but for the fact that the amount of the financial responsibility
is for the time being subject to a limit imposed by a capping agreement¹²;
- 432
- 4564 (3) the NDA recognises in its accounts, in accordance with generally accepted
accounting practice¹³, a relevant provision¹⁴ that relates to that responsibility; and
- 4565 (4) the provision is recognised:
- 433
629. (a) in order to reflect the coming into force of the direction mentioned in head
(1) above; or
630. (b) in consequence of the variation or removal of a limit on the NDA's statutory
financial responsibility¹⁵ imposed by a capping agreement,
- 434

then in computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount is to be brought into account in connection with:

- 4566 (i) the recognition made in the accounts of the NDA of:
- 435
631. (A) the relevant provision; or
632. (B) an asset that, in accordance with generally accepted accounting practice,
is recognised in order to reflect a limit on the NDA's statutory financial
responsibility¹⁶ imposed by a capping agreement;
- 436
- 4567 (ii) any adjustment made in those accounts, including the removal from the
accounts of an asset falling within head (i)(B) above, in consequence of a variation
or removal of the limit mentioned in that head¹⁷.

This does not, however, affect the amount, if any, to be brought into account in computing the profits, gains or losses of the NDA in connection with an adjustment not falling within head (ii) above¹⁸.

1 le a direction under the Energy Act 2004 s 3: see PARA 1592 ante. As to the Secretary of State see PARA 601 note 1 ante.

2 As to the establishment and constitution of the NDA see PARAS 1394-1395 ante; and as to its functions see PARAS 1592-1595 ante.

3 For the meaning of 'cleaning up' see PARA 1592 note 2 ante.

4 le a site falling within the Energy Act 2004 s 30(2). For the meaning of 'site' see PARA 1420 note 2 ante.

5 For the meaning of 'nuclear site licence' see PARA 1487 note 1 ante (definition applied by ibid s 196(1)).

6 For these purposes, 'BNFL company' means the nuclear fuels company ('BNFL') or a wholly-owned subsidiary of BNFL: ibid ss 30(5), 196(1). As to BNFL see PARA 1377 note 5 ante; and for the meaning of 'wholly-owned subsidiary' see PARA 744 note 6 ante.

7 See ibid s 30(2). As to when a body corporate is publicly owned see PARA 1412 note 11 ante.

8 For the meaning of 'decommissioning' see PARA 1592 note 2 ante.

9 For the meaning of 'installation' see PARA 1416 note 8 ante.

10 For the meaning of 'facility' see PARA 1420 note 2 ante.

11 le the financial responsibility under the Energy Act 2004 s 21: see PARA 1607 ante.

12 For the meaning of 'capping agreement' see PARA 1610 note 10 ante (definition applied by ibid s 30(5)) (s 30(5) amended for this purpose by the Finance Act 2006 s 100(1), (5)).

13 For the meaning of 'generally accepted accounting practice' see PARA 1610 note 3 ante (definition applied by the Energy Act 2004 s 30(6)).

14 For these purposes, 'relevant provision' means a provision for liabilities or charges as defined in the Companies Act 1985 Sch 4 para 89 (as amended; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 15 (2009) PARA 730); Energy Act 2004 s 30(5).

15 le the responsibility mentioned in note 11 supra.

16 See note 15 supra.

17 Energy Act 2004 s 30(1), (3) (amended by the Finance Act 2006 ss 100(1), (2), (3), 178, Sch 26 Pt 3(18)).

18 Energy Act 2004 s 30(4) (amended by the Finance Act 2006 s 100(1), (4)).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1611 Disregard for tax purposes of provisions recognised by the Nuclear Decommissioning Authority

NOTE 14--Definition of 'relevant provision' amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/D. THE NUCLEAR DECOMMISSIONING FUNDING ACCOUNT/1612. Establishment and maintenance of the Nuclear Decommissioning Funding Account.

D. THE NUCLEAR DECOMMISSIONING FUNDING ACCOUNT

1612. Establishment and maintenance of the Nuclear Decommissioning Funding Account.

For the purpose of ensuring transparency as respects the funding of the carrying out of the Nuclear Decommissioning Authority's ('the NDA's')¹ functions², it is the duty of the Secretary of State³ to establish and maintain an account to be known as the 'Nuclear Decommissioning Funding Account'⁴. That account, when first established, was to have an opening balance of such amount as the Secretary of State might, with the consent of the Treasury⁵, determine⁶.

Every amount paid to the NDA by way of grant⁷ must be shown in the account as a debit⁸. The following amounts are to be shown in the account as credits:

- 4568 (1) every amount received by the Secretary of State in pursuance of a requirement that the person with control of certain designated installations, sites or facilities is to make payments to him⁹;
- 4569 (2) every amount received by the NDA that is required to be paid by it to the Secretary of State under the specified statutory provision¹⁰;
- 4570 (3) such amount in respect of each financial year¹¹ as the Secretary of State may, with the consent of the Treasury, determine¹²; and
- 4571 (4) amounts representing interest, at such rate and in respect of such periods as the Secretary of State may, with the like consent¹³, determine, on outstanding credit balances of the account¹⁴.

The Secretary of State:

- 4572 (a) may make a single determination for the purposes of head (3) above in relation to more than one financial year;
- 4573 (b) must make every determination for those purposes in accordance with the policy most recently published¹⁵;
- 4574 (c) must revise a determination made for those purposes if he considers it necessary to do so in order to take account of any revision of the policy in accordance with which it was made, or last revised; and
- 4575 (d) must publish every determination made for those purposes, and every revision of such a determination, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it¹⁶.

The time at which an amount is to be debited or credited to the account in accordance with these provisions is to be the time determined by the Secretary of State¹⁷ with the consent of the Treasury¹⁸.

1 As to the establishment and constitution of the NDA see PARAS 1394-1397 ante.

- 2 As to the functions of the NDA see PARAS 1592-1595 ante.
- 3 As to the Secretary of State see PARA 601 note 1 ante.
- 4 Energy Act 2004 s 31(1).
- 5 The consent of the Treasury is required for every determination by the Secretary of State for the purposes of *ibid* s 31: s 31(9).
- 6 See *ibid* s 31(2).
- 7 *Ie* under *ibid* s 22(1): see PARA 1398 ante.
- 8 *Ibid* s 31(3).
- 9 *Ie* in pursuance of a requirement under *ibid* s 5(2): see PARA 1592 ante.
- 10 *Ie* under *ibid* s 22(3): see PARA 1398 ante.
- 11 For the meaning of 'financial year' see PARA 763 note 17 ante.
- 12 As to determinations by the Secretary of State see note 5 *supra*. The Secretary of State (1) must prepare, and may from time to time revise, a statement of his policy with respect to the determination of amounts for the purposes of the Energy Act 2004 s 31(4)(c) (see head (3) in the text); and (2) must publish that statement, and every revision of it, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it: s 31(6). The policy contained in the statement under s 31(6) must (a) set out the basis on which determinations for the purposes of s 31(4)(c) are to be made; (b) secure that amounts credited to the account in accordance with s 31(4)(c) are at least enough to prevent the credit balance of the account falling at any time below such level as the Secretary of State determines to be appropriate; and (c) set out the basis on which the Secretary of State's determination for the purposes of head (b) *supra* has been made: s 31(7).
- 13 See note 5 *supra*.
- 14 Energy Act 2004 s 31(4).
- 15 *Ie* under *ibid* s 31(6): see note 12 *supra*.
- 16 *Ibid* s 31(5).
- 17 *Ibid* s 31(8).
- 18 See note 5 *supra*.

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (v) Financial Provisions and the Nuclear Decommissioning Funding Account/D. THE NUCLEAR DECOMMISSIONING FUNDING ACCOUNT/1613. Examination of the Nuclear Decommissioning Funding Account.

1613. Examination of the Nuclear Decommissioning Funding Account.

As soon as practicable after the end of each relevant financial year¹, the Secretary of State² must prepare a statement of the Nuclear Decommissioning Funding Account³. The statement must show:

- 4576 (1) the credits and debits made to the account during the period for which it is prepared; and
- 4577 (2) the determinations made or revised⁴ during that period for the relevant statutory purposes⁵.

The period for which each statement is to be prepared is the period which begins:

- 4578 (a) in the case of the first statement, with the establishment of the account; and
- 4579 (b) in any other case, immediately after the end of the period for which the previous statement was prepared;

and which ends with the last day of the last relevant financial year to end before the statement's preparation⁶.

A statement prepared under these provisions must be sent to the Comptroller and Auditor General⁷ before 30 September in the financial year in which it is prepared⁸. The Comptroller and Auditor General must, before 31 December in the financial year in which he receives such a statement, examine and report on it and lay copies of it, and of his report on it, before Parliament⁹.

1 For these purposes, 'relevant financial year' means a financial year in the course of which the Secretary of State has made or revised a determination for the purposes of the Energy Act 2004 s 31(4)(c) (see PARA 1612 ante at head (3) in the text): s 32(6). For the meaning of 'financial year' see PARA 763 note 17 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Energy Act 2004 s 32(1). As to the establishment and maintenance of the Nuclear Decommissioning Funding Account see PARA 1612 ante.

4 I.e. for the purposes of ibid s 31(4)(c): see PARA 1612 ante at head (3) in the text.

5 Ibid s 32(2).

6 Ibid s 32(3).

7 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

8 Energy Act 2004 s 32(4).

9 Ibid s 32(5).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1614. Consent for dismantling or decommissioning.

(vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors

1614. Consent for dismantling or decommissioning.

A licensee¹ must not commence a project² unless he has applied to the Health and Safety Executive ('the Executive')³ for a consent to carry out the project and such a consent has been granted for these purposes by the Executive⁴.

'Project' means the carrying out of any dismantling or decommissioning work on any nuclear power station or nuclear reactor to which the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999⁵ apply⁶, namely, subject to certain exceptions⁷, nuclear power stations and other nuclear reactors, except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load⁸. The 1999 Regulations do not, however, apply to any project serving national defence purposes where the Secretary of State⁹ is of the opinion that application of those regulations would have an adverse effect on the defence purposes of the project¹⁰. Nor, unless the project is changed or extended¹¹, do those regulations apply to the carrying out of dismantling or decommissioning work on a nuclear power station or nuclear reactor commenced prior to 19 November 1999¹².

'Project' does not, however, include:

- 4580 (1) the removal from a power station or reactor of fuel elements, neutron absorption cartridges or control rods carried out in accordance with normal operating procedures; or
- 4581 (2) the removal of waste from, or decontamination work on, a power station or reactor when such an activity is carried out as part of routine operations not intended to be part of final dismantling or decontamination of that station or reactor¹³.

1 'Licensee' means a person to whom a nuclear site licence has been granted under the Nuclear Installations Act 1965 (see PARA 1490 ante) whether or not that licence remains in force: Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1).

2 For the meaning of 'project' see the text and notes 5-13 infra.

3 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, regs 2(1), 4 (amended by SI 2006/657).

5 Ie the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended): see PARA 1615 et seq post.

6 Ie by virtue of ibid reg 3(1).

7 See the text and notes 9-13 infra.

8 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, regs 2(1), 3(1).

9 As to the Secretary of State see PARA 601 note 1 ante.

10 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 3(3) (amended by SI 2006/657).

11 Ie except for the purposes of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 13: see PARA 1622 post.

12 Ibid reg 3(2). 19 November 1999 is the date when the 1999 Regulations came into force: see reg 1. For these purposes, dismantling or decommissioning of a nuclear power station or nuclear reactor is not to be treated as having commenced unless plant or equipment is disabled or removed for the purpose of permanently preventing the continued operation of that station or reactor: reg 2(1).

13 Ibid reg 2(1).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

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1615. Provision of an environmental statement.

A licensee¹ who applies for a consent for a project for dismantling or decommissioning work² must provide to the Health and Safety Executive³ an environmental statement, being a statement which:

- 4582 (1) includes such of the following information⁴ as is reasonably required to assess the environmental effects of the proposed project and which the licensee can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile⁵, namely:
- 437
633. (a) a description of the project⁶, including in particular a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases, a description of the main characteristics of the production processes, for instance the nature and quantity of the materials used, and an estimate, by type and quantity, of expected residues and emissions⁷ resulting from the operation of the proposed project⁸;
634. (b) an outline of the main alternatives studied by the licensee and an indication of the main reasons for his choice, taking into account the environmental effects⁹;
635. (c) a description of the aspects of the environment likely to be significantly affected by the proposed project, including in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including architectural and archaeological heritage, landscape and the inter-relationship between the above factors¹⁰;
636. (d) a description of the likely effects of the proposed project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from the existence of the project, the use of natural resource, the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the licensee of the forecasting methods used to assess the effects on the environment¹¹;
637. (e) a description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment¹²;
638. (f) a non-technical summary of the information provided under heads (a) to (e) above¹³; and
639. (g) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the licensee in compiling the required information¹⁴; and
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- 4583 (2) includes at least the following information¹⁵, namely:
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640. (a) a description of the project comprising information on the site, design and size of the project¹⁶;
641. (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects¹⁷;

642. (c) the data required to identify and assess the main effects which the project is likely to have on the environment¹⁸;
643. (d) an outline of the main alternatives studied by the licensee and an indication of the main reasons for his choice, taking into account the environmental effects¹⁹; and
644. (e) a non-technical summary of the information mentioned in heads (a) to (d) above²⁰.
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The above information must be provided to the extent that the information is relevant to the consent procedure and the specific characteristics of a particular project or type of project and of the environmental features likely to be affected²¹.

The Executive and any other consultation body²² notified that a licensee has made or is proposing to make an application for consent²³ must, if requested by the licensee, or may, without such a request, enter into consultation with the licensee to determine whether the body has in its possession any information which the licensee or that body considers relevant to the preparation of an environmental statement and, if it has, the body must make any such information available to the licensee²⁴. Nothing in the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999²⁵, however, requires the disclosure by a body of information that it is entitled not to disclose under the specified provisions²⁶ of the Environmental Information Regulations 2004²⁷.

1 For the meaning of 'licensee' see PARA 1614 note 1 ante.

2 I.e. under the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 4(a): see PARA 1614 ante.

3 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 I.e. the information specified in the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 5(1)(a), Sch 1 Pt I (paras 1-7): see head (1)(a)-(g) in the text.

5 See *ibid* reg 5(1)(a).

6 For the meaning of 'project' see PARA 1614 ante.

7 I.e. water, air and soil pollution, noise, vibration, light, heat, radiation and other similar matters: see the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, Sch 1 para 1.

8 *Ibid* Sch 1 para 1.

9 *Ibid* Sch 1 para 2.

10 *Ibid* Sch 1 para 3.

11 *Ibid* Sch 1 para 4.

12 *Ibid* Sch 1 para 5.

13 *Ibid* Sch 1 para 6.

14 *Ibid* Sch 1 para 7.

15 I.e. the information specified in *ibid* reg 5(1)(b), Sch 1 Pt II (paras 8-12) (see head (2)(a)-(e) in the text): reg 5(1)(b).

16 *Ibid* Sch 1 para 8.

17 Ibid Sch 1 para 9.

18 Ibid Sch 1 para 10.

19 Ibid Sch 1 para 11.

20 Ibid Sch 1 para 12.

21 Ibid reg 5(2).

22 For these purposes, 'the consultation bodies' means (1) the local planning authority; (2) the local highway authority; (3) any principal council for the area in which the site where the project is to be carried out, if not the local planning authority; and such of the following bodies as are applicable having regard to the place where a project is to be carried out: (a) in England and Wales, the Environment Agency; (b) in England, Natural England; (c) in Wales, the Countryside Council for Wales; (d) in Scotland, Scottish Natural Heritage and the Scottish Environment Protection Agency: *ibid* reg 2(1) (definition amended by virtue of the Countryside and Rights of Way Act 2000 s 73(2) and the Natural Environment and Rural Communities Act 2006 s 1(4)). 'Local planning authority' means, in England and Wales, a local planning authority within the meaning of the Town and Country Planning Act 1990 Pt I (ss 1-9) (as amended) (see *TOWN AND COUNTRY PLANNING* vol 46(1) (Reissue) PARA 28 et seq): Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1).

23 See note 2 *supra*.

24 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 7.

25 *Ie* the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended); see PARA 1614 *ante*; the text and notes 1-24 *supra*; and PARA 1616 *et seq post*.

26 *Ie* under the Environmental Information Regulations 2004, SI 2004/3391, regs 12, 13; see *ENVIRONMENTAL QUALITY AND PUBLIC HEALTH* vol 45 (2010) PARA 55; *WATER AND WATERWAYS* vol 101 (2009) PARA 680.

27 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 14 (substituted by SI 2006/657).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1616. Pre-application opinion as to the content of the environmental statement.

1616. Pre-application opinion as to the content of the environmental statement.

Without prejudice to the statutory requirement to provide an environmental statement¹, a licensee² who is minded to apply for a consent to carry out a project for dismantling or decommissioning work³ may request the Health and Safety Executive ('the Executive')⁴ to state in writing its opinion as to the information to be provided in connection with that application⁵. If the Executive considers that it has not been provided with sufficient information to give an opinion on a request so made, it must notify the licensee of the matters in respect of which it requires further information and is not to be required to give such an opinion until such further information has been provided⁶.

The Executive must not give an opinion in response to such a request until it has consulted the licensee, the consultation bodies⁷ and such other bodies as appear to the Executive to be appropriate having regard to the circumstances of the case, but it must⁸ respond to such request within 21 days of the end of the period allowed by the Executive for responding to such consultation⁹.

An opinion given for these purposes does not prevent the Executive subsequently requiring the licensee to submit further information¹⁰.

1 le without prejudice to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 5: see PARA 1615 ante.

2 For the meaning of 'licensee' see PARA 1614 note 1 ante.

3 For the meaning of 'project' see PARA 1614 ante.

4 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 6(1).

6 Ibid reg 6(2).

7 For the meaning of 'the consultation bodies' see PARA 1615 note 22 ante.

8 le subject to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 6(2): see the text and note 6 supra.

9 Ibid reg 6(3).

10 Ibid reg 6(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1617. Publicity.

1617. Publicity.

Within 14 days of sending to the Health and Safety Executive ('the Executive')¹ an environmental statement², the licensee³ must cause to be published in one or more newspapers circulating in the locality in which the project for dismantling or decommissioning work⁴ is to be carried out and, where required by the Executive, any other newspaper named by the Executive, a notice stating:

- 4584 (1) the name and address of the licensee and that he is the applicant in respect of a consent for a project;
- 4585 (2) the date on which the application was made;
- 4586 (3) the address or location of the site at which the proposed project is to be carried out;
- 4587 (4) that a copy of the application together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- 4588 (5) an address, or addresses, in the locality of the power station or reactor at which those documents may be inspected and the latest date on which they will be available for inspection, being a date not less than 30 days later than the date on which the notice is published;
- 4589 (6) an address, or addresses, whether or not the same as that given under head (5) above, in the locality of the power station or reactor at which copies of the environmental statement may be obtained;
- 4590 (7) that copies may be obtained there so long as stocks last;
- 4591 (8) if a charge is to be made for a copy, the amount of the charge;
- 4592 (9) that any person wishing to make representations about the application should make them in writing, before the date named in accordance with head (5) above, to the Executive at a specified address; and
- 4593 (10) that the project is subject to an environmental impact assessment⁵ procedure⁶.

A copy of the notice so required must be provided to the Executive by the licensee within 14 days of the notice being published⁷.

The licensee must ensure that:

- 4594 (a) not less than five copies of the application for consent to carry out a project together with five copies of the environmental statement are available for inspection by members of the public at all reasonable hours at the address, or addresses specified in the above-mentioned notice pursuant to head (5) above; and
- 4595 (b) copies of the environmental statement are available at the address specified in the above-mentioned notice pursuant to head (6) above on payment of a reasonable charge reflecting printing and distribution costs⁸.

¹ As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 le pursuant to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 5: see PARA 1615 ante.

3 For the meaning of 'licensee' see PARA 1614 note 1 ante.

4 For the meaning of 'project' see PARA 1614 ante.

5 For these purposes, 'environmental impact assessment' means a process which identifies, describes and assesses in an appropriate manner, in the light of each individual case, the direct and indirect effects of a proposed project on (1) human beings, flora and fauna; (2) soil, water, air, climate and the landscape; (3) material assets and the cultural heritage; (4) the interaction between the factors referred to in heads (1)-(3) supra: Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1).

6 Ibid reg 9(1) (amended by SI 2006/657).

7 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 9(2).

8 Ibid reg 9(3).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1618. Further information and evidence respecting environmental statements.

1618. Further information and evidence respecting environmental statements.

Where the Health and Safety Executive ('the Executive')¹ receives an application for consent to carry out a project for dismantling or decommissioning work² in relation to which the licensee³ has submitted a statement which he refers to as an environmental statement for the relevant statutory purposes⁴ and the Executive is of the opinion that the statement should contain further information in order to be an environmental statement, the Executive must notify the licensee in writing accordingly and the licensee must provide that further information⁵. The following provisions apply in relation to further information required of a licensee⁶.

Within 14 days of providing to the Executive the further information referred to above, the licensee must cause to be published in one or more newspapers circulating in the locality in which the project is to be carried out and, where requested by the Executive, any other newspaper named by the Executive, a notice stating:

- 4596 (1) the name of the licensee;
- 4597 (2) the date on which the application for consent to carry out the project was made;
- 4598 (3) the address or location of the site at which the proposed project is to be carried out;
- 4599 (4) that further information is available in relation to an environmental statement which has already been provided;
- 4600 (5) that a copy of the further information may be inspected by members of the public at all reasonable hours;
- 4601 (6) an address, or addresses, in the locality of the power station or nuclear reactor at which the further information may be inspected and the latest date on which it will be available for inspection, being a date not less than 30 days later than the date on which the notice is published;
- 4602 (7) an address, or addresses, whether or not the same as that given under head (6) above, in the locality of the nuclear reactor or power station at which copies of the further information may be obtained;
- 4603 (8) that copies may be obtained there as long as stocks last;
- 4604 (9) if a charge is to be made for a copy, the amount of the charge;
- 4605 (10) that any person wishing to make representations about the further information should make them in writing, before the date specified in accordance with head (6) above, to the Executive at a specified address⁷.

A copy of the notice so required must be provided to the Executive by the licensee within 14 days of the notice being published⁸.

The Executive must send a copy of the further information to each person to whom, in accordance with the relevant regulations⁹, the statement to which it relates was sent¹⁰; and the Executive may by notice in writing require the licensee to provide such number of copies of the further information as is specified in the notice, being the number required¹¹ for these purposes¹².

Where further information is required to be provided, the Executive must suspend determination of the application and must not determine it before the expiry of 14 days after the date on which the further information was sent to all persons to whom the statement to which it relates was sent or the expiry of 30 days after the date that notice of it was published in a newspaper in accordance with heads (1) to (10) above, whichever is the later¹³.

The licensee who provides further information¹⁴ must ensure that:

- 4606 (a) not less than five copies of the information are available for inspection by members of the public at all reasonable hours at the address, or addresses, named in the notice published pursuant to head (6) above as the address at which such copies may be obtained; and
- 4607 (b) copies of the information are available at the address, or addresses, named in the notice published pursuant to head (7) above on payment of a reasonable charge reflecting printing and distribution costs¹⁵.

The Executive may in writing require a licensee to produce such evidence as it may reasonably call for to verify any information in his environmental statement¹⁶.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'project' see PARA 1614 ante.

3 For the meaning of 'licensee' see PARA 1614 note 1 ante.

4 Ie for the purposes of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended): see PARA 1614 et seq ante; the text and notes 5-16 infra; and PARA 1619 et seq post.

5 Ibid reg 10(1). Such information so provided is referred to in the 1999 Regulations as 'further information': reg 10(1).

6 Ibid reg 10(2).

7 Ibid reg 10(3).

8 Ibid reg 10(4).

9 Ie in accordance with the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended).

10 Ibid reg 10(5).

11 Ie for the purposes of ibid reg 10(5).

12 Ibid reg 10(6).

13 Ibid reg 10(7).

14 Ie in accordance with ibid reg 10(1): see the text and notes 1-5 supra.

15 Ibid reg 10(8).

16 Ibid reg 10(9).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1619. Procedure by the Health and Safety Executive.

1619. Procedure by the Health and Safety Executive.

Where the Health and Safety Executive ('the Executive')¹ receives in relation to a proposed project for dismantling or decommissioning work² an application for a consent³ it must:

- 4608 (1) within 21 days of the date of receipt of that application notify the consultation bodies⁴ in writing of the name and address of the licensee⁵ and of the duty imposed on them⁶ to make information available to the licensee; and
- 4609 (2) inform the licensee of the names and addresses of the bodies notified under head (1) above⁷.

Where the Executive is provided with an environmental statement⁸ it must:

- 4610 (a) consult the consultation bodies as to the information contained in that statement and for that purpose must within 21 days of the date of receipt of that statement provide to them the information contained in the statement;
- 4611 (b) require any body so consulted to respond to the Executive within such reasonable time as the Executive may specify;
- 4612 (c) send a copy of the environmental statement to the Secretary of State stating whether or not in the opinion of the Executive the project to which the environmental statement relates is likely to have significant effects on the environment in another EEA state⁹; and
- 4613 (d) must inform any particular person¹⁰ who they are aware is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a local advertisement, by sending them a notice that contains the prescribed details¹¹.

The Executive must not grant a consent¹² in relation to an application to carry out a proposed project unless:

- 4614 (i) there has been carried out an environmental impact assessment¹³ which takes into consideration the environmental statement provided¹⁴;
- 4615 (ii) the Executive has taken into account the assessment carried out pursuant to head (i) above, the responses of those consulted pursuant to heads (a) to (d) above and any representations made to it pursuant to the prescribed procedure for publicity¹⁵; and
- 4616 (iii) where another EEA state indicates that it wishes to participate in the procedure for which the relevant regulations provide¹⁶, a period of at least 21 days has elapsed since the end of all periods of consultation agreed pursuant to the prescribed procedure¹⁷ and the Executive has taken into account any responses received¹⁸ by another EEA state¹⁹.

The Executive may, on granting a consent to carry out a project, attach to that consent such conditions as may appear to it to be necessary or desirable in the interests of limiting the impact of that project on the environment²⁰.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'project' see PARA 1614 ante.

3 Ie pursuant to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 4(a): see PARA 1614 ante.

4 For the meaning of 'the consultation bodies' see PARA 1615 note 22 ante.

5 For the meaning of 'licensee' see PARA 1614 note 1 ante.

6 Ie by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 7: see PARA 1615 ante.

7 Ibid reg 8(1).

8 Ie pursuant to ibid reg 5: see PARA 1615 ante.

9 'EEA state' means a state party to the Agreement on the European Economic Area: Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 2(1).

10 'Any particular person' includes any non-governmental organisation promoting environmental protection: ibid reg 2(1) (definition added by SI 2006/657).

11 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 8(2) (amended by SI 2006/657). The details referred to in head (d) in the text are the details set out in the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 9(1)(i), (j) (as respectively amended and added) (see PARA 1617 ante at heads (9)-(10) in the text): reg 8(2) (as so amended).

12 Ie whether for the purposes of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended) or otherwise.

13 For the meaning of 'environmental impact assessment' see PARA 1617 note 5 ante.

14 Ie under the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 5: see PARA 1615 ante.

15 Ie pursuant to ibid reg 9(1)(i) (as amended): see PARA 1617 ante at head (9) in the text.

16 Ie where ibid reg 12(3) applies: see PARA 1621 post.

17 Ie pursuant to ibid reg 12(5)(b): see PARA 1621 post.

18 Ie pursuant to the provisions of ibid reg 12: see PARA 1621 post.

19 Ibid reg 8(3).

20 Ibid reg 8(4).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1620. Information as to decisions.

1620. Information as to decisions.

Where an application for consent to carry out a project for dismantling or decommissioning work¹ is determined by the Health and Safety Executive ('the Executive')², the Executive must:

- 4617 (1) in writing, inform the licensee³ and the Secretary of State⁴ of the decision;
- 4618 (2) inform the public of the decision by publishing a notice in a newspaper circulating in the locality of the site concerned, or by such other means as are reasonable in the circumstances; and
- 4619 (3) make available for public inspection at all reasonable hours at an office of the Executive nearest to the place where the power station or reactor is situated, and free of charge, a statement containing:
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- 645. (a) the content of the decision and any conditions attached thereto;
- 646. (b) the main reasons and considerations on which the decision is based, including information about the public participation process;
- 647. (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project; and
- 648. (d) information regarding the right to challenge the validity of the decision and the procedures for doing so⁵.
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1 For the meaning of 'project' see PARA 1614 ante.

2 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

3 For the meaning of 'licensee' see PARA 1614 note 1 ante.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 11 (amended by SI 2006/657).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1621. Projects likely to have significant effects on the environment in another EEA state.

1621. Projects likely to have significant effects on the environment in another EEA state.

Where:

- 4620 (1) it comes to the attention of the Secretary of State¹ that a project for dismantling or decommissioning work² proposed to be carried out in Great Britain is the subject of an application for consent³ and is likely to have significant effects on the environment in another EEA state⁴; or
- 4621 (2) another EEA state likely to be significantly affected by such project so requests,

the Secretary of State must:

- 4622 (a) send to the EEA state as soon as possible and no later than their date of publication in the London Gazette, or the Edinburgh Gazette as the case may be, referred to in head (b) below, the prescribed particulars⁵ and, if he thinks fit, the specified information⁶; and
- 4623 (b) publish the particulars in head (a) above in a notice placed in the London Gazette or, where the project is in Scotland, the Edinburgh Gazette, with an indication of where further information is available; and
- 4624 (c) give the EEA state a reasonable time in which to indicate whether it wishes to be further consulted in accordance with the following provisions⁷.

The Secretary of State in so far as he is concerned must also:

- 4625 (i) arrange for the particulars and information referred to above to be made available, within a reasonable time, to the specified authorities⁸ and the public concerned in the territory of the EEA state likely to be significantly affected; and
- 4626 (ii) ensure that those authorities and the public concerned are given an opportunity, before consent to the application is granted, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied⁹.

The Secretary of State must¹⁰ enter into consultation with the EEA state concerned regarding, inter alia, the potential significant effects of the project on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects¹¹ and determine in agreement with the other EEA state a reasonable period of time for the duration of the consultation period¹². Where an EEA state has been so consulted, on the determination of the application concerned the Secretary of State must:

- 4627 (A) send to the Health and Safety Executive¹³ within 21 days of receipt any responses made by another EEA state pursuant to consultation under these provisions;
- 4628 (B) inform the EEA state of the decision; and
- 4629 (C) forward to it a statement of the content of the decision and any conditions attached thereto, the main reasons and considerations on which the decision is based and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project¹⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'project' see PARA 1614 ante.

3 Ie under the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 4 (as amended): see PARA 1614 ante.

4 For the meaning of 'EEA state' see PARA 1619 note 9 ante.

5 Ie the particulars mentioned in the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 12(2). The particulars referred to in head (a) in the text are (1) a description of the project, together with any available information on its possible significant effect on the environment in another EEA state; and (2) information on the nature of the decision which may be taken: reg 12(2).

6 Ie the information referred to in ibid reg 12(3). Where an EEA state indicates, in accordance with reg 12(1)(iii) (see head (c) in the text), that it wishes to participate in the procedure for which the 1999 Regulations provide, the Secretary of State must as soon as possible send to that EEA state the following information: (1) a copy of the application for consent to carry out the project concerned; (2) a copy of the environmental statement in respect of the project to which that application relates including any further information relating to the project provided pursuant to reg 10(1) (see PARA 1618 ante); and (3) relevant information regarding the procedure under those regulations, but only to the extent that such information has not been provided to the EEA state earlier in accordance with reg 12(1)(i) (see head (a) in the text): reg 12(3).

7 Ibid reg 12(1); and see note 6 supra.

8 Ie the authorities referred to in EEC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 6(1) (as substituted).

9 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 12(4).

10 Ie in accordance with EEC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 7(4) (as substituted).

11 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 12(5)(a).

12 Ibid reg 12(5)(b).

13 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

14 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 12(6) (amended by SI 2006/657).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1622. Change or extension of project.

1622. Change or extension of project.

Where there is a change or extension of:

- 4630 (1) any project for dismantling or decommissioning work¹ in respect of which a consent has been granted²; or
- 4631 (2) any project which commenced prior to 19 November 1999³,

and that change or extension may have significant adverse effects on the environment, the licensee⁴ must apply to the Health and Safety Executive ('the Executive')⁵ for a determination as to whether the project is to be made subject to an environmental impact assessment⁶ and must not commence or continue with the change or extension to the project and any other part of the project that the Executive may direct until such determination has been made⁷. In determining for this purpose whether an environmental impact assessment is required, the Executive must have regard to the relevant selection criteria⁸; and the licensee must provide to the Executive such information as it may require to enable the determination to be made⁹.

Where the Executive determines for these purposes that an environmental impact assessment is required in respect of the project, the relevant regulations¹⁰ apply as if any reference in them to the project were a reference to the project as so changed or extended¹¹. Where, however, the Executive determines for these purposes that an environmental impact assessment is not required in respect of the project, the Executive must:

- 4632 (a) in writing, inform the licensee and the Secretary of State¹² of the decision; and
- 4633 (b) inform the public of the decision by publishing a notice in a newspaper circulating in the locality of the site concerned, or by such other means as are reasonable in the circumstances, stating the main reasons on which the decision is based¹³.

¹ For the meaning of 'project' see PARA 1614 ante.

² Ie under the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 4 (as amended): see PARA 1614 ante.

³ Ie prior to the date when the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended) came into force: see reg 1.

⁴ For the meaning of 'licensee' see PARA 1614 note 1 ante.

⁵ As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

⁶ For the meaning of 'environmental impact assessment' see PARA 1617 note 5 ante.

⁷ Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 13(1) (amended by SI 2006/657).

8 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 13(2). The relevant selection criteria are as follows (Sch 2 paras 1-3), ie:

- 120 (1) characteristics of projects: the characteristics of projects must be considered having regard, in particular, to:
 - 99. (a) the size of the project;
99
 - 100.(b) the cumulation with other projects;
100
 - 101.(c) the use of natural resources;
101
 - 102.(d) the production of waste;
102
 - 103.(e) pollution and nuisances;
103
 - 104.(f) the risk of accidents, having regard in particular to substances or technologies used;
104
- 121 (2) location of projects: the environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard to:
 - 105.(a) the existing land use;
105
 - 106.(b) the relative abundance, quality and regenerative capacity of natural resources in the area;
106
 - 107. (c) the absorption capacity of the natural environment, paying particular attention to the following areas, ie wetlands; coastal zones; mountain and forest areas; nature reserves and parks; areas classified or protected under member states' legislation; special protection areas designated by member states pursuant to EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) (as amended) on the conservation of wild birds (see ANIMALS vol 2 (2008) PARAS 994, 1006; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728) and EEC Council Directive 92/43 (OJ L206, 22.07.92, p 7) (as amended) on the conservation of natural habitats and wild fauna and flora (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 674); areas in which the environmental quality standards laid down in Community legislation have already been exceeded; densely populated areas; and landscapes of historical, cultural or archaeological significance;
107
- 122 (3) characteristics of the potential impact: the potential significant effects of projects must be considered in relation to criteria set out under heads (1)-(2) supra, and having regard in particular to:
 - 108.(a) the extent of the impact (geographical area and size of the affected population);
108
 - 109.(b) the transfrontier nature of the impact;
109
 - 110.(c) the magnitude and complexity of the impact;
110
 - 111.(d) the probability of the impact;
111
 - 112.(e) the duration, frequency and reversibility of the impact.
112

9 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 13(3).

10 *le ibid* regs 4-10, 12 (as amended): see PARAS 1614-1619, 1621 *ante*.

11 *Ibid* reg 13(4).

12 As to the Secretary of State see PARA 601 note 1 *ante*.

13 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 13(5).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1623. Recovery of expenses by the Health and Safety Executive.

1623. Recovery of expenses by the Health and Safety Executive.

The following provisions apply to any expenses incurred by the Health and Safety Executive ('the Executive')¹ which the Executive may determine to be incurred wholly or partly in connection with the carrying into effect of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999² and include any sums paid by the Executive by way of remuneration, allowances or other payments to inspectors appointed under the Health and Safety at Work etc Act 1974³.

Where a licensee⁴ has applied for a consent to carry out a project for dismantling or decommissioning work⁵ or has requested an opinion as to the content of an environmental statement⁶, the Executive, in such cases and to such extent as it may appear to it appropriate to do so:

- 4634 (1) must require the licensee to repay to it so much of any expenses to which these provisions apply as may appear to it to be attributable to dealing with the application or request; and
- 4635 (2) may require the licensee to make to it a payment or payments on account of such liability⁷;

and a licensee must comply with any requirement so made of him⁸. Any liability of a licensee in respect of sums payable by him under these provisions on account of pensions must, if the Executive so determines, be satisfied by way of contributions calculated at such rate as may be determined by the Treasury, by reference to remuneration⁹.

Where a licensee has made a payment under head (2) above on account of an anticipated liability, then if the amount of the liability to which he becomes subject is less than the amount paid under that head, the Executive is liable to repay the difference to him¹⁰.

1 As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 I.e. the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended): see PARA 1614 et seq ante, PARA 1624 post.

3 Ibid reg 15(1). As to the appointment of inspectors under the Health and Safety at Work etc Act 1974 see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

4 For the meaning of 'licensee' see PARA 1614 note 1 ante.

5 I.e. pursuant to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 4 (as amended): see PARA 1614 ante.

6 I.e. pursuant to ibid reg 6: see PARA 1616 ante. See also note 7 infra.

7 Ibid reg 15(2). The statutory wording is 'pursuant to regulation 4 or 5 respectively' but it is apprehended that the reference to reg 5 is a drafting error and that the reference is intended to be to reg 6.

8 Ibid reg 15(3).

9 Ibid reg 15(4).

10 Ibid reg 15(5).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1623-1624 Recovery of expenses by the Health and Safety Executive, Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/7. NUCLEAR ENERGY AND RADIOACTIVE SUBSTANCES/(10) NUCLEAR DECOMMISSIONING/ (vi) Environmental Impact Assessment for Decommissioning of Nuclear Reactors/1624. Enforcement.

1624. Enforcement.

The provisions of the Health and Safety at Work etc Act 1974 relating to enforcement and offences¹ apply to any requirement or prohibition imposed upon any licensee² by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999³ or any requirement which they impose upon any person to give information to the licensee⁴ as if the requirement or prohibition concerned had been imposed by regulations made under the specified provision⁵ of that 1974 Act⁶. Any function of the Health and Safety Commission⁷ under any other provision of that 1974 Act which is exercisable in relation to any function of the Health and Safety Executive⁸ under or in respect of health and safety regulations, including their enforcement, is exercisable as if those 1999 Regulations were health and safety regulations for the purposes of that 1974 Act⁹.

The Health and Safety (Enforcing Authority) Regulations 1998¹⁰ do not, however, apply in relation to the enforcement of any requirement or prohibition referred to above¹¹.

¹ I.e. the Health and Safety at Work etc Act 1974 ss 18-26 (as amended), 33-42 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 372 et seq; HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

² For the meaning of 'licensee' see PARA 1614 note 1 ante.

³ I.e. by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892 (as amended): see PARA 1614 et seq ante.

⁴ I.e. any requirement imposed by ibid reg 7: see PARA 1615 ante.

⁵ I.e. under the Health and Safety at Work etc Act 1974 s 15 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424-425.

⁶ Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 16(1).

⁷ As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 367 et seq.

⁸ As to the Health and Safety Executive see PARA 1391 ante; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

⁹ Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 16(1).

¹⁰ I.e. the Health and Safety (Enforcing Authority) Regulations 1998, SI 1998/494 (as amended): see HEALTH AND SAFETY AT WORK.

¹¹ Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892, reg 16(2).

UPDATE

1592-1624 Nuclear Decommissioning

As to the duty to submit a funded decommissioning programme see PARA 1494A.

1623-1624 Recovery of expenses by the Health and Safety Executive, Enforcement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1624 Enforcement

NOTES 6, 9--SI 1999/2892 reg 16(1) amended: SI 2008/960.

NOTE 7--Health and Safety Commission abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(i) Scope and Definitions/1625. Scope of this part of the title.

8. PETROLEUM PRODUCTION

(1) INTRODUCTION

(i) Scope and Definitions

1625. Scope of this part of the title.

The statutory provisions described in this part of this title are concerned with (1) the law relating to property and other rights in petroleum¹ existing in its natural condition in strata in Great Britain² and in the continental shelf³; (2) the legal framework for persons to be enabled to search for and get such petroleum⁴ and for the control of such exploration and production⁵; and (3) statutory provisions governing certain relevant fields of administration and finance, including principally the functions of central government⁶, and the establishment, constitution and functions of the Oil and Pipelines Agency⁷.

The following matters are dealt with in detail elsewhere in this work: health and safety on installations⁸; jurisdiction in relation to territorial waters⁹; jurisdiction and statute law generally in relation to the continental shelf¹⁰; the handling and storing of petroleum spirit¹¹ and its conveyance by road¹²; the control and regulation of the government pipeline and storage system¹³; the exploration and exploitation of mineral resources in Antarctica¹⁴; and certain provisions relating to oil pollution¹⁵. Other provisions with regard to offshore oil and chemical pollution are discussed below¹⁶.

Certain legislation dealing with petroleum exploration and exploitation is outside the scope of this work¹⁷.

1 For the meaning of 'petroleum' see PARA 1626 post.

2 As to ownership of petroleum in Great Britain see PARAS 1634-1635 post. For the meaning of 'Great Britain' see PARA 602 note 7 ante. As to internal waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 121; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

3 As to rights of action see PARA 1637 post.

4 As to licences to search for and get petroleum see PARA 1639 et seq post.

5 See PARA 1639 et seq post.

6 See PARA 1629 et seq post.

7 See PARA 1771 et seq post.

8 Installations on land (including the foreshore and land intermittently covered with water), offshore installations, and any other installation (whether floating, or resting on the sea bed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof) are included in the definition of 'premises' in the Health and Safety at Work etc Act 1974: see s 53(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 note 6. The provisions of that Act, including particularly those imposing duties in regard to the safety of premises and the provisions of health and safety regulations, have effect for securing the general purposes of the Act in relation to such installations: see s 1(1), (3) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303. As to the application of the Act, and health and safety regulations, in relation to offshore installations see further PARA 1677 post.

9 See INTERNATIONAL RELATIONS LAW.

10 See INTERNATIONAL RELATIONS LAW. As to the jurisdiction of English courts in relation to certain torts see CONFLICT OF LAWS; see also the Continental Shelf Act 1964. Certain statutory provisions dealing with jurisdiction are extended so far as concerns offshore installations and submarine pipelines. So far as relates to provisions of orders and regulations concerning aircraft on or in the neighbourhood of offshore installations, the Civil Aviation Act 1982 s 102, Sch 13 Pt III para 6 (as amended) (relating to the extra-territorial effect of certain instruments: see AIR LAW vol 2 (2008) PARA 30) applies to all aircraft and not only to aircraft registered in the United Kingdom, and applies to the doing of anything in relation to any aircraft by any person, irrespective of nationality or, in the case of a body corporate, of the law under which it was incorporated (Sch 13 Pt III para 6(5)), and applies to installations notwithstanding that they are for the time being in transit (Sch 13 Pt III para 6(6)). Nothing in the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended) (deposits in the sea: see SHIPPING AND MARITIME LAW) applies to anything done (1) for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (see PARA 1743 note 7 post) is in force; or (2) for the purpose of establishing or maintaining an offshore installation within the meaning of Pt IV (ss 29-45) (see PARA 1729 et seq post): Food and Environment Protection Act 1985 s 7A (added by the Petroleum Act 1998 s 50, Sch 4 para 20).

11 See PARA 788 ante; and HEALTH AND SAFETY AT WORK. As to the statutory prohibition on keeping petroleum spirit without a licence see the Petroleum (Consolidation) Act 1928 s 1 (as amended); for provisions as to licences see ss 2-4 (as amended); and as to the labelling of vessels containing petroleum spirit see s 5 (as amended; repealed in relation to the carriage of petroleum mixtures and liquid methane in a road tanker or tank container by the Road Traffic (Carriage of Dangerous Substances in Road Tankers and Tank Containers) Regulations 1992, SI 1992/743, reg 30(1)).

12 See ROAD TRAFFIC.

13 See the Requisitioned Land and War Works Acts 1945 and 1948; the Land Powers (Defence) Act 1958; the Secretaries of State (Government Oil Pipeline and Petroleum Licences) Order 1989, SI 1989/150, art 2; and ARMED FORCES; WAR AND ARMED CONFLICT.

14 See the Antarctic Act 1994; and INTERNATIONAL RELATIONS LAW.

15 See the Pollution Prevention and Control Act 1999; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; the Prevention of Oil Pollution Act 1971; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq; the Merchant Shipping Act 1995 Pt VI (ss 128-192A) (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq; the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq; and the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, SI 1998/1056 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 347 et seq. Operators in the United Kingdom sector of the continental shelf have entered into an agreement known as the Offshore Pollution Liability Agreement (OPOL), by which they bind themselves to accept liability, irrespective of fault but subject to certain maxima and exceptions, to persons who sustain damage from oil discharges from offshore facilities and to join in steps to guarantee payment of sums so due in specified circumstances. The original text of the agreement appears in (1974) 13 ILM 1409 and rules made under the agreement in (1975) 14 ILM 147. The agreement has now been extended to the continental shelves of Belgium, Denmark, Germany, France, Greece, Holland, Ireland, the Isle of Man, Italy, Norway, Portugal and Spain. The current text dates from 1996.

16 See PARA 1694 et seq post.

17 See the Offshore Petroleum Development (Scotland) Act 1975, which provides for the Secretary of State to acquire land in Scotland for purposes relating to offshore petroleum exploration and exploitation; enables him to carry out works and facilitate operations for those purposes, to regulate such operations in certain sea areas and to provide for the reinstatement of land used for those purposes and for various connected matters. That Act (except s 7(6): proceedings for offences) extends to Scotland only, and is therefore not dealt with in this work. See also the Petroleum (Production) Act (Northern Ireland) 1964.

Provisions of substantial significance in relation to petroleum exploration and exploitation have appeared in local legislation: see eg the Zetland County Council Act 1974 (amended by the Shetland Islands Council Order Confirmation Act 1979), which confers on the Shetland Islands Council (formerly the Zetland County Council) extensive powers in connection with shore and harbour facilities.

UPDATE

1625 Scope of this part of the title

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 10--Food and Environment Protection Act 1985 s 7A amended: Energy Act 2008 Sch 1 para 2.

Food and Environment Protection Act 1985 s 7A further amended and repealed in part: Marine and Coastal Access Act 2009 Sch 8 para 2(4), Sch 22 Pt 2 (not yet in force).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(i) Scope and Definitions/1626. Meaning of 'petroleum' and cognate terms.

1626. Meaning of 'petroleum' and cognate terms.

The word 'petroleum' is not a definite term¹; its meaning in a particular case depends on the facts². The test is what the word meant at the date of the instrument concerned³, in the vernacular of non-scientific persons concerned with its use⁴, and where there is conflict this meaning must prevail over the purely scientific meaning⁵. Nevertheless, the word 'petroleum' is capable of limitation or expansion according to the intention with which it is used⁶; and this intention may be inferred from the document itself or from consideration of the circumstances in which it was made⁷. Where the word 'petroleum' occurs in legislation it is usually defined expressly.

For the purposes of Part I of the Petroleum Act 1998⁸, 'petroleum':

- 4636 (1) includes any mineral oil or relative hydrocarbon and natural gas⁹ existing in its natural condition in strata; but
- 4637 (2) does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation¹⁰.

This definition is applied for the purposes of the Oil and Pipelines Act 1985¹¹, the Offshore Safety Act 1992¹² and a number of statutory provisions dealing with taxation¹³. 'Petroleum' has also been expressly defined for the purposes of the Ministry of Fuel and Power Act 1945¹⁴.

Expressions cognate to 'petroleum' which have been defined in legislation include 'petroleum-spirit'¹⁵, 'petroleum oil'¹⁶, 'petroleum field'¹⁷ and 'petroleum products'¹⁸. 'Oil' has also been statutorily defined¹⁹.

1 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 455, PC. As to whether petroleum is a 'mineral' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 13.

2 See *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 226, [1953] 1 All ER 451 at 456, PC.

3 As to the construction of instruments according to contemporary usage see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 207.

4 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 454-455, PC. Cf *Glasgow Corp'n v Farie* (1888) 13 App Cas 657 at 675, HL, per Lord Watson; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 12-13.

5 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 454-455, PC.

6 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 454-455, PC. Thus eg the intention governs the extent, if any, to which 'petroleum' may include natural gas (defined in PARA 1627 post): *Borys v Canadian Pacific Rly Co* supra; and see *Barnard-Argue-Roth-Stearns Oil and Gas Co Ltd v Farquharson* [1912] AC 864, PC; *Knight Sugar Co Ltd v Alberta Rly and Irrigation Co* [1938] 1 All ER 266, PC. As to a mixture of petroleum oil and other substances see *LCC v Holzapfels Compositions Co* (1899) 68 LJQB 886.

7 *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 223, [1953] 1 All ER 451 at 454-455, PC. Cf *Commonwealth of Australia v Hazeldehl Ltd* [1921] 2 AC 373, PC.

8 Ie the Petroleum Act 1998 Pt I (ss 1-9): see PARA 1634 et seq post.

9 For the meaning of 'natural gas' see PARA 1627 post.

10 Petroleum Act 1998 s 1.

11 See the Oil and Pipelines Act 1985 s 6 (definition substituted by the Petroleum Act 1998 s 50, Sch 4 para 21).

12 See the Offshore Safety Act 1992 s 5(7) (definition amended by the Petroleum Act 1998 Sch 4 para 33(4)).

13 See eg the Taxation of Chargeable Gains Act 1992 s 196(5) (as substituted and amended); and OIL AND GAS TAXATION vol 78 (2010) PARA 457; the Income and Corporation Taxes Act 1988 s 837B (as added); and OIL AND GAS TAXATION vol 78 (2010) PARA 437.

14 For the purposes of the Ministry of Fuel and Power Act 1945 s 1(1) (as amended), which provides for the appointment and functions of the Minister of Fuel and Power (now the Secretary of State), 'petroleum' includes products of petroleum: s 6(1). As to petroleum products see further the text and note 18 infra; and as to the Secretary of State see PARA 601 note 1 ante.

15 In the Petroleum (Consolidation) Act 1928, 'petroleum-spirit' means petroleum which, when tested in accordance with EEC Commission Directive 92/69 (OJ L383, 29.12.92, p 113) Annex Pt A.9, has a flash point (as defined in Annex Pt A.9) of less than 21°C: Petroleum (Consolidation) Act 1928 s 23 (amended for these purposes by the Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776, reg 15(1), Sch 6, Pt 1, PARA 2(1), (5)). 'Petroleum-spirit' has the same meaning in the Prevention of Oil Pollution Act 1971: s 29(1).

16 See the London County Council (General Powers) Act 1912 s 4 (as amended).

17 In the National Minimum Wage Act 1998, 'petroleum field' is defined as a geological structure identified as an oil or gas field by the relevant Order in Council extending the provisions of the Act to offshore employment: see s 42(5). A similar definition appears in the Employment (Continental Shelf) Act 1978 s 2 (prospectively repealed by the Petroleum Act 1998 s 51, Sch 5 Pt I, as from a day to be appointed under s 52(2), (3); at the date at which this title states the law, no such day had been appointed); and the Employment Rights Act 1996 s 201(5) (prospectively repealed by the Petroleum Act 1998 ss 50, 51, Sch 4 para 40(3), Sch 5 Pt I as from a day to be appointed under s 52(2), (3); at the date at which this title states the law, no such day had been appointed).

18 See eg the Energy Act 1976 s 21; and PARA 603 note 4 ante.

19 In the Prevention of Oil Pollution Act 1971, 'oil' means oil of any description and includes spirit produced from oil of any description, and also includes coal tar: see s 29(1). A similar definition appears in the Merchant Shipping Act 1995: see s 151(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 425, 428. See also eg the Oil Taxation Act 1975 ss 1(1), 12(1) (as amended); and OIL AND GAS TAXATION vol 78 (2010) PARA 301; the Income and Corporation Taxes Act 1988 s 502(1) (as amended); and OIL AND GAS TAXATION vol 78 (2010) PARA 418.

UPDATE

1626-1627 Meaning of 'petroleum' and cognate terms, Meaning of 'natural gas'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(i) Scope and Definitions/1627. Meaning of 'natural gas'.

1627. Meaning of 'natural gas'.

The expression 'natural gas', like 'petroleum'¹, is not a definite term, and its meaning in a particular case is to be arrived at on similar principles². In some circumstances petroleum and natural gas may be taken to be separate substances, although they are both hydrocarbons and contain the same elements³.

'Natural gas' has been defined expressly for the purposes of certain statutes, for example the Gas Act 1965⁴ and the Energy Act 1976⁵.

1 As to the meaning of 'petroleum' see PARA 1626 ante.

2 *Borys v Canadian Pacific Rly Co* [1953] AC 217, [1953] 1 All ER 451, PC; *Barnard-Argue-Roth-Stearns Oil and Gas Co Ltd v Farquharson* [1912] AC 864, PC; and cf para 1626 the text and notes 1-7 ante. As to whether natural gas is a 'mineral' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 13.

3 *Borys v Canadian Pacific Rly Co* [1953] AC 217, [1953] 1 All ER 451, PC; *Barnard-Argue-Roth-Stearns Oil and Gas Co Ltd v Farquharson* [1912] AC 864 at 869-870, PC; and see *Knight Sugar Co Ltd v Alberta Rly and Irrigation Co* [1938] 1 All ER 266, PC. As to natural gas in solution in liquid petroleum see *Borys v Canadian Pacific Rly Co* supra.

4 See PARA 983 note 3 ante.

5 See PARA 603 note 3 ante.

UPDATE

1626-1627 Meaning of 'petroleum' and cognate terms, Meaning of 'natural gas'

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/A. DOMESTIC LEGISLATION/1628. The principal legislation.

(ii) Sources of Law

A. DOMESTIC LEGISLATION

1628. The principal legislation.

The law within the scope of this part of this title¹ is contained chiefly in the Petroleum Act 1998, which consolidates provisions about petroleum, offshore installations and submarine pipelines previously contained in the Petroleum (Production) Act 1934, the Mineral Workings (Offshore Installations) Act 1971, the Petroleum and Submarine Pipelines Act 1975, the Oil and Gas (Enterprise) Act 1982, the Petroleum Act 1987, and certain provisions previously contained in other legislation, for example in the Continental Shelf Act 1964, the Territorial Sea Act 1987 and the Offshore Safety Act 1992. With certain exceptions², the Petroleum Act 1998 was brought into force on 15 July 1999³. Part I of that Act makes provision with regard to the ownership of petroleum, licensing of exploration and supplementary matters⁴; Part II deals with the application of the criminal and civil law to offshore activities⁵; Part III deals with submarine pipelines and certain offshore gas storage facilities⁶; Part IV makes provision with regard to the abandonment of offshore installations⁷; and Part V contains miscellaneous and general provisions⁸.

The Continental Shelf Act 1964, which came into effect on 15 April 1964 (being the date on which it was passed), provides for the exploration and exploitation of the continental shelf⁹. The extant provisions of that Act vest in the Crown any rights exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources, except in so far as they are exercisable in relation to coal¹⁰, and provide that Orders in Council may designate areas as areas in which the rights of the United Kingdom are exercisable under the Act¹¹. They make provision with regard to the safety of navigation in designated areas¹²; for extending, with appropriate modifications, the provisions of the Radioactive Substances Act 1993 to certain installations and waters¹³; with regard to damage to submarine pipelines¹⁴; and for the prosecution of offences¹⁵.

The Oil and Pipelines Act 1985, which was fully in force by 27 March 1986¹⁶, provides for the establishment and functions of the Oil and Pipelines Agency¹⁷. The Agency has the power among other things to enter into agreements for the carrying out of activities on behalf of the Crown in relation to petroleum, pipelines and storage installations held by or on behalf of the Crown. It can also buy, sell and otherwise deal in petroleum on its own account¹⁸.

The Offshore Safety Act 1992, which was in force for all relevant purposes by 30 November 1993¹⁹, extends the application of health and safety legislation to offshore installations²⁰, and empowers the Secretary of State to give directions for the purpose of preserving the safety of any offshore installation, onshore terminal or oil refinery to any person who is the operator of an offshore installation, onshore terminal or refinery²¹.

The safety of any drilling operations onshore is regulated by the Borehole Sites and Operations Regulations 1995²², made under the Health and Safety at Work etc Act 1974. Those regulations do not, however, apply to offshore installations or activities carried out from such installations²³.

¹ See PARA 1625 ante.

2 The exceptions are: (1) the Petroleum Act 1998 s 5(1)-(4), (11) (see PARA 1669 post) and s 52 (commencement provisions) which, as provided in s 52(1), came into force on the passing of the Act (ie 11 June 1998); and (2) Sch 4 paras 8, 10, 11, 13, 34 and 40 (amendments) and the repeals in Sch 5 of the Employment (Continental Shelf) Act 1978, of the Trade Union and Labour Relations (Consolidation) Act 1992 s 287(5) and of the Employment Rights Act 1996 s 201(5): see the Petroleum Act 1998 (Commencement No 1) Order 1999, SI 1999/161, art 2(2). At the date at which this title states the law, the provisions mentioned in head (2) *supra* and the repeals referred to in that head were not in force.

3 See *ibid* art 2(1).

4 See the Petroleum Act 1998 Pt I (ss 1-9); and PARA 1626 ante, PARA 1634 et seq post.

5 See *ibid* Pt II (ss 10-13) (as amended); and PARAS 1678-1679 post.

6 See *ibid* Pt III (ss 14-28) (as amended): see PARAS 1030-1032 ante, PARA 1740 et seq post.

7 See *ibid* Pt IV (ss 29-45); and PARA 1729 et seq post.

8 See *ibid* Pt V (ss 46-53); and PARAS 1629, 1767, 1770 post.

9 See the Continental Shelf Act 1964, long title. The Act applies to the United Kingdom: see *R v Jameson* [1896] 2 QB 425 at 430, DC, per Lord Russell of Killowen CJ; and STATUTES; and cf the Continental Shelf Act 1964 s 12, which was repealed by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

10 See the Continental Shelf Act 1964 s 1(1); and PARA 1636 post.

11 See generally para 1636 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172.

12 See the Continental Shelf Act 1964 s 4 (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 539.

13 See *ibid* s 7 (as amended); and PARA 1679 post.

14 See *ibid* s 8 (as amended); PARA 1766 post; and TELECOMMUNICATIONS vol 97 (2010) PARA 207.

15 See *ibid* s 11 (as amended). Proceedings for any offence under another Act as applied by or under the Continental Shelf Act 1964 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom: s 11(1) (amended by the Oil and Gas (Enterprise) Act 1982 s 37, Sch 3 para 3). Where a body corporate is guilty of such an offence and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly; and for these purposes, 'director' in relation to a body corporate established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate: Continental Shelf Act 1964 s 11(2).

16 See the Oil and Pipelines Act 1985 (Commencement) Order 1985, SI 1985/1748; and the British National Oil Corporation (Dissolution) Order 1986, SI 1986/585.

17 See the Oil and Pipelines Act 1985 ss 1, 3, 7 (as amended); and PARA 1771 et seq post.

18 See *ibid* s 2(1)(a), (d); and PARA 1778 et seq post.

19 Offshore Safety Act 1992 s 7; Offshore Safety Act 1992 (Commencement No 1) Order 1993, SI 1993/2406; Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, which came into force on 23 August 1993.

20 See the Offshore Safety Act 1992 ss 1-4 (as amended).

21 See *ibid* s 5 (as amended); and PARA 1681 post.

22 See the Borehole Sites and Operations Regulations 1995, SI 1995/2038 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 744.

23 See *ibid* reg 3(1).

UPDATE

1628 The principal legislation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/A. DOMESTIC LEGISLATION/1629. Powers and duties of the Secretary of State under the Petroleum Act 1998.

1629. Powers and duties of the Secretary of State under the Petroleum Act 1998.

Under the Petroleum Act 1998, the Secretary of State¹:

- 4638 (1) has the power to grant licences to search and bore for, and to get, petroleum²;
- 4639 (2) may make regulations prescribing certain matters with regard to licences³;
- 4640 (3) may make repayments of royalties for the purpose of facilitating development⁴;
- 4641 (4) may appoint officers to inspect the plans of any mines or abandoned mines near which it is proposed to search for petroleum⁵;
- 4642 (5) may grant authorisations for the construction and use of submarine pipelines⁶;
- 4643 (6) may require the owner of a controlled pipeline to modify it by increasing its capacity or installing a junction to connect another pipeline⁷;
- 4644 (7) may grant third party access to controlled petroleum pipelines⁸ and to certain other pipelines⁹;
- 4645 (8) may determine certain disputes regarding controlled petroleum pipelines subject to the Norwegian access system¹⁰;
- 4646 (9) may bring certain¹¹ criminal proceedings¹²;
- 4647 (10) may terminate authorisations¹³ and issue new authorisations with regard to pipelines vested in him¹⁴;
- 4648 (11) may appoint inspectors¹⁵;
- 4649 (12) has a duty to consult relevant organisations before making regulations about submarine pipelines¹⁶;
- 4650 (13) may designate a person as the owner of a submarine pipeline¹⁷;
- 4651 (14) may require the submission of an abandonment programme with respect to an offshore installation or submarine pipeline¹⁸ and may approve, reject, require revision of, or withdraw approval of such a programme¹⁹;
- 4652 (15) may require a person in default to take remedial action with regard to an abandonment programme²⁰;
- 4653 (16) may require information about a person's financial affairs before approving an abandonment programme²¹ and may make regulations relating to the abandonment of offshore installations and submarine pipelines²²; and
- 4654 (17) may make loans to oil companies for development²³.

The matters to which the Secretary of State may have regard, in exercising or performing the powers and duties so conferred or imposed on him, include, in particular:

- 4655 (a) activities in relevant waters²⁴ for or in connection with the generation²⁵ of electricity²⁶;
- 4656 (b) proposals made by a person to carry on such activities;
- 4657 (c) the proposals that it appears to the Secretary of State may be made in the future for the carrying on of such activities; and

4658 (d) the likelihood that activities will in due course be carried on in accordance with proposals falling within head (b) or head (c) above²⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 See the Petroleum Act 1998 s 3; and PARA 1639 post.

3 See *ibid* s 4; and PARAS 1639, 1767 note 2 post.

4 See *ibid* s 6; and PARA 1767 post.

5 See *ibid* s 8; and PARA 1638 post.

6 See *ibid* s 15 (as amended); and PARAS 1744-1748 post.

7 See *ibid* s 16 (as amended); and PARA 1749 post. For the meaning of 'controlled pipeline' see PARA 1740 note 6 post.

8 See *ibid* s 17F (as added and amended); and PARA 1751 post. For the meaning of 'controlled petroleum pipeline' see PARA 1750 note 6 post.

9 See *ibid* s 17 (as amended); and PARAS 1748-1750 post.

10 See *ibid* s 17GA (as added); and PARA 1752 post.

11 In criminal proceedings for relevant offences under *ibid* Pt III (ss 14-28) (as amended) or for certain offences under Pt IV (ss 29-45).

12 See *ibid* s 22; and PARA 1759 post; s 41; and PARA 1739 post.

13 See *ibid* s 18 (as amended); and PARAS 1753-1755 post.

14 See *ibid* s 19 (as amended); and PARA 1756 post.

15 See *ibid* s 20; and PARAS 1763-1764 post.

16 See *ibid* s 25(1); and PARA 1740 note 2 post.

17 See *ibid* s 27 (as amended); and PARA 1749 note 4 post.

18 See *ibid* ss 29-31; and PARAS 1729-1730 post.

19 See *ibid* ss 32-25; and PARAS 1731-1734 post.

20 See *ibid* s 37; and PARA 1736 post.

21 See *ibid* s 38; and PARA 1732 post.

22 See *ibid* s 39; and PARA 1738 post.

23 See *ibid* s 47; and PARA 1767 post.

24 For these purposes, 'relevant waters' means (1) waters in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; or (2) waters in a renewable energy zone (within the meaning of the Energy Act 2004 Pt 2 Ch 2 (ss 84-104) (see PARA 1310 *et seq* ante)): Petroleum Act 1998 s 47A(3) (s 47A added by the Energy Act 2004 s 103(4)). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'renewable energy zone' for these purposes see PARA 1310 ante.

25 For the meaning of 'generation' see PARA 1041 note 7 ante (definition applied by the Petroleum Act 1998 s 47A(3) (as added: see note 24 *supra*)).

26 The reference in head (a) in the text to activities in connection with the generation of electricity in relevant waters includes: (1) the transmission, distribution and supply of the electricity generated; and (2) the doing of anything, whether by way of investigations, trials or feasibility studies or otherwise, with a view to ascertaining whether activities in relevant waters for or in connection with the generation of electricity are, in a particular case, practicable or commercially viable, or both: *ibid* s 47A(2) (as added: see note 24 *supra*). For the

meanings of 'distribution', 'transmission', 'supply' and cognate expressions see PARA 1041 notes 5-6, 10 ante (definitions applied by s 47A(3) (as so added)).

27 Ibid s 47A(1) (as added: see note 24 supra).

UPDATE

1629 Powers and duties of the Secretary of State under the Petroleum Act 1998

TEXT AND NOTE 27--Petroleum Act 1998 s 47A(1) amended, s 47A(2A) added: Energy Act 2008 Sch 1 para 12.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/B. EUROPEAN UNION LEGISLATION/1630. European Union legislation; in general.

B. EUROPEAN UNION LEGISLATION

1630. European Union legislation; in general.

The provisions of the EC Treaty against discrimination on grounds of nationality¹ and as to the rights of freedom of establishment and freedom to provide services² restrict the exercise of powers to license searching for and getting petroleum. The provisions on the abolition of customs duties³ and competition⁴ also have an impact on petroleum production; and the Community has instituted an energy policy as a stated task of the Community⁵. The Hydrocarbons Licensing Directive establishes common rules to ensure equal access to prospecting, exploration for and producing hydrocarbons for all companies with the necessary capabilities⁶; and a further Directive provides for member states to maintain minimum stocks of crude oil and petroleum products⁷. There are also measures on improving the health and safety of workers in the mineral-extracting industries through drilling⁸; on public procurement⁹; and relating to the quality of petrol and diesel fuels¹⁰.

European Directives with a more general application to energy matters are discussed in an earlier part of this title¹¹.

1 See the EC Treaty art 12.

2 See *ibid* arts 43-55.

3 See *ibid* art 23.

4 See *ibid* arts 81-89.

5 *Ibid* art 3(u).

6 See European Parliament and EC Council Directive 94/22 (OJ L164, 30.6.94, p 3) on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons; the Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, implementing that Directive in domestic law; and PARAS 1639 note 3, 1641-1643, 1668 post.

7 See EC Council Directive 2006/67 (OJ L217, 8.8.2006, p 8) imposing an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products; and PARA 1631 post.

8 See EEC Council Directive 92/91 (OJ L348, 28.11.92, p 9) (as amended) on minimum requirements for improving safety, health and protection of workers in the mineral-extracting industries through drilling.

9 See European Parliament and EC Council Directive 2004/17 (OJ L134, 30.4.2004, p 1) co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ('the Utilities Directive'). As to the implementation of the Utilities Directive in domestic law see the Utilities Contracts Regulations 2006, SI 2006/6; and PARA 643 et seq ante; but note that a utility carrying out one or more of the following activities, namely the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas, is excluded from having to comply with many of the provisions of those regulations in seeking offers in relation to a contract to be awarded for the purpose of carrying out one or more such activities: see reg 8; and PARA 645 ante.

10 See European Parliament and EC Council Directive 98/7 (OJ L350, 28.12.98, p 58) relating to the quality of petrol and diesel fuels.

11 See PARA 631 et seq ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/B. EUROPEAN UNION LEGISLATION/1631. Requirements as to stocks of crude oil and petroleum products.

1631. Requirements as to stocks of crude oil and petroleum products.

Member states must adopt such laws, regulations or administrative provisions as may be appropriate in order to maintain within the Community at all times¹ their stocks of petroleum products² at a level corresponding, for each of the categories of petroleum products listed in heads (1) to (3) below, to at least 90 days average daily internal consumption in the preceding calendar year³. That part of internal consumption met by derivatives of petroleum produced indigenously by the member state concerned may be deducted up to a maximum of 25 per cent of that consumption; and the domestic distribution of the result of such a deduction is to be decided by the member state concerned⁴. The following categories of product are to be taken into account in calculating internal consumption:

- 4659 (1) motor spirit and aviation fuel (aviation spirit and jet-fuel of the gasoline type);
- 4660 (2) gas oil, diesel oil, kerosene and jet-fuel of the kerosene type;
- 4661 (3) fuel oils;

but bunker supplies for sea-going vessels are not to be included in the calculation of internal consumption⁵.

Stocks maintained in accordance with the above requirements must be fully at the disposal of member states should difficulties arise in obtaining oil supplies; and member states must ensure that they have the legal powers to control the use of stocks in such circumstances. At all other times, member states must ensure the availability and accessibility of those stocks and they must establish arrangements allowing for the identification, accounting and control of the stocks⁶. Member states must ensure that fair and non-discriminatory conditions apply in their stock-holding arrangements and the cost burden resulting from the maintenance of such stocks must be identified by transparent arrangements⁷. To fulfil these requirements, member states may decide to have recourse to a stock-holding body or entity which will be responsible for holding all or part of the stocks. Two or more member states may decide to have recourse to a joint stock-holding body or entity, in which case they are to be jointly responsible for the obligations deriving⁸ from the relevant European Directive⁹.

Member states must submit to the European Commission a statistical summary¹⁰ showing stocks existing at the end of each month and specifying the number of days of average consumption in the preceding calendar year which those stocks represent. This summary must be submitted at the latest by the twenty-fifth day of the second month after the month to be reported¹¹.

For the purposes of implementing the relevant Directive, stocks may be established, under agreements between governments¹², within the territory of a member state for the account of undertakings, or bodies or entities, established in another member state; and it is for the government of the member state concerned to decide whether to hold a part of its stocks outside its national territory¹³.

Member states must adopt all the necessary provisions and take all the necessary measures to ensure control and supervision of stocks and must put in place mechanisms to verify the stocks¹⁴. They must also determine the penalties applicable to breaches of the national

provisions adopted pursuant to the relevant Directive and must take any measure necessary to ensure the implementation of these provisions; and the penalties must be effective, proportionate and dissuasive¹⁵.

If difficulties arise with regard to Community oil supplies, the Commission must, at the request of any member state or on its own initiative, arrange a consultation between the member states¹⁶. Except in cases of particular urgency or in order to meet minor local needs, member states must refrain, prior to that consultation, from drawing on their stocks to any extent which would reduce those stocks to below the compulsory minimum level¹⁷. They must inform the Commission of any withdrawals from their reserve stocks and must communicate as soon as possible:

- 4662 (a) the date upon which stocks fell below the compulsory minimum;
- 4663 (b) the reasons for such withdrawals;
- 4664 (c) the measures, if any, taken to replenish stocks;
- 4665 (d) an appraisal, if possible, of the probable development of the situation with regard to the stocks while they remain below the compulsory minimum¹⁸.

The Commission must submit regularly to the Council of the European Union a report on the situation concerning stocks in the Community, including if appropriate a report on the need for harmonisation in order to ensure effective control and supervision of stocks¹⁹.

1 Ie subject to EC Council Directive 2006/67 (OJ L217, 8.8.2006, p 8) imposing an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products, art 10: see the text and notes 16-18 infra.

2 Stocks required to be maintained by ibid art 1 may be maintained in the form of crude oil and intermediate products, as well as in the form of finished products: ibid art 5(1).

3 Ibid 1(1). A member state's stock-holding obligation is to be based on the previous calendar year's internal consumption: art 4(2). At the beginning of each calendar year, member states must recalculate their stock-holding obligation at the latest by 31 March in each year and ensure that they comply with their new obligations as soon as possible and, in any event, at the latest by 31 July in each year: art 4(2).

4 Ibid art 1(2).

5 Ibid art 2.

6 Ibid art 3(1).

7 Ibid art 3(2). In this context, member states may adopt measures to obtain appropriate information regarding the cost burden of stock-holding in accordance with art 1 and to make such information available to interested parties: art 3(2).

8 Ie deriving from EC Council Directive 2006/67 (OJ L217, 8.8.2006, p 8).

9 Ibid art 3(3).

10 Ie drawn up in accordance with ibid arts 5(2), (3), 6. In the statistical summary, stocks of jet-fuel of the kerosene type must be reported separately under the category referred to in art 2(b) (see head (2) in the text): art 4(3). In the statistical summary of stocks existing at the end of each month: (1) finished products must be accounted for according to their actual tonnage; (2) crude oil and intermediate products must be accounted for: (a) in the proportions of the quantities for each category of product obtained during the preceding calendar year from the refineries of the member state concerned; or (b) on the basis of the production programmes of the refineries of the member state concerned for the current year; or (c) on the basis of the ratio between the total quantity manufactured during the preceding calendar year in the member state concerned of products covered by the obligation to maintain stocks and the total amount of crude oil used during that year, up to a maximum of 40% of the total obligation for the first and second categories (petrol and gas oils), and up to a maximum of 50% for the third category (fuel oils): art 5(2). Blending components, when intended for processing into the finished products listed in art 2 (see heads (1)-(3) in the text), may be substituted for the products for which they are intended: art 5(3).

When the level of minimum stocks provided for in art 1 is calculated, only those quantities which would be held in accordance with art 3(1) must be included in the statistical summary: art 6(1). Subject to that, the following may be included in the stocks: (i) supplies on board oil tankers in port for the purpose of discharging, once the port formalities have been completed; (ii) supplies held in ports of discharge; (iii) supplies held in tanks at the entry to oil pipelines; (iv) supplies held in refinery tanks, excluding those supplies in pipes and refining plant; (v) supplies held in storage by refineries and by importing, storage or wholesale distribution firms; (vi) supplies held in storage by large-scale consumers in compliance with the provisions of national law concerning the obligation to maintain permanent stocks; (vii) supplies held in barges and coasting-vessels engaging in transport within national frontiers, on condition that it is possible for the competent authorities to keep a check on such supplies and provided that the supplies can be made available immediately: art 6(2). The following must, in particular, be excluded from the statistical summary: indigenous crude oil not yet extracted; supplies intended for the bunkers of sea-going vessels; supplies in direct transit apart from the stocks referred to in art 7(1) (see the text and notes 12-13 infra); supplies in pipelines, in road tankers and rail tank wagons, in the storage tanks of retail outlets, and those held by small consumers: art 6(3). Quantities held by the armed forces and those held for them by the oil companies must also be excluded from the statistical summary: art 6(3).

11 Ibid art 4(1).

12 Drafts of such agreements must be sent to the Commission, which may make its comments known to the governments concerned. The agreements, once concluded, must be notified to the Commission, which must make them known to the other member states. Agreements must satisfy the following conditions: (1) they must relate to crude oil and to all petroleum products covered by the relevant Directive; (2) they must lay down conditions and arrangements for the maintenance of stocks with the aim of safeguarding control and availability of those stocks; (3) they must specify the procedures for checking and identifying the stocks provided for, inter alia, the methods for carrying out and co-operating on inspections; (4) they must as a general rule be concluded for an unlimited period; (5) they must state that, where provision is made for unilateral termination, the latter is not to operate in the event of a supply crisis and that, in any event, the Commission is to receive prior information of any termination: *ibid* art 7(2).

13 Ibid art 7(1). The member state on whose territory the stocks are held under the framework of such an agreement must not oppose the transfer of those stocks to the other member states for the account of which stocks are held under that agreement; it must keep a check on such stocks in accordance with the procedures specified in that agreement but must not include them in its statistical summary. The member state on whose behalf the stocks are held may, however, include them in its statistical summary. Together with the statistical summary, each member state must send a report to the Commission concerning the stocks maintained within its own territory for the benefit of another member state, as well as the stocks held in other member states for its own benefit. In both cases, the storage locations and/or companies holding the stocks, quantities and product category (or crude oil) stored will be indicated in the report: art 7(1).

When stocks established under such agreements are not owned by the undertaking, or body/entity, which has an obligation to hold stocks, but are held at the disposal of that undertaking, or body/entity, by another undertaking, or body/entity, the following conditions must be met: (1) the beneficiary undertaking, or body/entity, must have the contractual right to acquire those stocks throughout the period of the contract; the methodology for establishing the price of such acquisition must be agreed between the parties concerned; (2) the minimum period of such a contract must be 90 days; (3) storage location and/or companies holding the stocks at the disposal of the beneficiary undertaking, or body/entity, as well as quantity and category of product, or crude oil, stored in that location must be specified; (4) the actual availability of the stocks for the beneficiary undertaking, or body/entity, must be guaranteed, at all times throughout the period of the contract, by the undertaking or body/entity holding the stocks at the disposal of the beneficiary undertaking, or body/entity; (5) the undertaking, or body/entity, holding the stocks at the disposal of the beneficiary undertaking, or body/entity, must be one which is subject to the jurisdiction of the member state on whose territory the stocks are situated in so far as the legal powers of that member state to control and verify the existence of the stocks are concerned: art 7(3).

14 Ibid art 8.

15 Ibid art 9.

16 Ibid art 10(1).

17 Ibid art 10(2).

18 Ibid art 10(3).

19 Ibid art 11.

UPDATE

1631 Requirements as to stocks of crude oil and petroleum products

TEXT AND NOTES--Directive 2006/67 replaced: EC Council Directive 2009/119 (OJ L265, 9.10.2009, p 9).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/C. INTERNATIONAL AGREEMENTS/1632. Relevant international agreements.

C. INTERNATIONAL AGREEMENTS

1632. Relevant international agreements.

The United Kingdom is a party to the Agreement on an International Energy Program¹ and is a participating country of the International Energy Agency, through which the programme is implemented². It is also a party to the Convention for the Protection of the Marine Environment of the North-east Atlantic, commonly called 'the OSPAR Convention'³, which came into force on 25 March 1998 and has been amended in July 1998, May 2002, February 2005 and May 2006. That Convention provides a comprehensive approach for addressing all sources of pollution which might affect the maritime area, as well as matters relating to the protection of the marine environment other than those relating to the prevention and elimination of pollution. The OSPAR Commission has adopted a number of binding decisions, in particular a decision prohibiting the disposal of offshore installations at sea⁴.

The United Kingdom has made a number of agreements with Norway providing for the exploitation of specific reservoirs in the continental shelf⁵. It has also made two framework agreements with Norway: the 1998 Framework Agreement on Inter-connecting Submarine Pipelines⁶ and the more comprehensive 2005 Framework Agreement concerning Cross-boundary Petroleum Co-operation⁷.

1 The Agreement on an International Energy Program (Paris, 18 November 1974; TS 111 (1976); Cmnds 5826, 6697). The agreement provides for the maintenance of emergency reserves in order to establish a common emergency self-sufficiency in oil supplies (arts 2-4, Annex), for the preparation of programmes of contingency measures to restrain oil demand in the countries concerned in an emergency (art 5); the allocation of oil between those countries in an emergency (arts 6-11); the activation and deactivation of the emergency provisions (arts 12-24); the establishment of an information system on the international oil market (arts 25-36); the establishment of a framework for consultation with oil companies (arts 37-40); long-term co-operation on energy (arts 41-43); relations with producer countries and other consumer countries (arts 44-48); and the constitution of the International Energy Agency and various other matters (arts 49-76). For legislation implementing the obligations of the United Kingdom as a party to this agreement see the Energy Act 1976 s 3; and PARA 605 ante.

2 See the Agreement on an International Energy Program, and note 2 supra; and the Decision of the Council of the Organisation for Economic Co-operation and Development (OECD) (Paris, 15 November 1974; Misc 4 (1975); Cmnd 5826). As to the OECD see further INTERNATIONAL RELATIONS LAW.

3 See the Convention for the Protection of the Marine Environment of the North-east Atlantic (Paris, September 1992).

4 See OSPAR Decision 98/3.

5 See eg the Agreement between the Government of the United Kingdom and the Government of the Kingdom of Norway relating to the Exploitation of the Frigg Field Reservoir and the Use of Installations and Pipelines for the Exploitation and Transmission of Hydrocarbons (London, 10 May 1976; TS 113 (1977); Cmnd 7043; (revised 1998; Cm 4583).

6 See the Framework Agreement between the Government of the United Kingdom and the Government of the Kingdom of Norway relating to the Laying, Operation and Jurisdiction of Inter-connecting Pipelines (Stavanger, 25 August 1998; TS 9 (2003); Cm 5672).

7 See the Framework Agreement between the Government of the United Kingdom and the Government of the Kingdom of Norway concerning Cross-boundary Petroleum Co-operation (Oslo, 4 April 2005; Cm 6792). See

also the Petroleum Act 1998 s 17GA, 17GB (added by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, art 2, Schedule para 2); and PARA 1752 post.

UPDATE

1632 Relevant international agreements

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/ (ii) Sources of Law/C. INTERNATIONAL AGREEMENTS/1633. Power to modify the Petroleum Act 1998 to give effect to international agreements.

1633. Power to modify the Petroleum Act 1998 to give effect to international agreements.

Her Majesty may by Order in Council¹ make any modifications² of the Petroleum Act 1998 that Her Majesty considers appropriate for the purpose of securing that effect is given to an international agreement³, whenever entered into, which relates in whole or in part to the construction⁴, operation, use, decommissioning or abandonment of a pipeline⁵ or offshore installation⁶. This power to modify the 1998 Act includes:

- 4666 (1) power to provide for provision made by or under that Act to have effect, with or without modifications, in relation to a foreign area⁷;
- 4667 (2) power to provide for provisions of that Act having effect, with or without modifications, in relation to a foreign area, so far as they apply to individuals, to apply to them whether or not they are British citizens;
- 4668 (3) power to provide for provisions of that Act having effect, with or without modifications, in relation to a foreign area, so far as they apply to bodies corporate, to apply to them whether or not they are incorporated under the law of a part of the United Kingdom; and
- 4669 (4) power to provide for modifications of that Act to come into force before the coming into force of the international agreement to which they relate⁸.

An Order in Council under these provisions may:

- 4670 (a) modify powers under the Petroleum Act 1998 to make subordinate legislation⁹;
- 4671 (b) make provision for a reference in a modification made by the order to a specified document¹⁰ to operate as a reference to that document as revised or reissued from time to time; and
- 4672 (c) provide for the delegation of powers exercisable by virtue of modifications made by the order¹¹.

The Petroleum Act 1998 (Third Party Access) Order 2007¹², which is made under these powers, makes new provision with regard to controlled petroleum pipelines subject to the Norwegian access system¹³ and makes consequential amendments to the 1998 Act¹⁴.

1 The power to make an Order in Council containing provision authorised by the Energy Act 2004 s 189 (see the text and notes 2-10 infra) is subject to the affirmative resolution procedure: s 189(5). As to the affirmative resolution procedure see PARA 754 note 17 ante.

2 For the meaning of 'modification' see PARA 733 note 8 ante.

3 For these purposes, 'international agreement' means (1) any international treaty, convention or protocol to which the United Kingdom is a party; or (2) any other agreement between the United Kingdom and another country or territory: Energy Act 2004 s 189(6). As to such agreements see PARA 1632 ante; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 For these purposes, 'construction' has the same meaning as in the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (see s 28(1); and PARA 1740 note 4 post): Energy Act 2004 s 189(6).

5 For these purposes, 'pipeline' has the same meaning as in the Petroleum Act 1998 Pt III (as amended) (see s 26; and PARA 1741 post): Energy Act 2004 s 189(6).

6 Ibid s 189(1), (2). For these purposes, 'offshore installation' has the same meaning as in the Petroleum Act 1998 Pt IV (ss 29-45) (see PARA 1729 note 4 post): Energy Act 2004 s 189(6).

7 'Foreign area' means an area which is not within any of the following: (1) the United Kingdom; (2) the territorial sea adjacent to the United Kingdom; or (3) an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 post): Energy Act 2004 s 189(6). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

8 Ibid s 189(3).

9 For the meaning of 'subordinate legislation' see PARA 748 note 10 ante.

10 For the meaning of 'document' see PARA 733 note 4 ante.

11 Energy Act 2004 s 189(4).

12 Ie the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, which came into force on 8 February 2007: see art 1.

13 See the Petroleum Act 1998 s 17GA, 17GB (added by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, art 2, Schedule para 2); and PARA 1752 post.

14 See ibid Schedule paras 1, 3, 4; and PARA 1032 ante, PARA 1751 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(iii) Ownership of Petroleum and Rights of Action/1634. Rights to petroleum in Great Britain.

(iii) Ownership of Petroleum and Rights of Action

1634. Rights to petroleum in Great Britain.

The exclusive right of searching and boring for and getting petroleum¹ existing in its natural condition in strata in Great Britain², including that beneath the territorial sea adjacent to the United Kingdom³, is vested by statute in the Crown⁴.

1 For the meaning of 'petroleum' for this purpose see PARA 1626 ante.

2 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

3 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

4 Petroleum Act 1998 s 2(1), (2). This provision also applies to petroleum in crown land (s 2(1)); and for these purposes 'Crown land' means land which (1) belongs to Her Majesty or the Duchy of Cornwall; (2) belongs to a government department; or (3) or is held on trust for Her Majesty for the purposes of a government department: s 2(3). Nothing in s 2, however, is to taken to prejudice any right conferred by any licence granted under the Petroleum (Production) Act 1934 s 2 (repealed) which was in force immediately before 15 February 1999 (ie the commencement of the Petroleum Act 1998: see PARA 1628 the text and notes 2-3 ante) so long as the licence remains in force: see s 2(4), Sch 3 paras 3, 4. Furthermore, so long as the licence granted on 26 March 1923 under the Petroleum (Production) Act 1918 (repealed) to the Duke of Devonshire relating to an area near Hardstoft in the county of Derbyshire remains in force, the Petroleum Act 1998 s 2 does not apply to petroleum which at the commencement of the Petroleum (Production) Act 1934 (repealed) might lawfully be got under that licence: see the Petroleum Act 1998 Sch 3 paras 5(1), (3). As to licensing in connection with petroleum see PARA 1639 et seq post.

Rights to any oil or natural gas situated outside territorial waters which had been included in a mineral grant previously made by the Crown were revested in the Crown by the Continental Shelf Act 1964: see the Continental Shelf Act 1964 s 1(1); para 1636 post; and *Earl of Lonsdale v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887, per curiam. As to property rights generally in mines and minerals see MINES, MINERALS AND QUARRIES. As to property rights in relation to fugacious elements, including oils and gases, see further *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 229, [1953] 1 All ER 451 at 458, PC.

UPDATE

1634 Rights to petroleum in Great Britain

NOTE 4--For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum (Production) Act 1934 s 2, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(iii) Ownership of Petroleum and Rights of Action/1635. Savings.

1635. Savings.

Nothing in Part I of the Petroleum Act 1998¹ is to be construed as:

- 4673 (1) imposing any liability on any person where in the course of mining or other lawful operations² petroleum³ is set free⁴; or
- 4674 (2) conferring, or enabling the Secretary of State⁵ to confer, on any person, whether acting on behalf of the Crown or not, any right which he does not otherwise enjoy to enter on or interfere with land⁶.

1 The Petroleum Act 1998 Pt I (ss 1-9): see PARA 1626 ante; the text and notes 2-6 infra; and PARA 1638 et seq post.

2 For a definition of 'mining operations' see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 220.

3 For the meaning of 'petroleum' for this purpose see PARA 1626 ante.

4 Petroleum Act 1998 s 9(1).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Petroleum Act 1998 s 9(2). As to rights to interfere with land see eg MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 130 et seq (right to withdraw support); and cf *Borys v Canadian Pacific Rly Co* [1953] AC 217 at 228, [1953] 1 All ER 451 at 458, PC.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(iii) Ownership of Petroleum and Rights of Action/1636. Petroleum in the continental shelf.

1636. Petroleum in the continental shelf.

Any rights exercisable by the United Kingdom¹ outside territorial waters² with respect to the sea bed and subsoil and their natural resources³, but excepting coal⁴, are vested by statute in the Crown⁵.

The Crown may, by Order in Council, designate areas, known as 'designated areas', within which these rights are to be exercisable. This includes the power to revoke such Orders for the purpose of consolidating them⁶.

1 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 As to the nature and extent of the rights referred to, and as to territorial waters generally, see INTERNATIONAL RELATIONS LAW.

3 The Continental Shelf Act 1964 does not define 'natural resources'.

4 For provisions as to coal in the continental shelf see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 26.

5 Continental Shelf Act 1964 s 1(1). The Continental Shelf Act 1964 was enacted consequent upon the United Kingdom becoming a party to the Convention on the Continental Shelf (Geneva, 29 April to 31 October 1958; TS 39 (1964); Cmnd 2422), but does not refer to the convention. See further INTERNATIONAL RELATIONS LAW.

6 Continental Shelf Act 1964 s 1(7) (amended by the Oil and Gas (Enterprise) Act 1982 s 37(1), Sch 3 para 1); see also PARA 1639 post.

The following orders have been made under this provision: the Continental Shelf (Designated Areas) (Extended Territorial Sea) Order 1987, SI 1987/1265; the Continental Shelf (Designation of Areas) (Consolidation) Order 2000, SI 2000/3062; and the Continental Shelf (Designation of Areas) Order 2001, SI 2001/3670.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(iii) Ownership of Petroleum and Rights of Action/1637. Civil liability for breach of statutory duty.

1637. Civil liability for breach of statutory duty.

Breach of a duty imposed on any person by regulations made under Part III of the Petroleum Act 1998¹ which state that this provision applies to such a breach are to be actionable so far, and only so far, as the breach causes personal injury²; but this does not prejudice any claim which otherwise lies³. Any such regulations as are mentioned above bind the Crown, and references in those regulations to employees include for those purposes persons in the service of the Crown; but nothing in this provision:

- 4675 (1) confers any right of action on a person as a member of the armed forces of the Crown; or
- 4676 (2) authorises proceedings against Her Majesty in her private capacity or in right of the Duchy of Lancaster or against the Duke of Cornwall⁴.

A defence to a charge of an offence created by the regulations which is available by virtue of the relevant statutory provision⁵ is not a defence in any civil proceedings, whether they are brought by virtue of the above provisions or otherwise⁶.

Similar provision is made with respect to breach of a duty imposed on any person by any provision of regulations made under the Mineral Workings (Offshore Installations) Act 1971 which expressly applies the relevant provision⁷ of that Act⁸.

Except so far as Part III of the Petroleum Act 1998 otherwise expressly provides, nothing in that Part of that Act:

- 4677 (a) confers a right of action in any civil proceedings, other than proceedings for recovery of a fine, in respect of any contravention⁹ of it or an order or regulations made under it;
- 4678 (b) affects any restriction imposed by or under any other enactment¹⁰, whether public, local or private; or
- 4679 (c) derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under that 1998 Act¹¹.

1 Ie under the Petroleum Act 1998 Pt III (ss 14-28) (as amended): see PARAS 1030-1032 ante, PARA 1740 et seq post. The reference in the text to regulations made under Pt III (as amended) includes a reference to regulations made under the Petroleum and Submarine Pipelines Act 1975 s 26 (repealed) which were in force immediately before 15 February 1999 (ie the commencement of the Petroleum Act 1998: see PARA 1628 the text and notes 2-3 ante) (Sch 3 para 9(3)) and the repeal of the Petroleum and Submarine Pipelines Act 1975 Pt III does not affect any instrument to the extent that, immediately before 15 February 1999, it applied s 26 (repealed) (Petroleum Act 1998 Sch 3 para 10).

2 Ibid s 23(1). For these purposes, 'personal injury' includes any disease, any impairment of a person's physical or mental condition and any fatal injury: s 23(6). References in the Fatal Accidents Act 1976 (or, in the case of a death before 1 September 1976, the Fatal Accidents Act 1846) to a wrongful act, neglect or include references to any such breach which is so actionable: Petroleum Act 1998 s 23(2), Sch 3 para 13.

3 Ibid s 23(3).

4 Ibid s 23(5).

5 le by virtue of *ibid* s 25(3)(c): see PARA 1740 note 2 post.

6 *Ibid* s 23(4).

7 le which expressly applies the Mineral Workings (Offshore Installations) Act 1971 s 11 (as amended).

8 See *ibid* s 11(1)(b), (2)-(4), (7). Section 7(1), (2), which conferred power to make regulations under the 1971 Act, is now repealed.

9 Any reference in the Petroleum Act 1998 Pt III (as amended) to a contravention of a provision of that Part or regulations made or directions given under that Part includes a reference to a failure to comply with that provision: s 28(3).

10 'Enactment' includes an enactment of the Parliament of Northern Ireland or of the Northern Ireland Assembly: *ibid* s 28(1).

11 *Ibid* s 28(6). Section 28(6) is subject to the Interpretation Act 1978 s 18 (duplicated offences: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272); Petroleum Act 1998 s 28(7).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(1) INTRODUCTION/(iii) Ownership of Petroleum and Rights of Action/1638. Power to inspect plans of mines.

1638. Power to inspect plans of mines.

For the purpose of ascertaining on behalf of the Secretary of State¹ the position of the workings, actual and prospective, of any mines² or abandoned mines³ through or near which it is proposed to sink any borehole for the purpose of searching for or getting petroleum⁴, any officer appointed by the Secretary of State has the same powers with respect to the production and inspection, and the taking of copies, of relevant documents⁵ as may be exercised by an inspector⁶ under the Health and Safety at Work etc Act 1974⁷ acting for the relevant purpose⁸ of that 1974 Act⁹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'mine' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5.

3 As to abandoned mines see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 530.

4 For the meaning of 'petroleum' for this purpose see PARA 1626 ante.

5 For these purposes, 'relevant documents' means plans, sections, drawings or other similar documents which, by virtue of the Health and Safety at Work etc Act 1974 Sch 3 para 16 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424) are required to be kept: Petroleum Act 1998 s 8(3)(a).

6 For these purposes, 'an inspector' means an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375): Petroleum Act 1998 s 8(3)(b). For these purposes, the Health and Safety at Work etc Act 1974 s 19(2), (3) is to be disregarded: Petroleum Act 1998 s 8(3)(c).

7 Ie under the Health and Safety at Work etc Act 1974 s 20 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

8 Ie for the purpose mentioned in ibid s 20(1): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

9 Petroleum Act 1998 s 8(1).

UPDATE

1638-1639 Power to inspect plans of mines, Power to grant licences to search for and get petroleum

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(i) The Award of Licences/1639. Power to grant licences to search for and get petroleum.

(2) LICENSING

(i) The Award of Licences

1639. Power to grant licences to search for and get petroleum.

On behalf of the Crown¹, the Secretary of State² has power to grant to such persons as he thinks fit³ licences⁴ to search and bore for, and get, petroleum⁵ in Great Britain⁶ under territorial waters or in designated areas⁷. Such licences are granted for such consideration, whether by way of royalty⁸ or otherwise⁹, as the Secretary of State with Treasury consent may determine, and upon such other terms and conditions as the Secretary of State thinks fit¹⁰. The Secretary of State must make regulations¹¹ prescribing:

- 4680 (1) the manner in which and the persons by whom applications for licences under Part I of the Petroleum Act 1998¹² may be made¹³;
- 4681 (2) the information to be included in or provided in connection with any such application¹⁴;
- 4682 (3) the fees to be paid on any such application¹⁵;
- 4683 (4) the conditions as to the size and shape of areas in respect of which licences may be granted¹⁶;
- 4684 (5) model clauses which must, unless he thinks fit to modify or exclude them in any particular case, be incorporated in any such licence¹⁷.

Different regulations may be made for different kinds of licence¹⁸.

As soon as practicable after granting a licence, the Secretary of State must publish notice of the fact in the London Gazette stating the name of the licensee and the situation of the area in respect of which the licence has been granted¹⁹.

The issue of an authorisation with regard to submarine pipelines²⁰ is to be deemed not to derogate from a licence granted under the above provisions which is for the time being in force²¹.

1 As to the Crown's right of property in petroleum see PARA 1634 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 The discretion of the Secretary of State is limited by requirements of the EC Treaty as to non-discrimination on grounds of nationality (see art 12) and the provisions on the right of establishment and freedom to provide services and goods (see arts 43-55) which have direct effect in English law: see PARA 1630 ante. See also European Parliament and EC Council Directive 94/22 (OJ L164, 30.6.94, p 3) on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons; the Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, implementing that Directive in domestic law; and PARAS 1641-1643, 1668 post. Under that Directive, member states retain the right to determine the areas within their territory to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons (European Parliament and EC Council Directive 94/22 (OJ L164, 30.6.94, p 3) art 2(1)) but whenever an area is made available for the exercise of those activities, member states must ensure that there is no discrimination between entities as regards access to and exercise of these activities (art 2(2)). Member states may, however, refuse on grounds of national security to allow access to and exercise of those activities to any entity which is effectively controlled by third countries or third country nationals: art 2(2).

In consequence of the provision made or authorised to be made by the Offshore Safety Act 1992 s 1 (as amended) (see PARA 1677 post), any functions of the Secretary of State under a licence granted under the Petroleum Act 1998, or any of his functions under s 3, may be exercised without regard to safety considerations and nothing done in the exercise of any such functions prejudices or affects the operation of the relevant statutory provisions within the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq) or any requirements imposed under those provisions: Offshore Safety Act 1992 s 3(2), (4) (amended by the Petroleum Act 1998 s 50, Sch 4 para 33(3)).

4 As to mining licences generally see MINES, MINERALS AND QUARRIES vol 31 (2003 (Reissue) PARA 349 et seq.

5 The petroleum to which the Petroleum Act 1998 s 2 applies (see PARA 1634 ante) and petroleum with respect to which rights vested in Her Majesty under the Continental Shelf Act 1964 s 1(1) (exploration and exploitation of continental shelf) are exercisable: see the Petroleum Act 1998 s 3(2). For the meaning of 'petroleum' see PARA 1402 ante.

6 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

7 Petroleum Act 1998 s 3(1), (2); Continental Shelf Act 1964 s 1(7) (amended by the Oil and Gas (Enterprise) Act 1982 s 37(1), Sch 3 para 1). Nothing in the Petroleum Act 1998 s 3 is to be taken to prejudice any right conferred by any licence granted under the Petroleum (Production) Act 1934 s 2 (repealed) which is in force immediately before 15 February 1999 (ie the commencement of the Petroleum Act 1998: see PARA 1628 the text and notes 2-3 ante) so long as the licence remains in force: s 3(4), Sch 3 para 4. The licence granted on 26 March 1923 under the Petroleum (Production) Act 1918 (repealed) to the Duke of Devonshire relating to an area near Hardstoft in the county of Derbyshire has effect, if in force immediately before 15 February 1999, as if granted under the Petroleum Act 1998: Sch 3 para 5(1), (2).

8 For the meaning of 'royalty' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 334. At the date at which this title states the law, royalties are not payable under such licences: see Department of Trade and Industry Press Release, 17 November 2002.

9 Eg non-recurrent fees and area rentals.

10 Petroleum Act 1998 s 3(3).

11 Any such regulations must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 4(3). In the exercise of his power under s 4 the Secretary of State has made the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended), which came into force on 5 March 2004: reg 1. See PARAS 1669-1674 post. In addition, by virtue of the Petroleum Act 1998 s 49, Sch 3 Pt I para 1(2), the following regulations have effect as if so made: (1) the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213 (as amended) (see PARAS 1640-1662 post); (2) the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436 (see PARAS 1640, 1663-1665, 1675-1676 post).

12 The under the Petroleum Act 1998 Pt I (ss 1-9): see PARAS 1626, 1634-1635, 1638 ante; the text and notes 1-11 supra, 13-21 infra; and PARAS 1669, 1666, 1743, 1767 note 2 post.

13 *Ibid* s 4(1)(a). As to applications for licences see PARA 1641 post.

14 *Ibid* s 4(1)(b).

15 *Ibid* s 4(1)(c).

16 *Ibid* s 4(1)(d).

17 *Ibid* s 4(1)(e). As to model clauses see PARA 1669 et seq post.

18 *Ibid* s 4(2).

19 *Ibid* s 4(4). If that area or any part of it is in Scotland, the Secretary of State must also publish the notice in the Edinburgh Gazette: s 4(4).

20 The an authorisation within the meaning of *ibid* Pt III (ss 14-28) (as amended): see ss 14, 28(1); and 1743 note 7 post.

21 *Ibid* s 9(3).

UPDATE

1638-1639 Power to inspect plans of mines, Power to grant licences to search for and get petroleum

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1639 Power to grant licences to search for and get petroleum

TEXT AND NOTES 1-10--If (1) a person is (or two or more persons are) the licensee in respect of a licence under the Petroleum (Production) Act 1934 s 2 or the Petroleum Act 1998 s 3 ('the transferor'), (2) the transferor transfers a right granted by the licence, or derived from a right so granted, to another person ('the transferee') after commencement in circumstances where the consent of the Secretary of State is required for the transfer, and (3) that consent is not obtained, the Secretary of State may, by notice given to the transferor and the transferee, direct that the right is to revert to the transferor from a date specified in the notice: Petroleum Act 1998 s 5A(1), (2) (ss 5A-5C added by Energy Act 2008 s 76). 'Transfer' does not include a transfer by way of security for a loan; and 'commencement' means the time when s 5A comes into force (ie 26 January 2009: see SI 2009/45): Petroleum Act 1998 s 5A(6). The date specified must not be earlier than the date on which the notice is given: s 5A(3). Before giving a notice to a person under s 5A(2), the Secretary of State must (a) notify the person of the proposal to give the notice, and (b) give the person a reasonable period within which to make written representations: s 5A(4). The Secretary of State may not give a notice under s 5A(2) after the end of the period of three months beginning with the date on which the Secretary of State learns of the transfer: s 5A(5).

The Commissioners for Her Majesty's Revenue and Customs may disclose to the Secretary of State information relating to the transfer of a right granted by a licence under the Petroleum (Production) Act 1934 s 2 or the Petroleum Act 1998 s 3, or derived from a right so granted, for the purpose of enabling the Secretary of State to determine whether a transfer to which s 5A applies has taken place: Petroleum Act 1998 s 5B(1). Section 5B applies despite any statutory or other restriction on the disclosure of information: s 5B(2). Information disclosed under s 5B must not be further disclosed except (i) for the purpose mentioned in s 5B(1), with the consent (which may be general or specific) of the Commissioners, (ii) in pursuance of an order of a court, or (iii) with the consent of each person to whom the information relates: s 5B(3). A person who discloses information contrary to s 5B(3) commits an offence if the identity of the person to whom the information relates is specified in the disclosure, or can be deduced from it: s 5B(4). It is a defence for a person charged with an offence under s 5B to prove that the person reasonably believed that (A) the disclosure was lawful, or (B) the information had already and lawfully been made available to the public: s 5B(5). A person guilty of an offence under s 5B is liable on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both, and on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both: s 5B(6). As to the statutory maximum see PARA 689. Supplemental provision with respect to offences under s 5B is made: see Petroleum Act 1998 s 5C.

See also Energy Act 2008 s 15 and PARA 1032B.4.

See also Petroleum Act 1998 s 45A (added by Energy Act 2008 s 75) (information about decommissioning of wells).

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 s 3 or the Petroleum (Production) Act 1934 s 2, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

NOTE 11--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283); and the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814.

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1640. Seaward and landward areas; frontier areas.

Two distinct kinds of licensing areas are defined by regulations made under the Petroleum (Production) Act 1934¹:

4685 (1) regulations are made in relation to licences:

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649. (a) to search and bore for, and get, petroleum² in strata in seaward areas, that is to say the islands on the seaward side of specified lines³, in the sea bed and subsoil beneath waters which lie on the seaward side of the appropriate lines of demarcation, and within the outward limit of territorial waters of the United Kingdom⁴, and in the sea bed and subsoil within any area designated by the Continental Shelf Act 1964⁵; and

650. (b) to search for petroleum in strata in the landward areas below the low-water line, that is to say areas of Great Britain⁶ and beneath the waters adjacent thereto which lie in the landward areas between the lines referred to above and the low-water line⁷;

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4686 (2) regulations are made in relation to licences to search and bore for, and get, petroleum in strata in landward areas, that is to say the areas of Great Britain and beneath the waters adjacent thereto which lie on the landward side of specified lines⁸.

Regulations prescribing model clauses in exploration licences⁹, production licences¹⁰ and petroleum exploration and development licences¹¹ for the purposes of the Petroleum Act 1998¹² make different provision with regard to landward and seaward areas¹³ and, additionally, with regard to certain seaward areas that are regarded as frontier areas¹⁴.

1 Ie regulations made under the Petroleum (Production) Act 1934 s 6 (repealed) but now having effect as if made under the Petroleum Act 1998 s 4: see PARA 1639 ante.

2 For the meaning of 'petroleum' see PARA 1626 ante.

3 Ie lines drawn in accordance with the detailed provisions of the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 3(1)(a), Sch 1 (both amended by SI 1992/2378).

4 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 3(1)(a) (as amended: see note 3 supra). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

5 Ie the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 ante.

6 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

7 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 3(1)(b).

8 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 3(1). The lines referred to are those drawn in accordance with the detailed provisions of Sch 1.

9 'Exploration licence' means a licence to search for petroleum in any seaward area and in those parts of any landward area which are below the low-water line: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 2.

10 'Production licence' means a licence to search and bore for, and get, petroleum in strata, in the sea bed and in the subsoil in a seaward area: *ibid* reg 2.

11 'Petroleum exploration and development licence' means a licence to search and bore for, and get, petroleum in a landward area: *ibid* reg 2.

12 *le* for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

13 For these purposes, 'landward area' means an area on the landward side of the baselines as set out in the Territorial Waters Order in Council 1964 (as amended) (which enables the baseline from which the outer territorial limit is measured to be drawn across the mouths of bays in accordance with public international law: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 125); and 'seaward area' means an area on the seaward side of the baselines as set out in the Territorial Waters Order in Council 1964 (as amended) in respect of which the Secretary of State may grant a licence pursuant to the Petroleum Act 1998 Pt I (ss 1-9) (see PARAS 1626, 1634-1635, 1638-1639 ante, PARAS 1669, 1666, 1743, 1767 note 2 post): see the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 2.

14 See PARAS 1671-1672 post. 'Frontier area' means an area whose exploitation is rendered especially difficult by any one or more of the following factors, namely (1) its distance from existing petroleum-related infrastructure; (2) great water depth; or (3) the lack of existing pertinent technical data relating to such area: *ibid* reg 2.

UPDATE

1640 Seaward and landward areas; frontier areas

TEXT AND NOTES--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283); and the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814.

NOTE 13--Now, 'landward area' has the meaning given by the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 3(1) (see PARA 1640): SI 2004/352 reg 2 (amended by SI 2009/3283).

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1641. Licence applications generally.

With certain exceptions¹, licences are awarded on a competitive basis following publication in the Official Journal of a notice by the Secretary of State² inviting applications³. Any such notice must set out the criteria to be applied in determining those applications⁴. Every application for a licence⁵ must be determined on the basis of criteria concerning:

- 4687 (1) the technical and financial capability of the applicant⁶;
- 4688 (2) the way in which the applicant proposes to carry out the activities that would be permitted by the licence;
- 4689 (3) in a case where tenders are invited, the price the applicant is prepared to pay in order to obtain the licence; and
- 4690 (4) where the applicant holds, or has held, a licence of any description under the Petroleum (Production) Act 1934 (repealed) or the Petroleum Act 1998, any lack of efficiency and responsibility displayed by the applicant in operations under that licence,

and the Secretary of State may refuse an application for a licence⁷. In a case where two or more applications for a licence have equal merit when assessed according to the criteria provided for in heads (1) to (4) above, other relevant criteria may be applied in order to determine which application should be granted⁸. The Secretary of State must not apply any of the prescribed criteria⁹ in a discriminatory manner¹⁰; but an application for a licence may be refused on grounds of national security where the applicant is effectively controlled by, or by nationals of, a state other than a member state¹¹.

Where an application for a licence is refused, the reasons for the decision must be notified to the applicant on request¹².

1 The exceptions are: (1) exploration licences for seaward areas or in landward areas below the low-water line (see the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 4(b)); (2) supplementary seismic survey licences (see the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, regs 4(2), 5(3), 8); and (3) methane drainage licences (see regs 4(1)(b), 5(3)).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 An application for a licence described in note 1 supra may be made at any time: see PARAS 1664-1665 post.

4 Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 5(1). In any case where the Secretary of State invites applications for a licence in accordance with regulations made under the Petroleum (Production) Act 1934 s 6 (repealed) and currently in force (by virtue of the Petroleum Act 1998 s 49, Sch 3 Pt I para 1(2), as if made under s 4: see PARA 1639 ante), and it is intended that the licence should be granted upon terms or conditions which differ from or are additional to those prescribed in those regulations for incorporation in licences of the relevant kind, a statement of such terms and conditions must be made available to any interested person at any time on request: Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, regs 2, 5(2). If any change to the terms and conditions included in the statement provided for in reg 5(1) is decided upon after the statement is first made available and before the licence to which it relates is granted, the change must be notified as soon as practicable to every person who has requested the statement: reg 5(3). As to the terms and conditions of licences see PARAS 1642, 1669 et seq post.

5 'Application for a licence' means an application made under regulations made under the Petroleum (Production) Act 1934 s 6 (repealed) and currently in force (see note 4 supra): Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 2.

6 'Applicant' means an entity which has lodged an application for a licence; and 'entity' means any natural or legal person or any group of such persons: *ibid* reg 2.

7 *Ibid* reg 3(1); Interpretation Act 1978 s 17(2).

8 Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 3(2).

9 *Ie* the criteria set out in *ibid* reg 3(1), (2): see the text and notes 5-8 *supra*.

10 *Ibid* reg 3(3).

11 *Ibid* reg 3(4).

12 *Ibid* reg 3(5).

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1642. Scope and application of terms and conditions of licences generally.

No licence¹ is to be granted upon terms and conditions other than such terms and conditions as are justified exclusively for the purpose of:

- 4691 (1) ensuring the proper performance of the activities permitted by the licence;
- 4692 (2) providing for the payment of consideration for the grant of the licence;
- 4693 (3) any of the considerations specified below, namely:
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- 651. (a) national security;
- 652. (b) public safety;
- 653. (c) public health;
- 654. (d) security of transport;
- 655. (e) protection of the environment;
- 656. (f) protection of biological resources and of national treasures possessing artistic, historic or archaeological value;
- 657. (g) safety of installations and of workers;
- 658. (h) planned management of hydrocarbon resources, including in particular the rate at which hydrocarbons are depleted and the optimisation of their recovery;
- 659. (i) the need to secure tax revenues².
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The terms and conditions provided for in heads (1) to (3) above must be applied in a non-discriminatory manner³.

1 For these purposes, 'licence' means a licence granted following an application for a licence: Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 2. For the meaning of 'application for a licence' see PARA 1641 note 5 ante.

2 Ibid reg 4(1), (2).

3 Ibid reg 4(3). Terms and conditions of United Kingdom licences incorporate prescribed model clauses: see PARA 1669 et seq post.

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1643. Duration of licences.

The Secretary of State¹ must² ensure that:

- 4694 (1) a licence³ only grants an entity⁴ exclusive rights for the period which is necessary for the proper performance of the activities authorised by the licence; and
- 4695 (2) the duration of the licence does not exceed the period necessary to carry out the activities authorised by the licence⁵.

He may, however, extend the term of a licence if:

- 4696 (a) the terms and conditions of the licence⁶ permit an extension of the term;
- 4697 (b) the licensee has performed its obligations in accordance with the terms and conditions of the licence; and
- 4698 (c) the term of the licence has proved, or is likely to prove, insufficient for the licensee to complete the activities authorised by the licence⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie subject to the Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 6(2): see the text and notes 6-7 infra.

3 For the meaning of 'licence' see PARA 1642 note 1 ante.

4 For the meaning of 'entity' see PARA 1641 note 5 ante.

5 Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 6(1).

6 As to the terms and conditions of licences generally see PARA 1642 ante.

7 Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 6(2).

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(ii) Assessment of Environmental Effects

1644. Requirements as to contents of licences.

The Secretary of State¹ may not grant any licence² which does not require the licensee to obtain the prior consent of the Secretary of State to the operations described below³, namely any of the following operations wholly or partly in the relevant area⁴:

- 4699 (1) the commencement or recommencement of the drilling of any well⁵;
- 4700 (2) the extraction of petroleum⁶, otherwise than as a by-product of the drilling or the testing of any well, where the amount extracted exceeds 500 tonnes per day in the case of oil⁷ and 500,000 cubic metres per day in the case of gas⁸; or
- 4701 (3) the erection of any structure⁹ in connection with a development¹⁰.

Nor may he exercise any power conferred on him to vary the terms of a licence so as to relieve the licensee of any requirement to obtain his consent to any of the operations to which heads (1) to (3) above apply¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'licence' means a licence granted or having effect as if granted under the Petroleum Act 1998 s 3 (licences to search and bore for and get petroleum: see PARA 1639 ante) and 'licensee' is to be construed accordingly: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1).

3 Ibid reg 4(1).

4 'The relevant area' means that area comprising (1) tidal waters and parts of the sea adjacent to the United Kingdom from the low-water mark up to the seaward limits of territorial waters; (2) waters in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (as amended) (designation of areas of continental shelf: see PARA 1636 ante); and (3) the sea bed and subsoil under the waters referred to in heads (1)-(2) supra: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1). References in the 1999 Regulations to a project being in a particular area include, unless the context otherwise requires, references to a project proposed to be carried out in that area, a project which is in the course of being carried out in that area and a project which has been carried out in that area: reg 3(2).

5 For these purposes, 'well' means any well or borehole drilled for the purposes of, or in connection with, the getting of petroleum, the exploration for petroleum or the establishment of the existence of, or appraisal of, the quantity, characteristics or quality of, petroleum in a particular location but does not include any well drilled in connection with the exploration for petroleum to a depth of 350 metres or less below the surface of the sea bed for the purpose of obtaining geological information about strata or any drilling operation, the main purpose of which is the testing of the stability of the sea bed: ibid reg 3(1). For the meaning of 'petroleum' see note 6 infra.

6 For these purposes, 'petroleum' includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: ibid reg 3(1).

7 For these purposes 'oil', except in the definition of 'petroleum' set out in note 6 supra, includes any mineral oil or relative hydrocarbon existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: ibid reg 3(1).

8 For these purposes 'gas', except in the definition of 'petroleum' set out in note 6 supra, means natural gas existing in its natural condition in strata: *ibid* reg 3(1).

9 'Structure' means any structure used for or, as the case may be, to be used for the purpose of getting petroleum or conveying petroleum to land (including any structure for the storage of petroleum) which is intended to be permanent and is neither designed to be moved from place to place without major dismantling nor to be used only for searching for petroleum: *ibid* reg 3(1).

10 *Ibid* reg 4(2). 'Development' means any project which has as its main object the getting of petroleum as opposed to the establishment of its existence, the appraisal of its quantity, characteristics or quality or the characteristics or extent of any reservoir in which it occurs: reg 3(1).

11 *Ibid* reg 4(3).

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1645. Requirements as to use of floating or mobile installations.

Notwithstanding any provision in any licence¹, an undertaker² must not without the prior written consent of the Secretary of State³ granted in accordance with the relevant regulations⁴:

4702 (1) use a floating installation⁵ in connection with a relevant project⁶ comprising a development⁷; or

4703 (2) use any mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well⁸.

1 For the meaning of 'licence' for these purposes see PARA 1644 note 2 ante.

2 'Undertaker' means any person who carries out, or may reasonably be taken to propose the carrying out of, a relevant project: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1). 'Relevant project' means a project comprising (1) the drilling of an exploration well; (2) a development; (3) the construction of a pipeline for the conveyance of petroleum other than one which is to form an integral part of any development; or (4) the use of a mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well, wholly or partly within the relevant area: reg 3(1). 'Exploration well' means any well other than a well drilled for the purposes of, or in connection with, a development: reg 3(1). For the meaning of 'well' see PARA 1644 note 5 ante; for the meaning of 'petroleum' for these purposes see PARA 1644 note 6 ante; for the meaning of 'development' see PARA 1644 note 10 ante; and for the meaning of 'the relevant area' see PARA 1644 note 4 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 Ie in accordance with the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1646 et seq post.

5 'Floating installation' means any floating construction or device maintained on a station by whatever means but does not include a structure: *ibid* reg 3(1). For the meaning of 'structure' see PARA 1644 note 9 ante.

6 As to relevant projects see note 2 *supra*.

7 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 4(4)(a).

8 *Ibid* reg 4(4)(b).

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1646. Grant of consent by the Secretary of State in respect of relevant projects.

The Secretary of State¹ may not grant a consent² in respect of a relevant project³ unless the application⁴ for that consent is:

- 4704 (1) in the case of an application for a renewal of a consent⁵ to the getting of petroleum in relation to a relevant project, other than as the by-product of the drilling or testing of a well, an application where the Secretary of State has decided that, having regard to the specified matters⁶, the operation in respect of which the renewal is sought would not be likely to have a significant effect⁷ on the environment and that accordingly no environmental statement⁸ need be prepared in respect of that project⁹;
- 4705 (2) accompanied by an environmental statement in respect of that project; or
- 4706 (3) the subject of a direction¹⁰ that no environmental statement need be prepared¹¹.

Where the Secretary of State receives an application for a consent in respect of a relevant project to which head (1) above applies, the undertaker¹² in question must provide the Secretary of State with such information as he may require regarding that application¹³.

Where an application for consent in respect of a relevant project is accompanied by an environmental statement, the Secretary of State may not grant a consent in respect of that project unless:

- 4707 (a) he is satisfied that the prescribed requirements as to consultation and publicity¹⁴ have been substantially met; and
- 4708 (b) he has taken into consideration:
 - 447 660. (i) the environmental statement;
 - 661. (ii) any information in respect of that relevant project of the specified kind¹⁵;
 - 662. (iii) the representations of any environmental authority¹⁶ to which a copy of that statement was required to be sent¹⁷; and
 - 663. (iv) any opinions expressed by the public¹⁸.
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Where a member state has requested to participate in the procedure¹⁹ in relation to the decision whether to grant consent in respect of a relevant project, the Secretary of State may not grant consent in respect of that project unless:

- 4709 (A) he is satisfied that the prescribed requirements²⁰ have been complied with;
- 4710 (B) he has communicated to that member state the response that he proposes to make to the application for consent, including information as to any measures envisaged to reduce or eliminate any trans-boundary effects of the project;
- 4711 (C) he is satisfied that the member state has been consulted regarding the application for consent and arrangements for consulting persons in that member state, including any authorities likely to be interested in the relevant project in

question by virtue of their particular environmental responsibilities²¹, a reasonable time has been allowed for the consultation of those persons and for any representations made by them regarding the relevant project to be forwarded to the Secretary of State²² and any timetable agreed with that member state regarding consultation with those persons has been observed²³; and

4712 (D) he has taken into consideration any representations made by the member state, members of the public and authorities in that member state and any information regarding the relevant project supplied by any of them²⁴.

Where the Secretary of State has made a direction that no further environmental statement need be prepared where one has already been prepared²⁵, he may not grant a consent to an application which falls within the terms of that direction unless he has taken the specified matters²⁶ into consideration²⁷.

Where the Secretary of State gives his consent to a relevant project, he may, to the extent that he has no other power to do so, attach conditions to that consent for the purpose of reducing or eliminating any significant adverse effects of that project on the environment²⁸.

The Secretary of State must publish a notice of his decision in relation to any application for consent accompanied by an environmental statement in the Gazettes²⁹ and by any other means he considers appropriate, which may include an electronic communication³⁰. He must, where he so publishes a notice of such a decision, communicate that decision, including the specified information³¹, to any EEA state³² which has been provided³³ with a copy of the environmental statement that accompanied that application³⁴.

Where the Secretary of State decides that no environmental statement is required to be prepared in respect of a relevant project which is the subject of an application for a consent to which head (1) above applies, he must publish notice of that decision in the Gazettes and by any other means he considers appropriate, which may include an electronic communication³⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For these purposes, 'consent' means, except in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 4 (see PARAS 1644-1645 ante): (1) in relation to any relevant project comprising the drilling of an exploration well, any consent required by or under a licence to the commencement or recommencement of the drilling of that well; (2) in relation to a relevant project comprising a development: (a) any consent required by or under a licence in respect of the erection of any structure; (b) any consent required by or under a licence to the getting of more than 500 tonnes of oil per day or 500,000 cubic metres of gas per day otherwise than as a by-product of the drilling or the testing of any well; (c) any consent required by virtue of reg 4(4)(a) (consent to use of floating installation: see PARA 1645 ante); (d) any consent required by or under a licence in respect of the commencement or recommencement of the drilling of any well used for the purposes of, or in connection with, the development; or (e) any authorisation for the execution of works for the construction of a pipeline for the conveyance of petroleum, being a pipeline which is to form an integral part of the development; (3) in relation to any relevant project comprising a pipeline for the conveyance of petroleum other than a pipeline which is to form an integral part of a development, any authorisation for the execution of works for the construction of that pipeline; or (4) in relation to any relevant project comprising the use of a mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well, any consent required under reg 4(4)(b) (see PARA 1645 ante); but does not in any case include any consent required pursuant to a licence in respect of anything done or to be done wholly outside the relevant area or any approval: reg 3(1). 'Authorisation' means a pipeline works authorisation required by the Petroleum Act 1998 s 14 (construction and use of pipelines: see PARA 1743 post): Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1). For the meaning of 'exploration well' see PARA 1645 note 2 ante; for the meaning of 'well' see PARA 1644 note 5 ante; for the meaning of 'development' see PARA 1644 note 10 ante; for the meaning of 'licence' see PARA 1644 note 2 ante; for the meaning of 'structure' see PARA 1644 note 9 ante; for the meanings of 'oil' and 'gas' see PARA 1644 notes 7-8 ante; and for the meaning of 'petroleum' for these purposes see PARA 1644 note 6 ante.

3 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

4 'Application' means, except in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, regs 16, 17 (as amended) (applications to court: see PARA 1656 post), an application in writing: reg 3(1).

5 For the purposes of ibid reg 5(2A) (as added) (see head (1) in the text), a consent is renewed where the term of the consent is increased, but without any other variation in the conditions attached to the consent: reg 5(2B) (reg 5(2A), (2B), (8A) added by SI 2007/933).

6 le the matters set out in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, Sch 1. The specified matters are as follows (Sch 1), ie:

123 (1) characteristics of projects: the characteristics of projects having regard, in particular, to:

113.(a) the size of the project;

113

114.(b) the cumulation with other projects;

114

115.(c) the use of natural resources;

115

116.(d) the production of waste, pollution and nuisances; and

116

117.(e) the risk of accidents, having regard in particular to substances or technologies used;

117

124 (2) location of projects: the environmental sensitivity of geographical areas likely to be affected by projects having regard, in particular, to:

118.(a) the existing land use;

118

119.(b) the relative abundance, quality and regenerative capacity of natural resources in the area;

119

120. (c) the absorption capacity of the natural environment, paying particular attention to the following areas, ie wetlands; coastal zones; mountain and forest areas; nature reserves and parks; areas classified or protected under member states' legislation; special protection areas designated by member states pursuant to EEC Council Directive 79/409 (OJ L103, 25.04.79, p 1) (as amended) on the conservation of wild birds (see ANIMALS vol 2 (2008) PARAS 994, 1006; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728) and EEC Council Directive 92/43 (OJ L206, 22.7.92, p 7) (as amended) on the conservation of natural habitats and wild fauna and flora (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 674); areas in which the environmental quality standards laid down in Community legislation have already been exceeded; densely populated areas; and landscapes of historical, cultural or archaeological significance;

120

125 (3) characteristics of the potential impact: the potential significant effects of projects in relation to criteria set out under heads (1), (2) supra, and having regard in particular to:

121.(a) the extent of the impact (geographical area and size of the affected population);

121

122.(b) the trans-frontier nature of the impact;

122

123.(c) the magnitude and complexity of the impact;

123

124.(d) the probability of the impact; and

124

125.(e) the duration, frequency and reversibility of the impact.

125

7 'Effect' includes, except where the context otherwise requires, any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect: ibid reg 3(1).

8 'Environmental statement' means a statement prepared in respect of a relevant project which includes (1) the matters specified in ibid Sch 2; and (2) any information submitted to the Secretary of State by the applicant voluntarily along with the matters referred to in head (1) supra: ibid reg 3(1) (definition substituted by SI

2007/933). The specified matters are as follows (Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, Sch 2), ie:

- 126 (1) a description of the project comprising information on the site, design and size of the project and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the information having regard to current knowledge and methods of assessment, such a description must include:
 - 126.(a) the land and sea bed use requirements during the construction and operational phases; 126
 - 127.(b) a description of the main characteristics of the production processes including the nature and quantity of the materials used; and 127
 - 128. (c) an estimate by type and quantity of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed project; 128
 - 127 (2) a description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects on the environment;
 - 128 (3) the data required to identify and assess the main effects which the project is likely to have on the environment and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the data having regard to current knowledge and methods of assessment such data must include:
 - 129. (a) a description of specific aspects of the environment likely to be significantly affected including in particular human population, fauna, flora, soil including the sea bed and its subsoil, water including the sea and any aquifers under the sea bed, air, climatic factors, the landscape or the seascape, tangible property, architectural and archaeological heritage and the interaction between any of the foregoing; and 129
 - 130.(b) a description of the likely significant effects on the environment arising from the existence of the project, the use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste together with details of the forecasting methods used to assess the effects on the environment; 130
 - 129 (4) an outline of the main alternatives (if any) studied by the undertaker and an indication of the main reasons for his choice, taking into account the environmental effects;
 - 130 (5) a non-technical summary of the information provided under the above headings; and
 - 131 (6) where relevant to the particular characteristics of the project and the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the information having regard to current knowledge and methods of assessment, an indication of any difficulties (technical difficulties or lack of know-how) encountered by the undertaker in compiling the required information.

9 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5(2A) (as added: see note 5 supra). As to application for consent to the construction of a pipeline or the augmentation of an existing pipeline see reg 5(2) (as substituted); and PARA 1744 post.

10 le a direction given under *ibid* reg 6 (as amended): see PARA 1647 post.

11 *Ibid* reg 5(1) (reg 5(1), (8), (10) substituted by SI 2007/933).

12 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

13 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5(3) (reg 5(3), (9) amended by SI 2007/933).

14 le the requirements of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, regs 9, 10 (as amended): see PARAS 1650-1651 post.

15 Ie information of the kind referred to in *ibid* reg 10(2) (as amended) (information omitted from environmental statement): see *PARA 1651 post*.

16 'Environmental authority' means any person on whom environmental responsibilities are conferred by or under any enactment other than the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): reg 3(1).

17 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended).

18 *Ibid* reg 5(4).

19 Ie pursuant to *ibid* reg 12(2) (as amended) (request by member state to participate in procedure under the 1999 Regulations in relation to relevant project affecting it): see *PARA 1653 post*.

20 Ie the requirements of *ibid* reg 12(1), (2) (as amended) (projects affecting other states): see *PARA 1653 post*.

21 See *ibid* reg 5(5)(c)(i).

22 See *ibid* reg 5(5)(c)(ii).

23 See *ibid* reg 5(5)(c)(iii).

24 *Ibid* reg 5(5).

25 Ie a direction under *ibid* reg 6(2) (as substituted): see *PARA 1647 post*.

26 The specified matters are (1) the environmental statement prepared in respect of the relevant project in question; (2) any information in respect of that relevant project of the kind referred to in reg 10(2) (as amended) (information omitted from environmental statement: see *PARA 1651 post*); (3) any representations previously made by an environmental authority to whom that statement was required to be sent; (4) any opinions originally expressed by the public; and (5) any representations or information relating to the relevant project of the kind referred to in *ibid* reg 5(5)(d) (see head (d) in the text): reg 5(6)(a)-(e).

27 *Ibid* reg 5(6).

28 *Ibid* reg 5(7).

29 'The Gazettes' means the London, Edinburgh and Belfast Gazettes: *ibid* reg 3(1).

30 *Ibid* reg 5(8) (as substituted: see note 11 *supra*). 'Electronic communication' means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) while in an electronic form: reg 3(1) (definition added by SI 2007/933). A notice so published must either (1) set out: (a) the contents of the decision and any conditions attached to the decision; (b) the main reasons and considerations on which the decision is based; (c) a summary of any representations made to the Secretary of State by third parties in respect of the project in question, together with details of how those representations were taken into account; and (d) a description, where necessary, of the main measures required to be taken to avoid, reduce and, if possible, offset major adverse effects on the environment; or (2) specify where details of the matters referred to in head (1) *supra* may be obtained: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5(8A) (as added: see note 5 *supra*).

31 Ie the information referred to in *ibid* reg 5(8A)(a) (as added): see note 30 head (1) *supra*.

32 'EEA state' means a member state, Norway, Iceland or Liechtenstein: *ibid* reg 3(1) (definition substituted by SI 2007/933).

33 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12 (as amended): see *PARA 1653 post*.

34 *Ibid* reg 5(9) (as amended: see note 13 *supra*).

35 *Ibid* reg 5(10) (as substituted: see note 11 *supra*).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(ii) Assessment of Environmental Effects/1647. Directions that no environmental statement need be prepared.

1647. Directions that no environmental statement need be prepared.

Where an undertaker¹ makes an application² containing the appropriate particulars³ to the Secretary of State⁴ for him to exercise the power conferred by this provision⁵, and the Secretary of State is satisfied that either:

- 4713 (1) the carrying out of the relevant project⁶ described in that application; or
- 4714 (2) the carrying out of the relevant project as modified or carried out in a particular way or carried out at a particular time,

is not likely to have a significant effect⁷ on the environment, he may⁸ give a direction that any application for consent⁹ in respect of that relevant project or that relevant project as modified, or to be carried out in the manner or at the time specified in the direction, need not be accompanied by an environmental statement¹⁰. No direction may, however, be given pursuant to the above provision in respect of any application for consent:

- 4715 (a) to the getting of more than 500 tonnes of oil¹¹ per day or 500,000 cubic metres of gas¹² per day otherwise than in the course of the drilling or testing of any well¹³;
- 4716 (b) to the erection of any structure¹⁴ in relation to a relevant project comprising a development¹⁵ which the Secretary of State is not satisfied would be likely to produce 500 tonnes or less of oil per day or 500,000 cubic metres or less of gas per day;
- 4717 (c) for the execution of works for the construction of a pipeline of 40 kilometres or more in length and a diameter of 800 millimetres or more (regardless of whether that pipeline forms an integral part of a development); or
- 4718 (d) in respect of which another member state has requested¹⁶ to participate in the procedure¹⁷.

Nor may any direction be so given in respect of any application for an extension of a consent¹⁸.

Where a relevant project has been the subject of an environmental assessment¹⁹, the Secretary of State may, on the application of the undertaker concerned, give a direction that further applications for consents of such kind as may be specified in that direction need not be accompanied by an environmental statement provided that:

- 4719 (i) the Secretary of State is satisfied that if such consents were granted anything that might be done pursuant to them would not give rise to substantially different effects from, or significantly greater effects than, those mentioned in the environmental statement originally prepared in respect of the relevant project; and
- 4720 (ii) any such consents, if granted, would not otherwise fall within any of heads (a) to (d) above²⁰.

In deciding whether or not to give a direction under the above provisions, the Secretary of State must take into consideration, where relevant, the specified²¹ matters²². The Secretary of

State must give notice to the undertaker concerned of his decision in relation to any application made under these provisions²³.

Any direction given pursuant to these provisions remains in force for two years, or such shorter period as may be specified in the direction, from the date on which it was given²⁴. The Secretary of State may, however, revoke any direction so given²⁵.

1 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

2 For the meaning of 'application' see PARA 1646 note 4 ante.

3 'Appropriate particulars' means the name and address of the undertaker, the location of the project in question, the nature and purpose of the project and what the undertaker considers would be likely to be the main environmental consequences of the execution of the project: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6(1)(a). An undertaker must provide to the Secretary of State such further information in relation to any application so made by the undertaker, or made under reg 6(2) (as substituted) (see the text and notes 19-20 infra) as the Secretary of State may require: reg 6(4).

6 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

7 For the meaning of 'effect' see PARA 1646 note 7 ante.

8 Ie subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6(5), (5A) (reg 6(5A) (as added)): see the text and notes 11-18 infra.

9 For the meaning of 'consent' see PARA 1646 note 2 ante.

10 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6(1) (amended by SI 2007/933).

11 For the meaning of 'oil' see PARA 1644 note 7 ante.

12 For the meaning of 'gas' see PARA 1644 note 8 ante.

13 For the meaning of 'well' see PARA 1644 note 5 ante.

14 For the meaning of 'structure' see PARA 1644 note 9 ante.

15 For the meaning of 'development' see PARA 1644 note 10 ante.

16 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12 (as amended) (projects affecting other states): see PARA 1653 post.

17 Ibid reg 6(5). Regulation 6(5) does not, however, prevent the giving of a direction pursuant to reg 6(1) (as amended) in respect of an application for a variation of any consent to the erection of any structure in relation to a development (whether the structure has already been erected pursuant to that consent or not): reg 6(6) (substituted by SI 2007/933).

18 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6(5A) (reg 6(5A), (5B), (11) added by SI 2007/933). For these purposes, an 'extension of a consent' is a variation of an existing consent for a relevant project, where, if the effect of the variation were itself the subject of a separate application, the application would be for consent to: (1) the getting of more than 500 tonnes of oil per day, or 500,000 cubic metres of gas per day otherwise than in the course of the drilling or testing of any well; (2) the erection of any structure in relation to a relevant project comprising a development which the Secretary of State is not satisfied would be likely to produce 500 tonnes or less of oil per day or 500,000 cubic metres or less of gas per day; or (3) the execution of works for the construction of a pipeline of 40 kilometres or more in length and a diameter of 800 millimetres or more (regardless of whether that pipeline forms an integral part of a development): Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6(5B) (as so added).

19 Ie in accordance with ibid reg 5(4): see PARA 1646 ante.

20 Ibid reg 6(2) (substituted by SI 2007/933). See also note 5 *supra*.

21 Ie the matters set out in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, Sch 1: see PARA 1646 note 6 *ante*.

22 Ibid reg 6(3).

23 Ibid reg 6(8). Where the Secretary of State makes a decision in relation to any application for a direction in accordance with reg 6 (as amended), reg 5(8), (8A) (as respectively substituted and added) applies in respect of such an application for a direction in the same way as it applies to an application for a consent accompanied by an environmental statement: reg 6(11) (as added: see note 18 *supra*).

24 Ibid reg 6(7).

25 Ibid reg 6(10).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(ii) Assessment of Environmental Effects/1648. Opinion by Secretary of State as to content of environmental statements.

1648. Opinion by Secretary of State as to content of environmental statements.

On the application¹ of an undertaker² containing the appropriate particulars³, the Secretary of State⁴ must⁵ give an opinion as to the matters to be included in an environmental statement⁶ in respect of the relevant project⁷ referred to in that application⁸. The Secretary of State may not, however, give his opinion pursuant to the above provision unless:

- 4721 (1) he has served a notice⁹ setting out the opinion that he is minded to give on:
- 449
- 664. (a) the undertaker; and
- 665. (b) any environmental authority¹⁰ which he considers would be likely to be interested in the relevant project by reason of its particular environmental responsibilities;
- 450
- 4722 (2) he is satisfied that a reasonable opportunity for making representations regarding the opinion he is minded to give has been afforded to the persons referred to in head (1) above; and
- 4723 (3) he has considered any representations made regarding the proposed opinion¹¹.

An opinion given pursuant to the above provision is without prejudice to the power of the Secretary of State¹² to request further information¹³.

1 For the meaning of 'application' see PARA 1646 note 4 ante.

2 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

3 For the meaning of 'appropriate particulars' see PARA 1647 note 3 ante.

4 Subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 7(2), (3): see the text and notes 9-13 infra.

6 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.

7 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

8 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 7(1).

9 'Notice' means notice in writing: *ibid* reg 3(1). Any notice or other document required or authorised to be given or served on any person under the 1999 Regulations may be given or served by (1) delivering it to that person; (2) leaving it at his proper address; or (3) sending it to his proper address by the recorded delivery service: reg 14(1). Any notice or other document required or authorised to be served on, or given to, any body corporate or unincorporated association other than a partnership is to be duly given or served on the secretary or clerk or other similar officer of that body: reg 14(2). Any notice or other document required or authorised to be served on, or given to, any partnership may be served on or given to a partner or a person having the control or management of the partnership business: reg 14(3). Subject to reg 14(5), for these purposes the proper address of any person on whom or to whom any such notice or document is to be served or given is his last known address except that such address is to be: (a) in the case of a body corporate or its secretary or clerk, the address of the registered office or principal office of the body corporate; (b) in the case of an

unincorporated association (other than a partnership) or its secretary or clerk, the address of the principal office of the association; and (c) in the case of a partnership or a person having control or the management of the partnership business, the address of the principal office of the partnership, and for these purposes the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is to be its principal office within the United Kingdom: reg 14(4). If the person to be served with or given any such notice or document has furnished the person by whom the notice or document is to be served or given with an address pursuant to any provision of the 1999 Regulations, that address is also to be treated for these purposes as his proper address: reg 14(5).

10 For the meaning of 'environmental authority' see PARA 1646 note 16 ante.

11 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 7(2).

12 Ie under *ibid* reg 10 (as amended) (provision to Secretary of State of further information and evidence respecting environmental statements: see PARA 1650 post) or reg 11(5) (further information in respect of environmental statements in relation to exercise of powers under licences by Secretary of State: see PARA 1652 post).

13 *Ibid* reg 7(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(ii) Assessment of Environmental Effects/1649. Obtaining of information for the preparation of environmental statements.

1649. Obtaining of information for the preparation of environmental statements.

The following provisions apply where an undertaker¹ makes an application² to the Secretary of State³ containing appropriate particulars⁴ in respect of a relevant project⁵ for the provision to the undertaker of any information which:

- 4724 (1) would assist the undertaker in the preparation of the environmental statement in respect of the relevant project referred to in the appropriate particulars; and
- 4725 (2) could not otherwise⁶ readily be obtained by the undertaker⁷.

On receipt of such an application, the Secretary of State must:

- 4726 (a) provide⁸ to the undertaker such information as he may have of the kind mentioned in heads (1) and (2) above;
 - 4727 (b) provide to the undertaker the name and address of any environmental authority⁹ that he considers may have any such information; and
 - 4728 (c) at the same time as he provides the name and address of any environmental authority to an undertaker, serve on that authority a notice¹⁰ which:
- 451
- 666. (i) states that he has provided the authority's name and address to the undertaker;
 - 667. (ii) refers to the duty imposed on the authority as described below; and
 - 668. (iii) is accompanied by a copy of the application made by the undertaker under these provisions¹¹.
- 452

Where a notice pursuant to head (c) above is served on an environmental authority by the Secretary of State, the authority must¹² provide to the undertaker concerned, within the period specified in the notice, any information held by it which it considers is of the kind mentioned in heads (1) and (2) above¹³.

Nothing in the above provisions, however, requires the disclosure of any information which is by virtue of any rule of the law of any part of the United Kingdom¹⁴ subject to any obligation of confidentiality¹⁵.

1 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

2 For the meaning of 'application' see PARA 1646 note 4 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'appropriate particulars' see PARA 1647 note 3 ante.

5 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

6 Ie but for the provisions of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 8(2), (3): see the text and notes 8-13 infra.

7 Ibid reg 8(1).

8 le subject to ibid reg 8(4): see the text and notes 14-15 infra.

9 For the meaning of 'environmental authority' see PARA 1646 note 16 ante.

10 For the meaning of 'notice' and as to service of notices, see PARA 1648 note 9 ante.

11 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 8(3).

12 See note 8 supra.

13 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 8(2).

14 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

15 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 8(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(ii) Assessment of Environmental Effects/1650. Procedure on receipt of application where environmental statement prepared; publicity requirements etc.

1650. Procedure on receipt of application where environmental statement prepared; publicity requirements etc.

Where the Secretary of State¹ receives an application² for a consent³ in respect of a relevant project⁴ which is accompanied by an environmental statement⁵, he must forthwith serve on the undertaker⁶ concerned a notice⁷ specifying those environmental authorities⁸ which in the opinion of the Secretary of State are likely to be interested in the project by reason of their particular environmental responsibilities⁹. The undertaker must forthwith:

- 4729 (1) serve on each environmental authority so notified to him:
- 453
- 669. (a) a copy of the Secretary of State's notice;
- 670. (b) a copy of the application for consent and the environmental statement that accompanied it; and
- 671. (c) a notice stating that representations may be made to the Secretary of State by a date specified in the notice which must be at least four weeks after the date on which the application, environmental statement and notice were served on the authority;
- 454
- 4730 (2) give notice to the Secretary of State of the name of every authority whom he has served under head (1) above, and of the date of such service;
- 4731 (3) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the relevant project, make available for public inspection at an address within the United Kingdom¹⁰ between the hours of 10 am and 4 pm on business days¹¹ for a period of not less than four weeks immediately following the publication (or last publication, where it is published in more than one newspaper or on more than one occasion) of the notice referred to in head (6) below a copy of the application for consent and a copy of the environmental statement that accompanied it;
- 4732 (4) make available at an address within the United Kingdom enough copies of the environmental statement to be likely to satisfy all reasonable demands for copies pursuant to head (5) below;
- 4733 (5) subject to head (4) above and the receipt by the undertaker of any sum mentioned in the notice referred to in head (6) below, supply during the period mentioned in head (3) above to any person on request, a copy of the environmental statement¹²; and
- 4734 (6) publish a notice which:
- 455
- 672. (a) describes the application and states that it is accompanied by an environmental statement;
- 673. (b) states that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that the provisions concerning projects affecting other states¹³ apply;
- 674. (c) gives the address referred to in head (3) above at which a copy of the application for consent and environmental statement may be inspected;
- 675. (d) states the nature of possible decisions in response to the application;

676. (e) sets out the arrangements made for consulting the public pursuant to these provisions;
677. (f) states that a copy of the environmental statement may be obtained from the address referred to in head (4) above and specifies the amount of any payment required to be tendered for the statement¹⁴;
678. (g) states a date not less than four weeks after the date on which the notice is last published¹⁵ by which any person may make representations in relation to the application in question to the Secretary of State, and specifies the address to which any such representations are to be sent; and
679. (h) provides an explanation of the right of a person aggrieved by a decision of the Secretary of State to make an application¹⁶ to the court¹⁷.
- 456

The undertaker must publish the notice referred to in head (6) above on such occasions as to be likely to come to the attention of those likely to be interested in, or affected by, the relevant project, and in such newspapers and by such other means (which may include an electronic communication¹⁸) as the Secretary of State may direct¹⁹; and must provide to the Secretary of State copies of the newspapers in which the notice appeared²⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'application' see PARA 1646 note 4 ante.

3 For the meaning of 'consent' see PARA 1646 note 2 ante.

4 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

5 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.

6 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

7 For the meaning of 'notice', and as to service of notices, see PARA 1648 note 9 ante.

8 For the meaning of 'environmental authority' see PARA 1646 note 16 ante.

9 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9(1).

10 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

11 'Business day' means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1).

12 Where an undertaker is subject to an obligation to supply a copy of an environmental statement pursuant to a request made under *ibid* reg 9(2)(e) (see head (5) in the text), he must supply a copy of the environmental statement to the person requesting it as soon as reasonably practicable after receipt of the request: reg 9(5).

13 *Ie* *ibid* reg 12 (as amended): see PARA 1653 post.

14 An undertaker may make the supply of a copy of an environmental statement to any person other than an environmental authority conditional on the receipt by the undertaker of a sum calculated by reference to the cost of printing and distributing copies of the statement, subject to a maximum of £2.00 for each copy requested: *ibid* reg 9(4).

15 *Ie* pursuant to *ibid* reg 9(2A) (as added): see the text and notes 18-19 *infra*.

16 *Ie* pursuant to *ibid* reg 16 (as amended): see PARA 1656 post.

17 *Ibid* reg 9(2) (amended by SI 2007/933).

18 For the meaning of 'electronic communication' see PARA 1646 note 30 ante.

19 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9(2A) (added by SI 2007/933).

20 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9(3).

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1651. Provision to the Secretary of State of further information and evidence respecting environmental statements.

The Secretary of State¹ may by notice² require an undertaker³ to provide in respect of an environmental statement⁴ provided to him⁵ such further information as he may require, including evidence in support of any information in that statement⁶. Where the Secretary of State is of the opinion that information provided pursuant to a requirement so imposed ought to have been included in the environmental statement in question because that information relates to the main effects⁷ the project is likely to have on the environment, or where other information becomes available to the Secretary of State after the date on which the application was made which in his opinion is of material relevance to his decision as to whether to grant consent⁸, he must in writing direct the undertaker to:

- 4735 (1) serve that information on any environmental authority⁹ on which the environmental statement was required to be served¹⁰, together with a notice referring to the material previously served on that authority and stating that further representations may be made to the Secretary of State by a date specified in that notice which must be at least four weeks after the date on which the information and notice were served on that authority;
 - 4736 (2) notify the Secretary of State of the name of every authority served with the information and notice referred to in head (1) above and the date of such service;
 - 4737 (3) make available to the public the application for consent, the environmental statement and the information referred to in head (1) above in the same way as the application and environmental statement were previously made available for the period of four weeks immediately following the publication (or last publication) of the notice referred to in head (4) below; and
 - 4738 (4) publish in such newspapers on such occasions as to be likely to come to the attention of those likely to be interested in, or affected by, the relevant project¹¹, a notice which:
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- 680. (a) refers to the previous notice in respect of the application and environmental statement and states that further information is available in respect of the relevant project;
 - 681. (b) gives the address at which a copy of the application for consent and environmental statement and further information may be inspected;
 - 682. (c) states where a copy of the environmental statement and the additional information may be obtained and specifies¹² the amount of any payment required to be tendered for the copy; and
 - 683. (d) states a date not less than four weeks after the date on which the notice is to be published (or last published) by which any person may make representations in relation to the application in question to the Secretary of State and specifies the address to which any such representations are to be sent¹³.

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The undertaker must provide to the Secretary of State copies of the newspapers in which the notice referred to in head (4) above appeared¹⁴.

- 1 As to the Secretary of State see PARA 601 note 1 ante.
- 2 For the meaning of 'notice', and as to service of notices, see PARA 1648 note 9 ante.
- 3 For the meaning of 'undertaker' see PARA 1645 note 2 ante.
- 4 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.
- 5 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante, PARA 1652 et seq post.
- 6 Ibid reg 10(1).
- 7 For the meaning of 'effect' see PARA 1646 note 7 ante.
- 8 For the meaning of 'consent' see PARA 1646 note 2 ante.
- 9 For the meaning of 'environmental authority' see PARA 1646 note 16 ante.
- 10 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9(2)(a)(ii): see PARA 1650 ante.
- 11 For the meaning of 'relevant project' see PARA 1645 note 2 ante.
- 12 Ie subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9(4) (maximum payment for copy of environmental statement): see PARA 1650 ante.
- 13 Ibid reg 10(2) (amended by SI 2007/933).
- 14 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 10(3).

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1652. Exercise by the Secretary of State of powers under licences.

Where the Secretary of State¹ exercises any powers under a licence² so as to require a licensee to submit to him for his approval³ any proposals for the carrying out of a relevant project⁴ comprising a development⁵ then any proposals so submitted must⁶ be accompanied by an environmental statement⁷. Such proposals need not, however, be accompanied by an environmental statement where:

- 4739 (1) the licensee has submitted appropriate particulars⁸ in respect of the development referred to in the proposals submitted to the Secretary of State; and
- 4740 (2) the Secretary of State, being satisfied that:
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- 684. (a) the proposals either relate to a development which will produce 500 tonnes or less of oil⁹ per day or 500,000 cubic metres or less of gas¹⁰ per day or do not involve the construction of a pipeline of 40 kilometres or more in length and a diameter of 800 millimetres or more;
- 685. (b) having regard to the specified matters¹¹, the carrying out of the proposals is not likely to have a significant effect¹² on the environment; and
- 686. (c) no member state has requested¹³ to participate in the decision relating to the granting of the approval,
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- 4741 has given a direction in writing within the two years immediately preceding the submission of the proposals that they need not be accompanied by an environmental statement¹⁴.

The Secretary of State may revoke a direction so given¹⁵.

Where the Secretary of State proposes to exercise powers under a licence to impose a requirement on a licensee to carry out a relevant project comprising a development:

- 4742 (i) which in his opinion is likely to produce in excess of 500 tonnes of oil per day or in excess of 500,000 cubic metres of gas per day or involves the construction of a pipeline of 40 kilometres or more in length and a diameter of 800 millimetres or more; or
- 4743 (ii) other than one falling within head (i) above which, having regard to the specified matters¹⁶, he is not satisfied is not likely to have a significant effect on the environment,

he must serve a notice¹⁷ on the licensee setting out details of the relevant project which he proposes that the licensee should be required to carry out and requiring the licensee to provide him with an environmental statement in respect of that project within such time as may be specified in the notice¹⁸.

Where proposals are submitted to the Secretary of State accompanied by an environmental statement, or an environmental statement is provided to the Secretary of State in compliance with a requirement imposed by virtue of the provisions set out above¹⁹, then the prescribed procedural and publicity requirements²⁰ and the prescribed requirements regarding the

provision to the Secretary of State of further information and evidence respecting environmental statements²¹ apply, with appropriate modifications, in respect of such an environmental statement in the same way as they apply to an application for a consent²² accompanied by an environmental statement²³. The Secretary of State may not approve proposals which entail the carrying out of a relevant project comprising a development or exercise any power under a licence to require the carrying out of a relevant project comprising a development where in either case an environmental statement has been submitted to him, unless he is satisfied that those requirements, as they so apply, have been substantially met and he has taken into account the environmental statement, any information of the specified kind²⁴, the representations of any environmental authority²⁵ sent a copy of the environmental statement²⁶ and any opinions expressed by the public²⁷.

Where any other member state has requested²⁸ to participate in the procedure in relation to the decision whether to grant an approval or impose a relevant requirement²⁹ in respect of a relevant project, the Secretary of State may not grant an approval or impose a relevant requirement in respect of that project unless:

- 4744 (A) he is satisfied that the prescribed requirements³⁰ have been met;
- 4745 (B) he has communicated to that member state the response that he proposes to make to the application for approval or, as the case may be, the relevant requirement he is minded to impose (including in either case information as to any measures envisaged to reduce or eliminate any trans-boundary effects of the project);
- 4746 (C) he is satisfied that the member state has been consulted regarding the application for consent and the arrangements for consulting persons in that member state³¹, a reasonable time has been allowed for the consultation of those persons and for any representations made by them regarding the relevant project to be forwarded to the Secretary of State and any timetable agreed with that member state regarding consultation with those persons has been observed; and
- 4747 (D) he has taken into consideration any representations made by the member state, members of the public and authorities in that member state and any information regarding the relevant project supplied by any of them³².

Where, having considered the matters referred to above³³, the Secretary of State approves any proposals³⁴ or imposes any relevant requirement, he may, to the extent that he has no power to do so otherwise, attach conditions to that approval or requirement for the purpose of reducing or eliminating any significant adverse effects of the relevant project referred to in those proposals³⁵.

The Secretary of State must publish the relevant matters³⁶ in the Gazettes³⁷ and by any other means he considers appropriate (which may include an electronic communication)³⁸. Upon that publication in the Gazettes, he must inform any EEA state³⁹ which has been provided⁴⁰ with a copy of the environmental statement of the approval of the proposals or, as the case may be, of the imposition of the relevant requirement⁴¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'licence' see PARA 1644 note 2 ante.

3 'Approval' means an approval of the kind referred to in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11(1) (see the text and notes 4-7 infra): reg 3(1).

4 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

5 For the meaning of 'development' see PARA 1644 note 10 ante.

- 6 le subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11(2): see the text and notes 8-14 *infra*.
- 7 Ibid reg 11(1). For the meaning of 'environmental statement' see PARA 1646 note 8 *ante*.
- 8 For the meaning of 'appropriate particulars' see PARA 1647 note 3 *ante*.
- 9 For the meaning of 'oil' see PARA 1644 note 7 *ante*.
- 10 For the meaning of 'gas' see PARA 1644 note 8 *ante*.
- 11 le the matters set out in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, Sch 1: see PARA 1646 note 6 *ante*.
- 12 For the meaning of 'effect' see PARA 1646 note 7 *ante*.
- 13 le under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12 (projects affecting other states): see PARA 1653 *post*.
- 14 Ibid reg 11(2).
- 15 Ibid reg 11(3).
- 16 See note 11 *supra*.
- 17 For the meaning of 'notice', and as to service of notices, see PARA 1648 note 9 *ante*.
- 18 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11(4).
- 19 le a requirement imposed by virtue of *ibid* reg 11(4).
- 20 le the provisions of *ibid* reg 9 (as amended) (procedure on receipt of application for consent accompanied by environmental statement; publicity requirements; provision of environmental statements to public): see PARA 1650 *ante*.
- 21 le the provisions of *ibid* reg 10 (as amended): see PARA 1651 *ante*.
- 22 For the meaning of 'consent' see PARA 1646 note 2 *ante*.
- 23 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11(5). References in regs 9, 10 (as amended) as so applied to the application for consent are to be treated as references to the proposals submitted by the licensee or, as the case may be, to the notice served pursuant to reg 11(4): reg 11(5).
- 24 le information of the kind referred to in *ibid* reg 10(2) (as amended) (information omitted from environmental statement: see PARA 1651 *ante*) as reg 10 (as amended) applies by virtue of reg 11(5) (see note 23 *supra*).
- 25 For the meaning of 'environmental authority' see PARA 1646 note 16 *ante*.
- 26 le in compliance with the requirements of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 9 (as amended) (see PARA 1650 *ante*) as it applies by virtue of reg 11(5) (see note 23 *supra*).
- 27 Ibid reg 11(6).
- 28 le under *ibid* reg 12(2): see PARA 1653 *post*.
- 29 'Relevant requirement' means any requirement, imposed under a licence, of the kind referred to in *ibid* reg 11(4) (see the text and notes 16-18 *supra*): reg 3(1).
- 30 le the requirements of *ibid* reg 12(1), (2) (projects affecting other states): see PARA 1653 *post*.
- 31 le including any authorities likely to be interested in the relevant project in question by virtue of their particular environmental responsibilities: *ibid* reg 11(7)(c)(i).
- 32 Ibid reg 11(7).

33 le the matters referred to in *ibid* reg 11(6), (7): see the text and notes 24-32 *supra*.

34 le any proposals of the kind referred to in *ibid* reg 11(1).

35 *Ibid* reg 11(8).

36 For these purposes, the 'relevant matters' are: (1) any decision regarding the approval pursuant to a licence of a project which entails the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State; (2) particulars of the exercise by the Secretary of State of any powers pursuant to a licence requiring the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State; or (3) any decision that an environmental statement is not to be required in connection with the giving of an approval or the imposition of a relevant requirement: *ibid* reg 11(9A) (added by SI 2007/933).

37 For the meaning of 'the Gazettes' see PARA 1646 note 29 *ante*.

38 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11(9) (substituted by SI 2007/933).

39 For the meaning of 'EEA state' see PARA 1646 note 32 *ante*.

40 le pursuant to *ibid* reg 12 (as amended): see PARA 1653 *post*.

41 *Ibid* reg 11(10).

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1653. Projects affecting other states.

Where it appears to the Secretary of State¹ that the carrying out of a relevant project² would be likely to have a significant effect³ on the environment of any other member state or where any other member state which considers that its environment is likely to be significantly affected by that project so requests, the Secretary of State must forward to the member state in question as soon as possible and no later than the date on which the environmental statement⁴ in respect of that project is made available to the public (except in a case where a request is made by the member state after that date):

- 4748 (1) a description of the project together with any available information regarding the possible trans-boundary impact of the project; and
- 4749 (2) a written notification explaining the nature of the decision to be taken as to whether or not to grant consent⁵ in respect of the relevant project and informing the member state in question that it may within such reasonable period as may be specified in the notification request to participate in the procedure⁶ relating to the taking of the decision⁷.

Where any other member state requests to participate in the procedure⁸ in relation to a relevant project, the Secretary of State must, save to the extent that he has not already done so, send to that member state:

- 4750 (a) a copy of the application for consent in respect of the relevant project, a copy of any proposals submitted to the Secretary of State for approval⁹ or, as the case may be, any notice served by the Secretary of State of a project proposed to be carried out by an undertaker¹⁰;
- 4751 (b) the environmental statement relating to that project; and
- 4752 (c) to the extent that it is not included in the items referred to in head (a) or head (b) above, and subject to the exception for confidentiality¹¹, any other available information of a specified¹² nature¹³.

Where it appears to the Secretary of State that the carrying out of a relevant project would be likely to have a significant effect on the environment of an EEA state¹⁴ other than a member state or any such EEA state which considers that its environment is likely to be significantly affected by that project so requests, the Secretary of State must forward to the state in question the environmental statement relating to that project at the same time as it is made available to the public¹⁵ or, where a request is made after the date on which the environmental statement is made available to the public, as soon as reasonably practicable after receipt of the request by the Secretary of State¹⁶.

Nothing in the above provisions requires the disclosure by the Secretary of State of any material which is subject to an obligation of confidentiality under the law of any part of the United Kingdom¹⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

- 2 For the meaning of 'relevant project' see PARA 1645 note 2 ante.
- 3 For the meaning of 'effect' see PARA 1646 note 7 ante.
- 4 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.
- 5 For the meaning of 'consent' see PARA 1646 note 2 ante.
- 6 Ie pursuant to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante; the text and notes 7-17 infra; and PARA 1654 et seq post.
- 7 Ibid reg 12(1).
- 8 Ie under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended).
- 9 For the meaning of 'approval' see PARA 1652 note 3 ante.
- 10 Ie any notice served pursuant to ibid reg 11(4): see PARA 1652 ante.
- 11 Ie subject to ibid reg 12(4): see the text and note 17 infra.
- 12 Ie information of a nature referred to in ibid reg 9(2) (see PARA 1650 ante) and s 10(2) (see PARA 1651 ante).
- 13 Ibid reg 12(2) (amended by SI 2007/933).
- 14 For the meaning of 'EEA state' see PARA 1646 note 32 ante.
- 15 See note 6 supra.
- 16 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12(3).
- 17 Ibid reg 12(4). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

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1654. Projects in other EEA states having a significant effect on the environment in the transboundary area.

Where the Secretary of State¹ receives information² from another EEA state³ which that EEA state has gathered from the developer of a relevant project⁴ in that EEA state which is likely to have significant effects⁵ on the environment of the transboundary area⁶, the Secretary of State must:

- 4753 (1) enter into consultations with that EEA state regarding, inter alia, the potential significant effects of the proposed project on the environment of the transboundary area and the measures envisaged to reduce or eliminate such effects; and
- 4754 (2) determine in agreement with that EEA state a reasonable period, before development consent for the project is granted, during which members of the public in the United Kingdom⁷ may submit representations⁸ to the competent authority in that EEA state⁹.

The Secretary of State must also:

- 4755 (a) arrange for the information referred to above to be made available, within a reasonable time, both to the environmental authorities¹⁰ in the United Kingdom which he considers are likely to be concerned by the project by reason of their particular environmental responsibilities, and to the public concerned;
- 4756 (b) ensure that those authorities and the public concerned in the United Kingdom are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the EEA state, within a reasonable time, their opinion on the information supplied; and
- 4757 (c) so far as he has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of that EEA state, and in particular:

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- 687. (i) any conditions attached to it;
- 688. (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
- 689. (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified¹¹.

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1 As to the Secretary of State see PARA 601 note 1 ante.

2 le pursuant to EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment, art 7(1) or (2) (as substituted).

3 For the meaning of 'EEA state' see PARA 1646 note 32 ante.

4 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

5 For the meaning of 'effect' see PARA 1646 note 7 ante.

6 'Transboundary area' means the area comprising the relevant area but excluding (1) the tidal waters and parts of the sea adjacent to Scotland from the low-water mark to the seaward limits of the territorial sea; and (2) the sea bed and subsoil under the waters referred to in head (1) supra: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 3(1) (definition added by SI 2007/933). For the meaning of 'the relevant area' see PARA 1644 note 4 ante.

7 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

8 le pursuant to EEC Council Directive 85/337 (OJ L175, 5.7.85, p 40) art 7(3)(b) (as substituted).

9 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12A(1) (reg 12A added by SI 2007/933).

10 For the meaning of 'environmental authority' see PARA 1646 note 16 ante.

11 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 12A(2) (as added: see note 9 supra).

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1655. Exempt projects.

The Secretary of State¹ may in exceptional circumstances direct that a relevant project² is to be exempt in whole or in part from the requirements of the relevant environmental assessment regulations³ provided that he is satisfied that the carrying out of that project is not likely to have a significant effect⁴ on the environment of any other EEA state⁵. Prior to the giving of any such direction, the Secretary of State must inform the European Commission of the reasons justifying the exemption to be granted and provide it with details of the information to be made available to the public pursuant to head (2) below⁶.

A direction given by the Secretary of State in pursuance of the above provision must:

- 4758 (1) require the carrying out of such other form of assessment as the Secretary of State considers appropriate;
- 4759 (2) require that all information relating to the main effects the project is likely to have on the environment collected pursuant to head (1) above is to be made available to the public and specify the manner in which it is to be made available;
- 4760 (3) specify the extent to which the relevant environmental assessment regulations are to apply or that they are not to apply at all; and
- 4761 (4) include a statement of his reasons for giving the direction⁷;

and it may disapply such provisions of those regulations as may in the circumstances appear to him to be appropriate⁸.

The Secretary of State must publish details of any direction so made together with information as to how persons interested in, or affected by, the project may obtain a copy of any direction given pursuant to these provisions in the Gazettes⁹ and by any other means he considers appropriate (which may include an electronic communication¹⁰).

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

3 I.e. the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante, PARA 1656 et seq post.

4 For the meaning of 'effect' see PARA 1646 note 7 ante.

5 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 13(1). For the meaning of 'EEA state' see PARA 1646 note 32 ante.

6 Ibid reg 13(2).

7 Ibid reg 13(3) (amended by SI 1997/933).

8 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 13(4).

9 For the meaning of 'Gazettes' see PARA 1646 note 29 ante.

10 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 13(5) (substituted by SI 1997/333). For the meaning of 'electronic communication' see PARA 1646 note 30 ante.

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1656. Applications to the court.

On the application of any person aggrieved¹:

- 4762 (1) by the grant of consent² in respect of a relevant project³ in relation to which an environmental statement⁴ was required to be submitted⁵, the court⁶ may grant an order quashing the grant of consent where it is satisfied that the consent was granted in contravention of the Secretary of State's duty to take the specified matters into consideration⁷, or that the interests of the applicant have been substantially prejudiced by any failure to comply with any other requirement⁸ of the relevant regulations⁹;
- 4763 (2) by an approval¹⁰ or the imposition of a relevant requirement¹¹ in respect of a relevant project in relation to which an environmental statement was required to be submitted¹², the court may grant an order quashing the approval or, as the case may be, the imposition of the relevant requirement where it is satisfied that the approval or, as the case may be, the imposition of the relevant requirement was in contravention of the Secretary of State's duty to take the specified matters into consideration¹³, or that the interests of the applicant have been substantially prejudiced by any failure to comply with any other requirement¹⁴ of the relevant regulations¹⁵.

An application to the court under head (1) or head (2) above must be made within six weeks from the date of publication in the Gazettes¹⁶ of details of the consent, approval or, as the case may be, imposition of the relevant requirement¹⁷. The court may by interim order, pending the determination of any question referred to in heads (1) and (2) above, stay the operation of the consent, approval or, as the case may be, the relevant requirement on such terms as it may think fit¹⁸.

Where:

- 4764 (a) any activity in relation to a relevant project is being, or has been, carried out without the necessary consent or approval of the Secretary of State granted in accordance with the relevant regulations¹⁹ or otherwise than in accordance with a relevant requirement imposed in accordance with those regulations; or
- 4765 (b) a relevant project is being, or has been, carried out in breach of any condition attached to any consent or approval, being a condition so attached for the purpose of reducing or eliminating any significant adverse effects²⁰ on the environment,

the court may²¹, on the application of the Secretary of State, make an order restraining the continued carrying out of the relevant project or compelling the performance of any act required to be done by a condition of the kind mentioned in head (b) above²². The court may, in addition to making such an order, make an order requiring:

- 4766 (i) the removal, so far as is practicable in all the circumstances, of any structure²³ erected:

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690. (A) without the consent or approval of the Secretary of State as mentioned in head (a) above;

691. (B) otherwise than in accordance with any relevant requirement as mentioned in head (a) above; or

692. (C) in breach of a condition of the kind mentioned in head (b) above; and

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4767 (ii) where it orders the removal of any structure, the reinstatement of the site where the structure was erected²⁴.

The court may not, however, grant an order under these provisions in respect of a breach of any condition of the kind mentioned in head (b) above where either the breach in question was due to circumstances beyond the control of the undertaker²⁵ and the breach could not reasonably have been prevented by the undertaker²⁶ or the breach occurred as a result of anything required to be done as a matter of urgency for the purposes of securing the safety of any person²⁷. Nor do these provisions apply to anything done in relation to a project which is the subject of an exemption granted²⁸ in respect of an exempt project²⁹.

Where the undertaker fails to comply with the terms of an order made pursuant to head (i) or head (ii) above within such time as may be specified in it or, in default of such specification, within a reasonable time of the making of the order, the Secretary of State may himself take the action required to be taken by the order and the reasonable costs and expenses of doing so are to be recoverable as a debt from the undertaker³⁰. Where the Secretary of State takes such action, that action is without prejudice to any consequences which may flow from the undertaker's failure to comply with the order³¹.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 For the meaning of 'consent' see PARA 1646 note 2 ante.

3 For the meaning of 'relevant project' see PARA 1645 note 2 ante.

4 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.

5 Ie by virtue of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5(1) (as substituted) (grant of consent by Secretary of State in respect of relevant projects): see PARA 1646 ante. As to the Secretary of State see PARA 601 note 1 ante.

6 Subject to *ibid* reg 15(3), for the purposes of reg 16 (as amended) (application to court by person aggrieved: see the text and notes 1-5 *supra*, 7-17 *infra*) and reg 17 (application to court by Secretary of State: see the text and notes 18-30 *infra*), 'the court' means (1) in respect of a relevant project in the English area, the High Court; (2) in respect of a relevant project in the Scottish area, the Court of Session; and (3) in respect of a relevant project in the Northern Irish area, the High Court in Northern Ireland: reg 15(1). For these purposes 'the English area', 'the Scottish area' and 'the Northern Irish area' have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197: Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 15(2). 'The English area' means such of the offshore area adjacent to England and Wales which lies to the south of the Scottish border and east of the Northern Irish border together with the internal waters of England and Wales in so far as they are tidal or constitute parts of the sea; 'the Scottish area' means such of the offshore area adjacent to Scotland which lies to the north of the Scottish border and east of the Northern Irish border together with the internal waters of Scotland in so far as they are tidal or constitute parts of the sea; and 'the Northern Irish area' means such of the offshore area adjacent to Northern Ireland which lies to the west of the Northern Irish border together with the internal waters of Northern Ireland in so far as they are tidal or constitute parts of the sea: Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 1(2) (as so applied). For the meaning of 'the offshore area' see PARA 1679 note 7 *post*. Where a project is situated in more than one of those areas, then any of the courts having jurisdiction in those areas has jurisdiction in relation to any question arising under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 16 (as amended) or reg 17: reg 15(3).

7 Ie in contravention of *ibid* reg 5(4)(b) (consideration of environmental statement etc): see PARA 1646 ante.

8 le any other requirement of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante, PARA 1657 post.

9 Ibid reg 16(1) (reg 16(1), (2) amended by SI 2007/933).

10 For the meaning of 'approval' see PARA 1652 note 3 ante.

11 For the meaning of 'relevant requirement' see PARA 1652 note 29 ante.

12 le by virtue of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 11 (as amended) (exercise by the Secretary of State of powers under licences): see PARA 1652 ante.

13 le in contravention of ibid reg 11(6) (consideration of environmental statement etc): see PARA 1652 ante.

14 See note 8 supra.

15 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 16(2) (as amended: see note 9 supra).

16 For the meaning of 'the Gazettes' see PARA 1646 note 29 ante.

17 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 16(3).

18 Ibid reg 16(4).

19 le granted in accordance with the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante, PARA 1657 post.

20 For the meaning of 'effect' see PARA 1646 note 7 ante.

21 le subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 17(3), (6): see the text and notes 23-29 infra.

22 Ibid reg 17(1).

23 For the meaning of 'structure' see PARA 1644 note 9 ante.

24 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 17(2).

25 For the meaning of 'undertaker' see PARA 1645 note 2 ante.

26 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 17(3)(a).

27 Ibid reg 17(3)(b).

28 le granted pursuant to ibid reg 13 (as amended): see PARA 1655 ante.

29 Ibid reg 17(6).

30 Ibid reg 17(4).

31 Ibid reg 17(5).

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1657. Offences.

Any person who intentionally or recklessly¹ submits to the Secretary of State²:

- 4768 (1) an environmental statement³;
- 4769 (2) appropriate particulars⁴; or
- 4770 (3) any other information required to be submitted by virtue of any provision of the relevant regulations⁵,

which is false or misleading in a material particular is guilty⁶ of an offence⁷.

An undertaker⁸ who:

- 4771 (a) intentionally acts in breach of the terms of a condition attached to any consent⁹ or approval¹⁰, being a condition so attached for the purpose of reducing or eliminating any significant adverse effects¹¹ on the environment; or
- 4772 (b) carries out any activity in relation to a relevant project¹² without the necessary consent or approval of the Secretary of State granted in accordance with the relevant regulations¹³ or otherwise than in accordance with a relevant requirement¹⁴ imposed in accordance with those regulations,

is guilty¹⁵ of an offence¹⁶.

The above provisions do not, however, apply to anything which is an offence by virtue of the provision of the Petroleum Act 1998¹⁷ relating to enforcement¹⁸; nor do they apply to anything done in relation to a project which is the subject of an exemption granted¹⁹ in respect of an exempt project²⁰.

Proceedings for an offence under the above provisions may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom²¹. No proceedings may, however be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions²² or by the Secretary of State or a person authorised by him in that behalf²³.

It is a defence to a charge under head (a) above for the undertaker to show:

- 4773 (i) that he took all reasonable steps to avoid the commission of the offence; or
- 4774 (ii) that the acts in question were attributable to anything required to be done as a matter of urgency for the purposes of securing the safety of any person²⁴.

A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine²⁵. Where any offence provided for by these provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or on the part of any person purporting to act in such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly²⁶.

- 1 For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.
- 2 As to the Secretary of State see PARA 601 note 1 ante.
- 3 For the meaning of 'environmental statement' see PARA 1646 note 8 ante.
- 4 For the meaning of 'appropriate particulars' see PARA 1647 note 3 ante.
- 5 Ie any provision of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante.
- 6 Ie subject to ibid reg 18(3): see the text and notes 16-17 infra.
- 7 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 18(1).
- 8 For the meaning of 'undertaker' see PARA 1645 note 2 ante.
- 9 For the meaning of 'consent' see PARA 1646 note 2 ante.
- 10 For the meaning of 'approval' see PARA 1652 note 3 ante.
- 11 For the meaning of 'effect' see PARA 1646 note 7 ante.
- 12 For the meaning of 'relevant project' see PARA 1645 note 2 ante.
- 13 Ie granted in accordance with the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended): see PARA 1644 et seq ante.
- 14 For the meaning of 'relevant requirement' see PARA 1652 note 29 ante.
- 15 Ie subject to the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 18(3), (4), (8): see the text and notes 16-19, 23 infra.
- 16 Ibid reg 18(2).
- 17 Ie the Petroleum Act 1998 s 21 (as amended): see PARAS 1757, 1758 post.
- 18 Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 18(3).
- 19 Ie granted pursuant to ibid reg 13: see PARA 1655 ante.
- 20 Ibid reg 18(8).
- 21 Ibid reg 18(11). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.
- 22 Ibid reg 18(9)(a).
- 23 Ibid reg 18(9)(c). As to consents to prosecutions in Northern Ireland see reg 18(9)(b). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 18: reg 18(10).
- 24 Ibid reg 18(4).
- 25 Ibid reg 18(5). As to the statutory maximum see PARA 689 note 2 ante.
- 26 Ibid reg 18(6). Where the affairs of a body corporate are managed by its members, reg 18(6) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 18(7).

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(iii) Conservation of Habitats

1658-1660 Conservation of Habitats

Material relating to this part has been revised and published under the title ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vols 45, 46 (2010).

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(iv) Types of Licences

A. LICENCES IN RESPECT OF SEAWARD AREAS OR LANDWARD AREAS BELOW LOW-WATER LINE

1661. Production licences.

Any person may apply¹ for a production licence in respect of a seaward area² only³. Every application for such a production licence must relate to a block or a tranche described in a notice published in the Official Journal or to a number of blocks or tranches so described⁴. That notice must describe, by reference to a map deposited at the office of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry) specified in the notice and at such other places, if any, as may be specified in the notice:

- 4775 (1) areas to which reference numbers must be assigned ('blocks');
- 4776 (2) groups of contiguous blocks to which reference numbers must be assigned ('tranches'); or
- 4777 (3) both blocks and tranches to which reference numbers must be assigned,

in respect of which the Secretary of State⁵ is prepared to receive applications for production licences⁶. The notice must⁷ provide for applications relating to any of the blocks or tranches so described to be made and determined in competition with others, specifying:

- 4778 (a) a date before which any such applications are to be made, being a date at least 90 days after the date on which the notice is published; and
- 4779 (b) a date on which, or a period within which, licences will be granted to successful applicants⁸.

In the case, however, of any block in respect of which:

- 4780 (i) provision for competing applications was made on a previous occasion in a notice published in the Official Journal; and
- 4781 (ii) that provision did not result in the grant of a licence,

the notice may provide for applications to be made and determined at any time⁹.

Where the Secretary of State decides that geological or production considerations justify the granting of a production licence in respect of any area to the holder of a licence in respect of a contiguous area, and notifies him and any other holders of licences in respect of areas contiguous to the area in question accordingly, any of them may apply for a licence in respect of the area in question within whatever period the Secretary of State considers sufficient for this purpose and specifies in the notification¹⁰.

With every application for a production licence in respect of a seaward area only there must be paid a fee of £2,820¹¹.

Every production licence must incorporate the appropriate model clauses, unless the Secretary of State thinks fit to modify or exclude, in any particular case, the clauses prescribed in relation to such licences¹².

There is nothing to prevent more than one application being made by the same person or more than one licence being granted to him¹³.

1 In accordance with the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213 (as amended). The 1988 Regulations were made under the Petroleum (Production) Act 1934 s 6 (repealed) but now have effect as if made under the Petroleum Act 1998 s 4 (see PARA 1639 ante) by virtue of s 49, Sch 3 Pt I para 1(2). An application for a licence must be made in writing and must be in the form specified in the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, Sch 3 (amended by SI 1992/2378; SI 1995/1435; SI 1996/2946) or in a form substantially to the like effect, sent to the Licensing Branch, Oil and Gas Division, Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry), London SW1, and must be accompanied by the appropriate fee and by such evidence and particulars or documents in support thereof as are referred to in Sch 3 (as amended) and are appropriate to that application: Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 5(1) (amended by SI 1995/1435). If any of the matters stated in an application or any further information supplied by the applicant change after the application is made or after the information is given but before a licence is granted or the Secretary of State informs the applicant that the application is refused, the applicant must forthwith give notice in writing to the Secretary of State giving particulars of the change: Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 5(2).

2 For the meaning of 'seaward area' for these purposes see PARA 1640 ante.

3 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 4(a).

4 Ibid reg 7(1) (substituted by SI 1996/2946).

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 7(2) (reg 7(2)-(5) substituted by SI 1995/1435; the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 7(2), (3) amended by SI 1996/2946).

7 In subject to the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 7(4) (as substituted): see the text and note 9 infra.

8 Ibid reg 7(3) (as substituted and amended: see note 6 supra).

9 Ibid reg 7(4) (as substituted: see note 6 supra).

10 Ibid reg 7(5) (as substituted: see note 6 supra).

11 Ibid reg 9(2) (amended by SI 1996/2946).

12 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 8(1). For the prescribed model clauses see the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended); and PARAS 1671-1673 post.

13 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 10.

UPDATE

1661 Production licences

TEXT AND NOTE 11--The fee is now £2,100: SI 1988/1213 reg 9(2) (further amended by SI 2009/3283).

NOTE 12--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283).

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1662. Exploration licences.

Any person may apply¹ for an exploration licence in respect of the whole or part of the seaward areas² or the landward areas below the low-water line³. The fee payable on every application for an exploration licence is £500⁴. There is nothing to prevent more than one application being made by the same person or more than one licence being granted to him⁵. Every exploration licence must incorporate the appropriate model clauses, unless the Secretary of State⁶ thinks fit to modify or exclude, in any particular case, the clauses prescribed in relation to such licences⁷.

1 In accordance with the Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213 (as amended). As to the method of application see PARA 1661 note 1 ante.

2 For the meaning of 'seaward areas' for these purposes see PARA 1640 ante.

3 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 4(b). For the meaning of 'landward areas below the low-water line' see PARA 1640 ante.

4 Ibid reg 9(3).

5 Ibid reg 10.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Petroleum (Production) (Seaward Areas) Regulations 1988, SI 1988/1213, reg 8(1). For the prescribed model clauses see Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended); and PARA 1670 post.

UPDATE

1662 Exploration licences

NOTE 7--For the prescribed model clauses in relation to licences granted on or after 13 November 2009 see the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814.

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B. LICENCES IN RESPECT OF LANDWARD AREAS

1663. Petroleum development and exploration licences.

Any person may apply¹ for a petroleum exploration and development licence² in respect of a landward area³. Every application for a petroleum exploration and development licence must⁴ relate to a block described in a notice published in the Official Journal or to a number of contiguous blocks so described⁵. That notice must describe, by reference to a map deposited at the office of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry) specified in the notice and at such other places, if any, as may be specified in the notice, areas ('blocks') to which reference numbers must be assigned, in respect of which the Secretary of State⁶ is prepared to receive applications for petroleum exploration and development licences⁷. The notice must⁸ provide for applications relating to any of the blocks so described to be made and determined in competition with others, specifying:

- 4782 (1) a date before which any such applications are to be made, being a date at least 90 days after the date on which the notice is published; and
- 4783 (2) a date on which, or a period within which, licences will be granted to successful applicants⁹.

In the case, however, of any block in respect of which:

- 4784 (a) provision for competing applications was made on a previous occasion in a notice published in the Official Journal; and
- 4785 (b) that provision did not result in the grant of a licence,

the notice may provide for applications to be made and determined at any time¹⁰.

Where the Secretary of State decides that geological or production considerations justify the granting of a petroleum exploration and development licence in respect of any area to the holder of a licence in respect of a contiguous area, and notifies him and any other holders of licences in respect of areas contiguous to the area in question accordingly, any of them may apply for a licence in respect of the area in question within whatever period the Secretary of State considers sufficient for this purpose and specifies in the notification¹¹.

An application for a petroleum exploration and development licence must include the specified information¹², accompanied by such evidence and particulars or documents in support thereof as are referred to in the relevant statutory provision¹³ and are appropriate to that application¹⁴. In respect of each applicant for a petroleum exploration and development licence which is a body corporate there must accompany the application two copies of the most recent audited accounts of such applicant and two copies of the most recent audited accounts of any body corporate having control¹⁵ of such applicant¹⁶. There must also accompany the application a list of the bodies corporate whose accounts are submitted pursuant to the above requirement¹⁷. Where the most recent audited accounts of a body corporate whose accounts are required to accompany an application are in respect of a period ending on a date more than 12 months before the date of the application, there must also accompany the application two copies of a

balance sheet showing the state of the body corporate's affairs as at the latest date within that 12 months period in respect of which a balance sheet can be made available¹⁸. In the case of each applicant who is not a body corporate there must accompany the application evidence demonstrating that he will have sufficient resources available to him to undertake the work programme¹⁹ described in the application²⁰. If any of the matters stated in an application or any further information supplied by the applicant change after the application is made or after the information is given but before a petroleum exploration and development licence is granted or the Secretary of State informs the applicant that the application is refused, the applicant must forthwith give notice in writing to the Secretary of State giving particulars of the change²¹.

Every petroleum exploration and development licence must incorporate the prescribed model clauses unless the Secretary of State thinks fit or modify or exclude, in any particular case, the clauses prescribed in relation to such licences²². Every application for such a licence must be accompanied by a fee of £1,000²³. There is nothing to prevent more than one application being made by the same person or more than one such licence being granted to him²⁴.

1 Ie in accordance with the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436. The 1995 Regulations were made under the Petroleum (Production) Act 1934 s 6(1) (repealed) but now have effect as if made under the Petroleum Act 1998 s 4 (see PARA 1639 ante) by virtue of s 49, Sch 3 Pt I para 1(2). Every application for a licence must (1) be made in writing and sent to Oil and Gas Division, Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry), London, SW1; and (2) be accompanied by the appropriate fee: Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 5(1). Every application for a licence which relates to an area bounded by any of the lines specified in Sch 1 must be accompanied by two copies of an Ordnance Survey map on a scale of 1:25,000, or such other map or chart as the Secretary of State may allow, upon which the boundaries of the area in relation to which the licence is sought are clearly defined: reg 5(2). For additional requirements with regard to applications for petroleum exploration and development licences see reg 6, Sch 2; and the text and notes 12-21 infra; and as to the appropriate fee see the text and note 23 infra.

2 'Petroleum exploration and development licence' means a licence granted pursuant to the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436 (as amended) to search and bore for and get petroleum in a landward area: reg 2. For the meaning of 'landward area' see PARA 1640 ante; and for the meaning of 'petroleum' see PARA 1626 ante.

3 Ibid reg 4(1)(a).

4 Ie subject to ibid reg 7(5): see the text and note 11 infra.

5 Ibid reg 7(1).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 7(2).

8 Ie subject to ibid reg 7(4): see the text and note 10 infra.

9 Ibid reg 7(3).

10 Ibid reg 7(4).

11 Ibid reg 7(5).

12 Ie the information specified in ibid reg 6(1), Sch 2.

13 Ie as are referred to in ibid Sch 2.

14 Ibid reg 6(1).

15 Whether for these purposes a body corporate has control of another body corporate is to be determined as if the Income and Corporation Taxes Act 1988 s 416(2), (4)-(6) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1299) applied subject to the following modifications, namely: (1) for the words 'the greater part' wherever they occur in the s 416(2) there were substituted the words 'one-third or more'; (2) in s 416(6), for the word 'may', there were substituted the word 'shall', the words from 'and such attributions' onwards were omitted, and in the other provisions of s 416(6) any reference to an associate of a person is to be construed as including only a

relative of his (as defined by s 417(4) (as amended) (ie spouse or civil partner, parent or remoter forebear, child or remoter issue, or brother or sister), a partner of his and a trustee of a settlement (as defined by s 681(4) (now repealed)) of which he is a beneficiary: Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 6(3).

16 Ibid reg 6(2).

17 Ibid reg 6(4).

18 Ibid reg 6(5).

19 'Work programme' means a scheme of prospecting including any geological survey by any physical or chemical means and any test drilling: ibid reg 2.

20 Ibid reg 6(6).

21 Ibid reg 6(7).

22 Ibid reg 9(1). For the prescribed model clauses see the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended); and PARA 1674 post.

23 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 10(1).

24 Ibid reg 11.

UPDATE

1663-1665 Licences in Respect of Landward Areas

Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436 further amended: Energy Act 2008 s 77, Sch 3 Pt 1.

1663 Petroleum development and exploration licences

TEXT AND NOTE 23--The fee is now £1,400: SI 1995/1436 reg 10(1) (amended by SI 2009/3283).

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1664. Supplementary seismic survey licences.

A person who holds a principal licence¹ may apply² for a supplementary seismic survey licence³ in respect of a landward area⁴ contiguous to the area to which the principal licence relates⁵. An application for such a licence may be made at any time⁶. Every such application must relate to a clearly defined area, no part of which is:

- 4786 (1) subject to a principal licence;
- 4787 (2) more than one kilometre from the boundary of the area to which a principal licence held by the applicant relates; or
- 4788 (3) below the low-water line⁷.

Every such application must be accompanied by two copies of a programme in accordance with which the applicant proposes to undertake seismic surveys in both the area to which the principal licence relates and the area to which the supplementary seismic survey licence is to relate⁸.

Every such licence must incorporate the appropriate model clauses unless the Secretary of State⁹ thinks fit to modify or exclude, in any particular case, the clauses prescribed in relation to such licences¹⁰. With every application for a supplementary seismic survey licence a fee of £150 is payable¹¹. Nothing prevents more than one application being made by the same person¹².

1 'Principal licence' means a licence of any description under the Petroleum Act 1998 other than a methane drainage licence or a supplementary seismic survey licence: Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 2; Interpretation Act 1978 s 17(2). As to methane drainage licences see PARA 1665 post; and for the meaning of 'supplementary seismic survey licence' see note 3 infra.

2 In accordance with the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436. As to the method of application see PARA 1663 note 1 ante.

3 'Supplementary seismic survey licence' means a licence to search for petroleum by undertaking seismic surveys in an area adjacent to an area to which a principal licence relates: *ibid* reg 2. For the meaning of 'petroleum' see PARA 1626 ante.

4 For the meaning of 'landward area' see PARA 1640 ante.

5 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 4(2).

6 *Ibid* reg 5(3).

7 *Ibid* reg 8(1). For the meaning of 'low-water line' see PARA 1640 ante.

8 *Ibid* reg 8(2).

9 As to the Secretary of State see PARA 601 note 1 ante.

10 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 9(1). For the prescribed model clauses see reg 9(2)(b), Sch 4; and PARA 1675 post.

11 *Ibid* reg 10(2).

12 Ibid reg 11.

UPDATE

1663-1665 Licences in Respect of Landward Areas

Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436 further amended: Energy Act 2008 s 77, Sch 3 Pt 1.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(iv) Types of Licences/B. LICENCES IN RESPECT OF LANDWARD AREAS/1665. Methane drainage licences.

1665. Methane drainage licences.

Any person may apply¹ for a methane drainage licence²; and such an application may be made at any time³.

Every such licence must incorporate the appropriate model clauses unless the Secretary of State⁴ thinks fit to modify or exclude, in any particular case, the clauses prescribed in relation to such licences⁵. With every application for such a licence a fee of £50 is payable⁶. Nothing prevents more than one application being made by the same person⁷.

1 In accordance with the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436. As to the method of application see PARA 1663 note 1 ante.

2 Ibid reg 4(1)(b). 'Methane drainage licence' means a licence to get natural gas in the course of operations for making and keeping safe mines whether or not disused: reg 2. For the meaning of 'natural gas' see PARA 1627 ante.

3 Ibid reg 5(3).

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 9(1). For the prescribed model clauses see reg 9(2)(c), Sch 5; and PARA 1676 post.

6 Ibid reg 10(3).

7 Ibid reg 11.

UPDATE

1663-1665 Licences in Respect of Landward Areas

Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436 further amended: Energy Act 2008 s 77, Sch 3 Pt 1.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/A. IN GENERAL/1666. Compulsory acquisition of ancillary rights.

(v) Rights and Duties of Licensees

A. IN GENERAL

1666. Compulsory acquisition of ancillary rights.

The provisions of the Mines (Working Facilities and Support) Act 1966¹ apply for the purpose of enabling a person holding a licence² to acquire such ancillary rights³ as may be required for the exercise of the rights granted by the licence⁴, and have effect accordingly, subject to certain modifications⁵.

However, in relation to any application made to the court for such ancillary rights, in deciding whether to grant any right applied for or what terms and conditions, if any, should be imposed⁶ upon the grant of such a right, the court must have regard, among other considerations⁷, to the effect on the amenities of the locality of the proposed use and occupation of the land in respect of which the right is applied for⁸. In determining the amount of any compensation⁹ to be paid in respect of any such grant, an additional allowance of not less than 10 per cent must be made on account of the acquisition of the right being compulsory¹⁰.

No order may be made for the applicant's costs to be paid by any person from whom a right is sought to be obtained¹¹; and the costs in connection with the application incurred by each person from whom a right is sought to be obtained must be ordered to be paid by the applicant unless the court is satisfied that an unconditional offer in writing was made by the applicant to that person of a sum as compensation equal to or greater than the amount of any compensation awarded to him by the court¹².

1 See MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 383 et seq.

2 I.e a licence granted under the Petroleum Act 1998 Pt I (ss 1-9): see PARA 1626 et seq ante. As to the Secretary of State's power to grant such licences see PARA 1639 ante.

3 For the meaning of 'ancillary rights' for the purposes of the Mines (Working Facilities and Support) Act 1966 s 2 (as amended) see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 387. Without prejudice to the generality of s 2(1) (as amended), the 1966 Act has effect for these purposes as if the ancillary rights mentioned in s 2(1) (as amended) included (1) a right to enter upon land and to sink boreholes in the land for the purpose of searching for and getting petroleum; and (2) a right to use and occupy land for (a) the erection of such buildings; (b) the laying and maintenance of such pipes; and (c) the construction of such other works, as may be required for the purpose of searching and boring for and getting, carrying away, storing, treating and converting petroleum: Petroleum Act 1998 s 7(3). For the meaning of 'petroleum' see PARA 1626 ante.

4 Ibid s 7(1).

5 See ibid s 7(2). The modifications are that (1) references to a person having a right to work minerals include references to a person holding a licence under Pt I; (2) references to minerals include references to petroleum; and (3) references to the working of minerals include references to the getting, carrying away, storing, treating and converting of petroleum: s 7(2)(a)-(c).

6 As to the imposition of terms and conditions see the Mines (Working Facilities and Support) Act 1966 5(1), (4); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 395.

7 As to the considerations to be taken into account by the court see ibid s 5(3), (4); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 395.

8 Petroleum Act 1998 s 7(4)(a).

9 As to compensation generally in respect of grants of rights see the Mines (Working Facilities and Support) Act 1966 s 8; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 397; see also *BP Petroleum Developments Ltd v Ryder* [1987] 2 EGLR 233, [1987] RVR 211.

10 Petroleum Act 1998 s 7(4)(b). See also *BP Petroleum Developments Ltd v Ryder* [1987] 2 EGLR 233, [1987] RVR 211.

11 Petroleum Act 1998 s 7(4)(c).

12 Ibid s 7(4)(d).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/A. IN GENERAL/1667. Obligation to give facilities.

1667. Obligation to give facilities.

The obligations imposed by the Mining Industry Act 1926¹ with regard to the giving of information and permitting of access to the Natural Environment Research Council² in relation to the sinking of shafts and boreholes extend to such operations when undertaken in Great Britain³ for the purpose of searching for or getting petroleum⁴.

1 See the Mining Industry Act 1926 s 23(1) (as amended); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 263.

2 As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

3 The obligations under the Mining Industry Act 1926 s 23(1) (as amended) have not been extended to operations outside Great Britain; but model clauses prescribed for inclusion in licences for both landward and seaward areas include requirements as to the keeping of records (including geological records) and samples, and for the delivery to the Secretary of State of copies of records and parts of samples: see PARA 1670 post at heads (10)-(12) in the text; and PARAS 1671-1674 post at heads (21)-(23) in the text of each of those paragraphs.

4 See the Mining Industry Act 1926 s 23(6) (added by the Petroleum Act 1998 s 50, Sch 4 para 1). For the meaning of 'petroleum' see PARA 1626 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/A. IN GENERAL/1668. Secretary of State's powers to require information.

1668. Secretary of State's powers to require information.

The Secretary of State¹ may only require an entity² which has been granted a licence³ to provide information on its intended or actual sources of procurement of supplies, works or services if that request is made exclusively with a view to the objectives set out in the relevant provision⁴ of the EC Treaty⁵; and he may only request information from an entity which has been granted a licence to monitor the activities of that entity if that monitoring is justified by any of the specified⁶ considerations⁷.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'entity' see PARA 1641 note 5 ante.

3 For the meaning of 'licence' see PARA 1642 note 1 ante.

4 Ie the objectives set out in the EC Treaty art 30 (ex art 36).

5 Hydrocarbons Licensing Directive Regulations 1995, SI 1995/1434, reg 7(1).

6 Ie the considerations specified in ibid reg 4(1), (2): see PARA 1642 ante.

7 Ibid reg 7(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(A) The Petroleum (Current Model Clauses) Order 1999/1669. The Petroleum (Current Model Clauses) Order 1999.

B. MODEL CLAUSES

(A) THE PETROLEUM (CURRENT MODEL CLAUSES) ORDER 1999

1669. The Petroleum (Current Model Clauses) Order 1999.

In an order made before 15 February 1999¹, the Secretary of State² was to reproduce the specified³ current model clauses⁴. In compliance with this requirement, the Secretary of State made the Petroleum (Current Model Clauses) Order 1999⁵, which came into force on 15 February 1999⁶. Any licence granted under the Petroleum (Production) Act 1934⁷ which was in force immediately before that date and which, when granted, incorporated any of the specified model clauses⁸, had effect on that date as if it incorporated, in place of the relevant model clauses⁹, the current model clauses so reproduced¹⁰. Where immediately before 15 February 1999 any such licence incorporated model clauses subject to any amendment or modification, or with the omission of any model clause, the current model clauses so reproduced have effect in relation to that licence:

- 4789 (1) subject to the same amendment or modification; or
- 4790 (2) as the case may be, with the omission of the model clause corresponding to the model clause omitted from the licence¹¹;

and where immediately before that date substitute model clauses¹² had been substituted for the model clauses originally incorporated in any licence granted under the 1934 Act¹³, the licence is to be treated for these purposes as if, when granted, it had incorporated the substitute model clauses¹⁴.

Notwithstanding anything contained in the Petroleum (Current Model Clauses) Order 1999, the prescribed model clauses¹⁵ in relation to:

- 4791 (a) exploration licences¹⁶;
- 4792 (b) production licences¹⁷; and
- 4793 (c) petroleum exploration and development licences¹⁸,

are now those provided for by the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004¹⁹.

1 Ie the commencement date of the Petroleum Act 1998: see PARA 1628 the text and notes 2-3 ante. However, s 5(1)-(4), Sch 1 (see the text and notes 2-4 infra) came into force on 11 June 1998: see s 52(1).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Ie model clauses in relation to each of the Petroleum Act 1998 Sch 1 paras 1-27, which list model clauses set out in a number of now superseded regulations.

4 See *ibid* s 5(4). For these purposes, the 'current model clauses' means, in relation to any paragraph of Sch 1, the model clauses which, immediately before 15 February 1999, would be incorporated in a licence granted

under the Petroleum (Production) Act 1934 s 2 (repealed) if the licence, when granted, had incorporated the model clauses mentioned in that paragraph: Petroleum Act 1998 s 5(1). The reference in s 5(1) to the model clauses which, immediately before 15 February 1999, would be incorporated in a licence is a reference to those model clauses as they would then have effect but as if any reference (however expressed) in a model clause to an enactment repealed and re-enacted by the Petroleum Act 1998 were, or (where the context requires) included, a reference to the corresponding provision of that 1998 Act: s 5(2). For the purposes of s 5(2), any provision of a model clause which would have effect (or would have a particular effect) only in relation to a licence of a description of which none was in force immediately before 15 February 1999 is to be treated as not then having effect (or as not then having that effect): s 5(3).

The order to be made under s 5(4) was to be made by statutory instrument, was to be laid before Parliament after being made and was to come into force on 15 February 1999: see s 5(11).

5 Ie the Petroleum (Current Model Clauses) Order 1999, SI 1999/160.

6 Ibid art 1.

7 Ie under the Petroleum (Production) Act 1934 s 2 (repealed).

8 Ie any of the model clauses mentioned in the Petroleum Act 1998 Sch 1 paras 1-27.

9 For these purposes, the relevant model clauses, in relation to any licence, are the model clauses which the licence incorporated immediately before 15 February 1999 other than any model clause which (1) was incorporated into the licence when it was granted; and (2) is not within any of Sch 1 paras 1-27: s 5(6).

10 Ibid s 5(5). Any provision incorporated in a licence by virtue of s 5(5) may be altered or deleted by an instrument under seal executed by the Secretary of State and the licensee or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995: Petroleum Act 1998 s 5(9). Where any provision is replaced by virtue of s 5(5): (1) a reference in any document to that provision (or which immediately before 15 February 1999 was to be construed as a reference to that provision) is, except so far as the nature of the document or context otherwise requires, to be construed as a reference to the replacement; and (2) anything done under or for the purposes of that provision must, except where the context otherwise requires, be treated as having been done under or for the purposes of the replacement: s 5(10).

11 Ibid s 5(7).

12 Ie model clauses set out in any regulations made under the Petroleum (Production) Act 1934 s 6 (repealed).

13 See note 7 supra.

14 Petroleum Act 1998 s 5(8).

15 Ie prescribed for the purposes of ibid s 4(1)(e): see PARA 1639 ante.

16 For the meaning of 'exploration licence' see PARA 1640 note 9 ante.

17 For the meaning of 'production licence' see PARA 1640 note 10 ante.

18 For the meaning of 'petroleum exploration and development licence' see PARA 1640 note 11 ante.

19 Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(1). See PARA 1670 et seq post. The model clauses so prescribed apply for the purposes of the twenty-second and subsequent rounds of licensing in seaward areas and the twelfth and subsequent rounds of licensing in landward areas.

UPDATE

1669 The Petroleum (Current Model Clauses) Order 1999

NOTES 4, 7--For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum (Production) Act 1934 s 2, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

NOTE 5--SI 1999/160 amended: Energy Act 2008 Sch 3 Pt 2.

NOTE 10--Petroleum Act 1998 s 5(9) amended: Energy Act 2008 Sch 5 para 8.

NOTE 19--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283); and the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1670. Model clauses for exploration licences.

(B) MODEL CLAUSES FOR EXPLORATION, PRODUCTION AND DEVELOPMENT IN SEAWARD AND LANDWARD AREAS

1670. Model clauses for exploration licences.

Model clauses have been prescribed¹ for incorporation in exploration licences² applied for on or after 5 March 2004³ which cover:

- 4794 (1) the grant of the licence⁴;
- 4795 (2) prospecting methods⁵;
- 4796 (3) the term of the licence⁶;
- 4797 (4) the licensee's right to determine the licence⁷;
- 4798 (5) the payment of consideration for the licence⁸;
- 4799 (6) restrictions on the commencement and abandonment of wells without the minister's consent and requirements as to the plugging of abandoned wells⁹;
- 4800 (7) the distance of wells from the boundaries of the exploration area¹⁰;
- 4801 (8) the avoidance of harmful methods of working¹¹;
- 4802 (9) the protection of fishing and navigation¹²;
- 4803 (10) the records to be kept by the licensee¹³;
- 4804 (11) the returns to be made by the licensee to the minister and to the Chancellor of the Exchequer¹⁴;
- 4805 (12) the keeping of samples¹⁵;
- 4806 (13) the minister's obligation to treat the licensee's reports as confidential¹⁶;
- 4807 (14) the minister's power to inspect the licensee's records¹⁷;
- 4808 (15) rights of access by persons authorised by the minister¹⁸;
- 4809 (16) the minister's power to execute works where the licensee is in default¹⁹;
- 4810 (17) the licensee's duty to indemnify the minister against third party claims²⁰;
- 4811 (18) an agreement not to assign rights under the licence without the minister's consent²¹;
- 4812 (19) the minister's power to revoke the licence²²;
- 4813 (20) provisions for arbitration in the event of disputes²³;
- 4814 (21) the licensee's obligations to give notice of certain activities to the Ministry of Defence²⁴; and
- 4815 (22) the licensee's obligation to appoint a fisheries liaison officer²⁵.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person²⁶.

1 Ie for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

2 For the meaning of 'exploration licence' see PARA 1640 note 9 ante.

3 Ie the date when the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended) came into force: see reg 1.

4 See *ibid* reg 3(1), (2), Sch 1 cl 2. The licence is a non-exclusive licence conferring the right during its continuance and subject to its provisions to search for petroleum in the strata in the islands and in the sea bed and subsoil in any seaward area and in those parts of any landward area which are below the low-water line; provided that no rights conferred by the licence are to be exercisable in any area in respect of which a licence (not being a methane drainage licence) is for the time being in force, entitling the grantee of it to search and bore for and get petroleum, except with the agreement of the holder of that licence to the exercise in any such area of any such rights: Sch 1 para 2. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry); and 'the licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned: Sch 1 cl 1(1). For the meaning of 'landward area' and 'seaward area' see PARA 1640 note 13 *ante* (where definitions identical to those in Sch 1 cl 1(1) are set out); for the meaning of 'petroleum' see PARA 1626 *ante* (where a definition identical to that in Sch 1 cl 1(1) is set out); and as to methane drainage licences see PARA 1665 *ante*, PARA 1676 *post*.

5 The right to search for petroleum conferred by the licence includes prospecting and carrying out geological surveys by physical or chemical means and drilling for the purpose of obtaining geological information about strata in the exploration area but does not include any right to get petroleum or any right to drill wells for production of petroleum or any other well of a depth exceeding 350 metres below the surface of the sea bed or such greater depth as the minister may from time to time approve either generally or in relation to a particular well or in relation to a class of wells to which that well belongs: *ibid* Sch 1 cl 3. For these purposes, 'well' includes borehole; and 'the exploration area' means the area for the time being in which the licensee may exercise the rights granted by the licence: Sch 1 cl 1(1).

6 See *ibid* Sch 1 cl 4. Unless sooner determined under any of its provisions, the licence is to continue in force for the term of three years, but may, if the minister sees fit and the licensee has at least three months before the expiry of that term made a written request for its extension, be continued for a further period of three years: Sch 1 cl 4.

7 See *ibid* Sch 1 cl 5. The licensee may at any time determine the licence by giving to the minister not less than six months' previous notice in writing to that effect: Sch 1 cl 5.

8 See *ibid* Sch 1 cl 6.

9 See *ibid* Sch 1 cl 7. Where the licensee's rights in any area cease for the time being to be exercisable, by reason of the grant of a licence to search and bore for and get petroleum, or by reason of the ending of any such agreement as is referred to in the proviso to Sch 1 cl 2 (see note 4 *supra*), the licensee, unless the minister otherwise determines, must within one month after the date on which such rights cease to be exercisable plug any of the licensee's wells in that area: Sch 1 cl 7(5). All the licensee's wells (other than wells to which Sch 1 cl 7(5) applies) in the exploration area must, unless the minister otherwise determines, be plugged by the licensee not less than one month before the expiry or determination of the licensee's rights under the licence: Sch 1 cl 7(6). The plugging of any well must be done in accordance with a specification approved by the minister applicable to that well or to wells generally or to a class of wells to which that well belongs and must be carried out in an efficient and workmanlike manner: Sch 1 cl 7(7).

10 Except with the minister's consent in writing, no well is to be drilled or made so that any part of it is less than 125 metres from any of the boundaries of the exploration area: *ibid* Sch 1 cl 8.

11 See *ibid* Sch 1 cl 9. The licensee must maintain all apparatus and appliances and all wells which have not been abandoned and plugged as provided by Sch 1 cl 7 in good repair and condition and must execute all operations in or in connection with the exploration area in a proper and workmanlike manner in accordance with methods and practice of exploration customarily used in good oilfield practice: Sch 1 cl 9(1). He must comply with any relevant instructions from time to time given by the minister (see Sch 1 cl 9(2)) and must give notice to the minister of any event causing escape or waste of petroleum, damage to petroleum-bearing strata or entrance of water through wells to petroleum-bearing strata forthwith after the occurrence of that event (Sch 1 cl 9(3)). Forthwith after the occurrence of any event causing escape of petroleum into the sea, the licensee must give notice of the event to the Chief Inspector of Her Majesty's Coastguard: Sch 1 cl 9(3).

12 The licensee must not carry out any operations authorised by the licence in or about the exploration area in such manner as to interfere unjustifiably with navigation or fishing in the waters of the exploration area or with the conservation of the living resources of the sea: *ibid* Sch 1 cl 10.

13 See *ibid* Sch 1 cl 11.

14 See *ibid* Sch 1 cl 12.

15 See *ibid* Sch 1 cl 13. As far as reasonably practicable the licensee must correctly label and preserve for reference for a period of five years samples of the sea bed and of the strata encountered in any of the licensee's wells in the exploration area and samples of any petroleum or water discovered in any such wells

(Sch 1 cl 13(1)) and must not dispose of any sample after the expiry of that period unless he has at least six months before the date of the disposal given notice in writing to the minister of his intention to dispose of the sample and the minister or any person authorised by him has not within that period of six months informed the licensee in writing that he wishes the sample to be delivered to him (Sch 1 cl 13(2)).

16 See *ibid* Sch 1 cl 14.

17 See *ibid* Sch 1 cl 15.

18 See *ibid* Sch 1 cl 16.

19 If the licensee fails at any time to perform the obligations arising under the terms and conditions of *ibid* Sch 1 cl 7 or Sch 1 cl 9, the minister is entitled, after giving to the licensee reasonable notice in writing of his intention, to execute any works and to provide and install any equipment which in the opinion of the minister may be necessary to secure the performance of those obligations or any of them and to recover the costs and expenses of so doing from the licensee: Sch 1 cl 17.

20 See *ibid* Sch 1 cl 18.

21 The licensee must not, without the consent of the minister in writing, assign or part with any of the rights granted by the licence in relation to the whole or any part of the exploration area or grant any sub-licence in respect of any such rights: *ibid* Sch 1 cl 19.

22 See *ibid* Sch 1 cl 20. The minister may revoke the licence upon the occurrence of any of the following events: (1) any specified consideration or any part of it being in arrear or unpaid for two months next after any of the days on which it ought to have been paid; (2) any breach or non-observance by the licensee of any of the terms and conditions of the licence; (3) in Great Britain, the bankruptcy or sequestration of the licensee; (4) in Great Britain, the making by the licensee of any arrangement or composition with his creditors; (5) in Great Britain, if the licensee is a company, the appointment of a receiver or administrator or any liquidation whether compulsory or voluntary; (6) in a jurisdiction other than Great Britain, the commencement of any procedure or the making of any arrangement or appointment substantially corresponding to any of those mentioned in heads (3)-(5) *supra*; (7) if the licensee is a company, the licensee's ceasing to direct and control either (a) its operations under the licence; or (b) any commercial activities in connection with those operations from a fixed place within the United Kingdom; and where two or more persons are the licensee any reference to the licensee in heads (2)-(7) *supra* is a reference to any of those persons: Sch 1 cl 20(1), (2) (amended by SI 2006/784).

23 See the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 1 cl 21.

24 The licensee must give the Ministry of Defence six months' prior notice of any installation movements within the exploration area and six weeks' prior notice of any seismic survey within that area: *ibid* Sch 1 cl 22(1), (2). He must, at his own expense, install and maintain underwater sonar beacons to Ministry of Defence specifications on any structures that may be temporarily within the exploration area, provided that there is no requirement to fit such beacons to fixed and charted installations: Sch 1 cl 22(3).

25 See *ibid* Sch 1 cl 23.

26 *Ibid* Sch 1 cl 1(2).

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

1670 Model clauses for exploration licences

TEXT AND NOTES--Model clauses have been prescribed by the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814, for incorporation in exploration licences granted on or after 13 November 2009. SI 2009/2814 also prescribes model clauses for incorporation in licences granted

on or after 13 November 2009 for loading, unloading and storage of gas and for establishing and maintaining a gas installation, most of which are identical to the clauses prescribed for incorporation in exploration licences; see PARA 1670A.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1670A. Model clauses for loading, unloading and storage of gas and for establishing and maintaining a gas installation.

1670A. Model clauses for loading, unloading and storage of gas and for establishing and maintaining a gas installation.

Model clauses have been prescribed by the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009, SI 2009/2814, for incorporation in licences granted on or after 13 November 2009 for (1) (a) the use of a controlled place for the unloading of gas to an installation or pipeline; (b) the use of a controlled place for the storage of gas; (c) the conversion of any natural feature in a controlled place for the purpose of storing gas; (d) the recovery of gas stored in a controlled place; and (2) establishing or maintaining an installation in a controlled place for the purposes of such exploration.

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1671. Model clauses for production licences relating to frontier areas with no break clause.

1671. Model clauses for production licences relating to frontier areas with no break clause.

Model clauses have been prescribed¹ for incorporation in production licences² applied for on or after 5 March 2004³ which relate to frontier areas⁴ and which do not include a break clause⁵. Those model clauses cover:

- 4816 (1) the grant of the licence⁶;
- 4817 (2) the term of the licence⁷;
- 4818 (3) options to continue the licence into a second or a third term⁸, to continue it after the third term⁹ and to extend it further¹⁰;
- 4819 (4) the licensee's right to determine the licence or to surrender part of the licensed area¹¹;
- 4820 (5) provisions as to surrendered areas¹²;
- 4821 (6) payment of consideration for the licence¹³;
- 4822 (7) the method or methods used for the measurement of petroleum obtained from the licensed area¹⁴;
- 4823 (8) the licensee's duty to keep accounts¹⁵;
- 4824 (9) the licensee's obligations to carry out the work programme set out in the licence and any appropriate programme for exploring for petroleum in the licensed area which he has been required to submit to the minister¹⁶;
- 4825 (10) restrictions on the carrying out of development and production programmes without the minister's consent¹⁷;
- 4826 (11) restrictions on the commencement and abandonment of wells without the minister's consent and requirements as to the plugging of abandoned wells¹⁸;
- 4827 (12) the distance of wells from the boundaries of the licensed area¹⁹;
- 4828 (13) the control of development wells²⁰;
- 4829 (14) the licensee's obligations to provide storage tanks, pipes, pipelines and other receptacles²¹;
- 4830 (15) the avoidance of harmful methods of working²²;
- 4831 (16) restrictions on the appointment of operators without the minister's consent²³;
- 4832 (17) the protection of fishing and navigation²⁴;
- 4833 (18) the licensee's obligations as to the training of employees²⁵;
- 4834 (19) the minister's power to oblige the licensee to co-operate with other licensees in the development of an oil field as a unit²⁶;
- 4835 (20) the minister's powers to give directions as to oil fields across boundaries²⁷;
- 4836 (21) the records to be kept by the licensee²⁸;
- 4837 (22) the returns to be made by the licensee to the minister²⁹;
- 4838 (23) the keeping of samples³⁰;
- 4839 (24) the minister's obligation to treat the licensee's reports as confidential³¹;
- 4840 (25) the minister's power to inspect the licensee's records³²;
- 4841 (26) rights of access by persons authorised by the minister³³;
- 4842 (27) the minister's power to execute works where the licensee is in default³⁴;

- 4843 (28) the right of distress³⁵;
- 4844 (29) the licensee's duty to indemnify the minister against third party claims³⁶;
- 4845 (30) restrictions on the matters to be contained in advertisements and prospectuses³⁷;
- 4846 (31) restrictions on assignments³⁸;
- 4847 (32) the minister's power to revoke the licence³⁹;
- 4848 (33) provisions for arbitration in the event of disputes⁴⁰;
- 4849 (34) the licensee's obligations to give notice of certain activities to the Ministry of Defence⁴¹; and
- 4850 (35) the licensee's obligation to appoint a fisheries liaison officer⁴².

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person⁴³.

1 Ie for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

2 For the meaning of 'production licence' see PARA 1640 note 10 ante.

3 Ie the date when the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended) came into force: see reg 1.

4 For the meaning of 'frontier area' see PARA 1640 note 14 ante.

5 Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(1), (3). 'Break clause' means a clause in a licence, other than a clause relating to continuation of the licence beyond its initially agreed or any subsequent term, which provides that, in the event of failure by the licensee on or before a date specified in that clause to take specified action or to undertake to complete specified work, the licence is to cease and determine: reg 2.

6 See *ibid* reg 3(3), Sch 2 cl 2. The licence is an exclusive licence conferring the right during its continuance and subject to its provisions to search and bore for, and get, petroleum in the sea bed and subsoil under the seaward area more particularly described in the licence, being the area comprising blocks on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry); provided that nothing in the licence affects the right of the minister to grant a methane drainage licence in respect of the whole or any part of the licensed area or affects the exercise of any rights granted under any such methane drainage licence: see Sch 2 cl 2. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry); 'the licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned; 'block' means an area comprised in the licence which is delineated on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform and to which a reference number was assigned at the date of the licence; and 'the licensed area' means the area for the time being in which the licensee may exercise the rights granted by the licence: Sch 2 cl 1(1). For the meaning of 'seaward area' see PARA 1640 note 13 ante; for the meaning of 'petroleum' see PARA 1626 ante (where a definition identical to that contained in Sch 2 cl 1(1) is set out); and as to methane drainage licences see PARA 1665 ante, PARA 1676 post.

7 See *ibid* Sch 2 cl 3. Unless sooner determined under any of the provisions of the licence, it continues for the initial term, ie the period of two years: Sch 2 cl 1(1), 3(1). Upon expiry of the initial term, and provided always that its terms and conditions continue to be performed and observed, the licence continues in force as follows: (1) subject to Sch 2 cl 4, 9, for the second term (ie a period of four years following expiry of the initial term); (2) subject to Sch 2 cl 5 and 9, for the third term (ie a period of six years following expiry of the second term); and (3) subject to Sch 2 cl 6, for the production period: Sch 2 cl 1(1), 3(2). 'Production period' means, in circumstances governed by Sch 2 cl 6(3)(a)-(c), a period of 18 years and, in circumstances governed by Sch 2 cl 6(3)(d) or Sch 2 cl 6(4), such period or periods of not more than 18 years in aggregate as the minister is to prescribe: Sch 2 cl 1(1). See further note 9 *infra*.

8 See *ibid* Sch 2 cl 4, 5. See also note 7 *supra*.

9 See *ibid* Sch 2 cl 6. See also note 7 *supra*. At any time not later than three months before the expiry of the third term the licensee may, subject to payment of those sums provided for in the licence and to performance of the terms and conditions contained in it, give notice in writing to the minister that he desires the licence to continue as to a part of the licensed area ('the producing part'): see Sch 2 cl 6(1). The producing part must be

an area that comprises no section that is not, wholly or in part, the subject of a consent, approval or programme described in Sch 2 cl 6(3): Sch 2 cl 6(2). If such a notice is given the licence continues in force after the expiry of the third term as provided by Sch 2 cl 6(4)-(6) in the event that before such expiry (1) the minister has given a consent in pursuance of Sch 2 cl 14(1) and such consent is still in force upon expiry of the third term; or (2) the minister has in pursuance of Sch 2 cl 14(4) approved a programme submitted to him in pursuance of Sch 2 cl 14(2) and such approval is still in force upon expiry of the third term; or (3) the minister has served a programme on the licensee in pursuance of Sch 2 cl 14(6) and such programme is still in force upon expiry of the third term; or (4) the minister has in his discretion so directed in writing: Sch 2 cl 6(3). Where the minister has given a direction extending the third term of the licence in pursuance of head (4) supra he may in his discretion, on notice in writing being given to him by the licensee not later than three months before the expiry of such extension or before the expiry of any subsequent extension under this provision that he desires the licence to continue in force thereafter, give a further direction that the licence shall so continue in force: Sch 2 cl 6(4). Where the licence continues in force by virtue of Sch 2 cl 6 then subject to the provisions of Sch 2 cl 3 it so continues during the production period: Sch 2 cl 6(5). 'Section' means a part of a block comprising an area bounded by minute lines of latitude and longitude one minute apart respectively: Sch 2 cl 1(1).

10 See *ibid* Sch 2 cl 7.

11 See *ibid* Sch 2 cl 8. The licensee may at any time by giving to the minister not less than one month's notice in writing to that effect determine the licence or surrender any part of the licensed area being a part which complies with Sch 2 cl 9: Sch 2 cl 8.

12 See *ibid* Sch 2 cl 9.

13 See *ibid* Sch 2 cl 10.

14 See *ibid* Sch 2 cl 11.

15 See *ibid* Sch 2 cl 12.

16 See *ibid* Sch 2 cl 13.

17 See *ibid* Sch 2 cl 14, 15.

18 See *ibid* Sch 2 cl 16 (as amended). The plugging of any well must be done in accordance with a specification approved by the minister applicable to that well or to wells generally or to a class of wells to which that well belongs and must be carried out in an efficient and workmanlike manner: Sch 2 cl 16(5). Subject to Sch 2 cl 16(7) and Sch 2 cl 16(7A) (as added), any well drilled by the licensee pursuant to the licence must be plugged and sealed not less than one month before the expiry or determination of the licensee's rights in respect of the area or part thereof in which that well is drilled: see Sch 2 cl 16(6) (amended by SI 2006/784). A direction by the minister may, however, be given by notice in writing to the licensee not less than one month before the licensee's rights in respect of the area or part thereof in which the well is situated expire or determine so as to relieve the licensee of the obligation so imposed to plug and seal the well: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 2 cl 16(7). Where the minister revokes the licence, any well drilled by the licensee pursuant to the licence must either be plugged and sealed as soon as reasonably practicable or, if the minister so directs at the time of revocation, be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: see Sch 2 cl 16(7A) (added by SI 2006/784). Any well that, pursuant to a direction by the minister under the Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 2 cl 16(7), has not been plugged and sealed, must be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: Sch 2 cl 16(8). All casings and fixtures forming part of a well and left in position at the expiry or determination (whether by revocation or otherwise) of the licensee's rights in respect of the area or part thereof in which that well is drilled, or at the completion of any works required of the licensee under Sch 2 cl 16(7A) (as added), whichever is the later, are to be the property of the minister: Sch 2 cl 16(9) (substituted by SI 2006/784). 'Well' includes borehole: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 2 cl 1(1).

19 Except with the consent in writing of the minister, no well must be drilled or made so that any part of it is less than 125 metres from any of the boundaries of the licensed area: *ibid* Sch 2 cl 17.

20 See *ibid* Sch 2 cl 18. The licensee must not suspend work on the drilling of a development well, or having suspended it must not begin it again, except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 2 cl 18(1). When work on the drilling of a development well is so suspended, the licensee must forthwith furnish the minister with such information relating to the well as the minister may specify: Sch 2 cl 18(2). The licensee (1) must not do any completion work in respect of a well in the licensed area except in accordance with a programme of completion work approved by the minister in respect of the well; (2) must furnish to the minister, in accordance with the

provisions of such a programme, particulars of any completion work done by him in respect of a well in the licensed area; and (3) must not remove or alter any casing or equipment installed by way of completion work in respect of a well except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 2 cl 18(3). For these purposes, 'completion work', in relation to a well, means work, by way of the installation of a casing or equipment or otherwise after the well has been drilled, for the purpose of bringing the well into use as a development well; and 'development well' means a well which the licensee uses or intends to use in connection with the getting of petroleum in the licensed area, other than a well which for the time being he uses or intends to use only for searching for petroleum: Sch 2 cl 18(4).

21 The licensee must use methods and practice customarily used in good oilfield practice for confining the petroleum obtained from the licensed area in tanks, gasholders, pipes, pipelines or other receptacles constructed for that purpose: *ibid* Sch 2 cl 19.

22 See *ibid* Sch 2 cl 20.

23 See *ibid* Sch 2 cl 21. The licensee must ensure that another person (including, in the case where the licensee is two or more persons, any of those persons) does not exercise any function of organising or supervising all or any of the operations of searching or boring for or getting petroleum in pursuance of the licence unless that other person is a person approved in writing by the minister and the function in question is one to which that approval relates: Sch 2 cl 21(1). The minister may not refuse to give his approval of a person if that person is competent to exercise the function in question, but where an approved person is no longer competent to exercise that function the minister may, by notice in writing given to the licensee, revoke his approval: Sch 2 cl 21(2).

24 The licensee must not carry out any operations authorised by the licence in or about the licensed area in such manner as to interfere unjustifiably with navigation or fishing in the waters of the licensed area or with the conservation of the living resources of the sea: *ibid* Sch 2 cl 22.

25 See *ibid* Sch 2 cl 23.

26 See *ibid* Sch 2 cl 24.

27 See *ibid* Sch 2 cl 25.

28 See *ibid* Sch 2 cl 26.

29 See *ibid* Sch 2 cl 27.

30 See *ibid* Sch 2 cl 28(1)-(4). As far as reasonably practicable the licensee must correctly label and preserve for reference for a period of five years samples of the sea bed and of the strata encountered in any well and samples of any petroleum or water discovered in any well in the licensed area: Sch 2 cl 28(1). The licensee must not dispose of any sample after the expiry of that period of five years unless (1) he has at least six months before the date of the disposal given notice in writing to the minister of his intention to dispose of the same; and (2) the minister or any person authorised by him has not within that period of six months informed the licensee in writing that he wishes the sample to be delivered to him: Sch 2 cl 28(2).

31 See *ibid* Sch 2 cl 29.

32 See *ibid* Sch 2 cl 30.

33 See *ibid* Sch 2 cl 31.

34 If the licensee at any time fails to perform the obligations arising under the terms and conditions of any of *ibid* Sch 2 cll 11, 16, 19 or 20, the minister is entitled, after giving to the licensee reasonable notice in writing of his intention, to execute any works and to provide and install any equipment which in the opinion of the minister may be necessary to secure the performance of those obligations or any of them and to recover the costs and expenses of so doing from the licensee: Sch 2 cl 32.

35 See *ibid* Sch 2 cl 33. As to diligence in Scotland see Sch 2 cl 34.

36 See *ibid* Sch 2 cl 35.

37 No statement must be made either in any notice, advertisement, prospectus or other document issued by or to the knowledge of the licensee or in any other manner claiming or suggesting whether expressly or by implication that Her Majesty or any government department or any person or body acting on behalf of Her Majesty has or have formed or expressed any opinion that the licensed area is from its geological formation or otherwise one in which petroleum is likely to be obtainable: *ibid* Sch 2 cl 36.

38 See *ibid* Sch 2 cl 37.

39 See *ibid* Sch 2 cl 38 (as amended). If any of the specified events occur then the minister may revoke the licence and thereupon the licence and all the rights granted by it are to cease and determine: see Sch 2 cl 38(1). The specified events are: (1) any payments mentioned in Sch 2 cl 10(1) or any part of them being in arrear or unpaid for two months after any of the days on which they ought to have been paid; (2) any breach or non-observance by the licensee of any of the terms and conditions of the licence; (3) in Great Britain, the bankruptcy or sequestration of the licensee; (4) in Great Britain, the making by the licensee of any arrangement or composition with his creditors; (5) in Great Britain, if the licensee is a company, the appointment of a receiver or administrator or any liquidation whether compulsory or voluntary; (6) in a jurisdiction other than Great Britain, the commencement of any procedure or the making of any arrangement or appointment substantially corresponding to any of those mentioned in heads (3)-(5) *supra*; (7) any breach or non-observance by the licensee of the terms and conditions of a development scheme; (8) if the licensee is a company, the licensee's ceasing to direct and control either (a) its operations under the licence; or (b) any commercial activities in connection with those operations, from a fixed place within the United Kingdom; (9) any breach of a condition subject to which the minister gave his approval in pursuance of Sch 2 cl 37(3) (assignment of rights to petroleum or proceeds of sale of petroleum); (10) any breach of Sch 2 cl 37(5) (restrictions on assignment where the licensee is two or more persons); and where two or more persons are the licensee any reference to the licensee in heads (3)-(8) *supra* is a reference to any of those persons: *ibid* Sch 2 cl 38(2) (amended by SI 2007/784). The minister may revoke the licence, with the like consequences as are mentioned in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 2 cl 38(1), if (i) the licensee is a company; and (ii) there is a change in the control of the licensee; and (iii) the minister serves notice in writing on the licensee stating that he proposes to revoke the licence unless such a further change in the control of the licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and (iv) that further change does not take place within that period: Sch 2 cl 38(3). There is a change in the control of the licensee for the purposes of head (ii) *supra* whenever a person has control of the licensee who did not have control of the licensee when the licence was granted; and the Income and Corporation Taxes Act 1988 s 416(2)-(4), (6) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1299) applies, for the purpose of determining whether a person has or had control of the licensee, with the modifications specified in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 2 cl 37(4) (restrictions on disposal of petroleum or proceeds of sale of petroleum): Sch 2 cl 38(4). Where two or more persons are the licensee and any of them is a company, Sch 2 cl 38(3), (4) is modified: see Sch 2 cl 38(5).

40 See *ibid* Sch 2 cl 39.

41 See *ibid* Sch 2 cl 40. The licensee must give the Ministry of Defence six months' prior notice of any installation movements within a block, and six weeks' prior notice of any seismic survey within a block: Sch 2 cl 40(1), (2). He must at his own expense install and maintain underwater sonar beacons to Ministry of Defence specifications on any structures that may be temporarily within a block; provided that there is no requirement to fit such beacons to fixed and charted installations: Sch 2 cl 40(3).

42 See *ibid* Sch 2 cl 41.

43 *Ibid* Sch 2 cl 1(2).

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

1671 Model clauses for production licences relating to frontier areas with no break clause

TEXT AND NOTES--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1672. Model clauses for production licences relating to frontier areas which include a break clause.

1672. Model clauses for production licences relating to frontier areas which include a break clause.

Model clauses have been prescribed¹ for incorporation in production licences² applied for on or after 5 March 2004³ which relate to frontier areas⁴ and which include a break clause⁵. Those model clauses cover:

- 4851 (1) the grant of the licence⁶;
- 4852 (2) the term of the licence⁷ and its expiry on the failure to complete certain work⁸;
- 4853 (3) options to continue the licence into a second or a third term⁹, to continue it after the third term¹⁰ and to extend it further¹¹;
- 4854 (4) the licensee's right to determine the licence or to surrender part of the licensed area¹²;
- 4855 (5) provisions as to surrendered areas¹³;
- 4856 (6) payment of consideration for the licence¹⁴;
- 4857 (7) the method or methods used for the measurement of petroleum obtained from the licensed area¹⁵;
- 4858 (8) the licensee's duty to keep accounts¹⁶;
- 4859 (9) the licensee's obligations to carry out the work programme set out in the licence before the expiry of the second term and to carry out any appropriate programme for exploring for petroleum in the licensed area which he has been required to submit to the minister¹⁷;
- 4860 (10) restrictions on the carrying out of development and production programmes without the minister's consent¹⁸;
- 4861 (11) restrictions on the commencement and abandonment of wells without the minister's consent and requirements as to the plugging of abandoned wells¹⁹;
- 4862 (12) the distance of wells from the boundaries of the licensed area²⁰;
- 4863 (13) the control of development wells²¹;
- 4864 (14) the licensee's obligations to provide storage tanks, pipes, pipelines and other receptacles²²;
- 4865 (15) the avoidance of harmful methods of working²³;
- 4866 (16) restrictions on the appointment of operators without the minister's consent²⁴;
- 4867 (17) the protection of fishing and navigation²⁵;
- 4868 (18) the licensee's obligations as to the training of employees²⁶;
- 4869 (19) the minister's power to oblige the licensee to co-operate with other licensees in the development of an oil field as a unit²⁷;
- 4870 (20) the minister's powers to give directions as to oil fields across boundaries²⁸;
- 4871 (21) the records to be kept by the licensee²⁹;
- 4872 (22) the returns to be made by the licensee to the minister³⁰;
- 4873 (23) the keeping of samples³¹;
- 4874 (24) the minister's obligation to treat the licensee's reports as confidential³²;
- 4875 (25) the minister's power to inspect the licensee's records³³;

- 4876 (26) rights of access by persons authorised by the minister³⁴;
- 4877 (27) the minister's power to execute works where the licensee is in default³⁵;
- 4878 (28) the right of distress³⁶;
- 4879 (29) the licensee's duty to indemnify the minister against third party claims³⁷;
- 4880 (30) restrictions on the matters to be contained in advertisements and prospectuses³⁸;
- 4881 (31) restrictions on assignments³⁹;
- 4882 (32) the minister's power to revoke the licence⁴⁰;
- 4883 (33) provisions for arbitration in the event of disputes⁴¹;
- 4884 (34) the licensee's obligations to give notice of certain activities to the Ministry of Defence⁴²; and
- 4885 (35) the licensee's obligation to appoint a fisheries liaison officer⁴³.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person⁴⁴.

1 Ie for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

2 For the meaning of 'production licence' see PARA 1640 note 10 ante.

3 Ie the date when the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended) came into force: see reg 1.

4 For the meaning of 'frontier area' see PARA 1640 note 14 ante.

5 Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(1), (4). For the meaning of 'break clause' see PARA 1671 note 5 ante.

6 See *ibid* reg 3(4), Sch 3 cl 2. The licence is an exclusive licence conferring the right during its continuance and subject to its provisions to search and bore for, and get, petroleum in the sea bed and subsoil under the seaward area more particularly described in the licence, being the area comprising blocks on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry); provided that nothing in the licence affects the right of the minister to grant a methane drainage licence in respect of the whole or any part of the licensed area or affects the exercise of any rights granted under any such methane drainage licence: see Sch 3 cl 2. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry); 'the licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned; 'block' means an area comprised in the licence which is delineated on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform and to which a reference number was assigned at the date of the licence; and 'the licensed area' means the area for the time being in which the licensee may exercise the rights granted by the licence: Sch 3 cl 1(1). For the meaning of 'seaward area' see PARA 1640 note 13 ante; for the meaning of 'petroleum' see PARA 1626 ante (where a definition identical to that contained in Sch 3 cl 1(1) is set out); and as to methane drainage licences see PARA 1665 ante, PARA 1676 post.

7 See *ibid* Sch 3 cl 3. Unless sooner determined under any of the provisions of the licence, it continues for the initial term, ie the period of two years: Sch 3 cl 1(1), 3(1). Upon expiry of the initial term, and provided always that its terms and conditions continue to be performed and observed, the licence continues in force as follows: (1) subject to Sch 3 cl 4, 5, 10, for the second term (ie a period of four years following expiry of the initial term); (2) subject to Sch 3 cl 6 and 10, for the third term (ie a period of six years following expiry of the second term); and (3) subject to Sch 3 cl 7, for the production period: Sch 3 cl 1(1), 3(2). 'Production period' means, in circumstances governed by Sch 3 cl 7(3)(a)-(c), a period of 18 years and, in circumstances governed by Sch 3 cl 7(3)(d) or Sch 3 cl 7(4), such period or periods of not more than 18 years in aggregate as the minister is to prescribe: Sch 3 cl 1(1). See further note 10 *infra*.

8 Unless the minister in any particular case decides otherwise, the licence automatically ceases and determines on the fourth anniversary of the date of commencement of the initial term in the event of failure by the licensee on or before that anniversary to (1) take the action described in Part I of the work programme described in the licence; and (2) undertake to complete on or before expiry of the second term the work described in Part II of that work programme: *ibid* Sch 3 cl 5.

9 See *ibid* Sch 3 cl 4, 6. See also notes 7-8 *supra*.

10 See *ibid* Sch 3 cl 7. See also notes 7-8 *supra*. At any time not later than three months before the expiry of the third term the licensee may, subject to payment of those sums provided for in the licence and to performance of the terms and conditions contained in it, give notice in writing to the minister that he desires the licence to continue as to a part of the licensed area ('the producing part'): see Sch 3 cl 7(1). The producing part must be an area that comprises no section that is not, wholly or in part, the subject of a consent, approval or programme described in Sch 3 cl 7(3): Sch 3 cl 7(2). If such a notice is given the licence continues in force after the expiry of the third term as provided by Sch 3 cl 7(4)-(6) in the event that before such expiry (1) the minister has given a consent in pursuance of Sch 3 cl 15(1) and such consent is still in force upon expiry of the third term; or (2) the minister has in pursuance of Sch 3 cl 15(4) approved a programme submitted to him in pursuance of Sch 3 cl 15(2) and such approval is still in force upon expiry of the third term; or (3) the minister has served a programme on the licensee in pursuance of Sch 3 cl 15(6) and such programme is still in force upon expiry of the third term; or (4) the minister has in his discretion so directed in writing: Sch 3 cl 7(3). Where the minister has given a direction extending the third term of the licence in pursuance of head (4) *supra* he may in his discretion, on notice in writing being given to him by the licensee not later than three months before the expiry of such extension or before the expiry of any subsequent extension under this provision that he desires the licence to continue in force thereafter, give a further direction that the licence shall so continue in force: Sch 3 cl 7(4). Where the licence continues in force by virtue of Sch 3 cl 7 then subject to the provisions of Sch 3 cl 3 it so continues during the production period: Sch 3 cl 7(5). 'Section' means a part of a block comprising an area bounded by minute lines of latitude and longitude one minute apart respectively: Sch 3 cl 1(1).

11 See *ibid* Sch 3 cl 8.

12 See *ibid* Sch 3 cl 9. The licensee may at any time by giving to the minister not less than one month's notice in writing to that effect determine the licence or surrender any part of the licensed area being a part which complies with Sch 3 cl 10: Sch 3 cl 9.

13 See *ibid* Sch 3 cl 10.

14 See *ibid* Sch 3 cl 11.

15 See *ibid* Sch 3 cl 12.

16 See *ibid* Sch 3 cl 13.

17 See *ibid* Sch 3 cl 14.

18 See *ibid* Sch 3 cl 15, 16.

19 See *ibid* Sch 3 cl 17 (as amended). The plugging of any well must be done in accordance with a specification approved by the minister applicable to that well or to wells generally or to a class of wells to which that well belongs and must be carried out in an efficient and workmanlike manner: Sch 3 cl 17(5). Subject to Sch 3 cl 17(7) and Sch 3 cl 17(7A) (as added), any well drilled by the licensee pursuant to the licence must be plugged and sealed not less than one month before the expiry or determination of the licensee's rights in respect of the area or part thereof in which that well is drilled: see Sch 3 cl 17(6) (amended by SI 2006/784). A direction by the minister may, however, be given by notice in writing to the licensee not less than one month before the licensee's rights in respect of the area or part thereof in which the well is situated expire or determine so as to relieve the licensee of the obligation so imposed to plug and seal the well: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 3 cl 17(7). Where the minister revokes the licence, any well drilled by the licensee pursuant to the licence must either be plugged and sealed as soon as reasonably practicable or, if the minister so directs at the time of revocation, be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: see Sch 3 cl 17(7A) (added by SI 2006/784). Any well that, pursuant to a direction by the minister under the Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 3 cl 17(7), has not been plugged and sealed, must be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: Sch 3 cl 17(8). All casings and fixtures forming part of a well and left in position at the expiry or determination (whether by revocation or otherwise) of the licensee's rights in respect of the area or part thereof in which that well is drilled, or at the completion of any works required of the licensee under Sch 3 cl 17(7A) (as added), whichever is the later, are to be the property of the minister: Sch 3 cl 17(9) (substituted by SI 2006/784). 'Well' includes borehole: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 3 cl 1(1).

20 Except with the consent in writing of the minister, no well must be drilled or made so that any part of it is less than 125 metres from any of the boundaries of the licensed area: *ibid* Sch 3 cl 18.

21 See *ibid* Sch 3 cl 19. The licensee must not suspend work on the drilling of a development well, or having suspended it must not begin it again, except with the consent in writing of the minister and in accordance with

the conditions, if any, subject to which the consent is given: Sch 3 cl 19(1). When work on the drilling of a development well is so suspended, the licensee must forthwith furnish the minister with such information relating to the well as the minister may specify: Sch 3 cl 19(2). The licensee (1) must not do any completion work in respect of a well in the licensed area except in accordance with a programme of completion work approved by the minister in respect of the well; (2) must furnish to the minister, in accordance with the provisions of such a programme, particulars of any completion work done by him in respect of a well in the licensed area; and (3) must not remove or alter any casing or equipment installed by way of completion work in respect of a well except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 3 cl 19(3). For these purposes, 'completion work', in relation to a well, means work, by way of the installation of a casing or equipment or otherwise after the well has been drilled, for the purpose of bringing the well into use as a development well; and 'development well' means a well which the licensee uses or intends to use in connection with the getting of petroleum in the licensed area, other than a well which for the time being he uses or intends to use only for searching for petroleum: Sch 3 cl 19(4).

22 The licensee must use methods and practice customarily used in good oilfield practice for confining the petroleum obtained from the licensed area in tanks, gasholders, pipes, pipelines or other receptacles constructed for that purpose: *ibid* Sch 3 cl 20.

23 See *ibid* Sch 3 cl 21.

24 See *ibid* Sch 3 cl 22. The licensee must ensure that another person (including, in the case where the licensee is two or more persons, any of those persons) does not exercise any function of organising or supervising all or any of the operations of searching or boring for or getting petroleum in pursuance of the licence unless that other person is a person approved in writing by the minister and the function in question is one to which that approval relates: Sch 3 cl 22(1). The minister may not refuse to give his approval of a person if that person is competent to exercise the function in question, but where an approved person is no longer competent to exercise that function the minister may, by notice in writing given to the licensee, revoke his approval: Sch 3 cl 22(2).

25 The licensee must not carry out any operations authorised by the licence in or about the licensed area in such manner as to interfere unjustifiably with navigation or fishing in the waters of the licensed area or with the conservation of the living resources of the sea: *ibid* Sch 3 cl 23.

26 See *ibid* Sch 3 cl 24.

27 See *ibid* Sch 3 cl 25.

28 See *ibid* Sch 3 cl 26.

29 See *ibid* Sch 3 cl 27.

30 See *ibid* Sch 3 cl 28.

31 See *ibid* Sch 3 cl 29(1)-(4). As far as reasonably practicable the licensee must correctly label and preserve for reference for a period of five years samples of the sea bed and of the strata encountered in any well and samples of any petroleum or water discovered in any well in the licensed area: Sch 3 cl 29(1). The licensee must not dispose of any sample after the expiry of that period of five years unless (1) he has at least six months before the date of the disposal given notice in writing to the minister of his intention to dispose of the same; and (2) the minister or any person authorised by him has not within that period of six months informed the licensee in writing that he wishes the sample to be delivered to him: Sch 3 cl 29(2).

32 See *ibid* Sch 3 cl 30.

33 See *ibid* Sch 3 cl 31.

34 See *ibid* Sch 3 cl 32.

35 If the licensee at any time fails to perform the obligations arising under the terms and conditions of any of *ibid* Sch 3 cll 12, 17, 20 or 21, the minister is entitled, after giving to the licensee reasonable notice in writing of his intention, to execute any works and to provide and install any equipment which in the opinion of the minister may be necessary to secure the performance of those obligations or any of them and to recover the costs and expenses of so doing from the licensee: Sch 3 cl 33.

36 See *ibid* Sch 3 cl 34. As to diligence in Scotland see Sch 3 cl 35.

37 See *ibid* Sch 3 cl 36.

38 No statement must be made either in any notice, advertisement, prospectus or other document issued by or to the knowledge of the licensee or in any other manner claiming or suggesting whether expressly or by implication that Her Majesty or any government department or any person or body acting on behalf of Her Majesty has or have formed or expressed any opinion that the licensed area is from its geological formation or otherwise one in which petroleum is likely to be obtainable: *ibid* Sch 3 cl 37.

39 See *ibid* Sch 3 cl 38.

40 See *ibid* Sch 3 cl 39 (as amended). If any of the specified events occur then the minister may revoke the licence and thereupon the licence and all the rights granted by it are to cease and determine: see Sch 3 cl 39(1). The specified events are: (1) any payments mentioned in Sch 3 cl 11(1) or any part of them being in arrear or unpaid for two months after any of the days on which they ought to have been paid; (2) any breach or non-observance by the licensee of any of the terms and conditions of the licence; (3) in Great Britain, the bankruptcy or sequestration of the licensee; (4) in Great Britain, the making by the licensee of any arrangement or composition with his creditors; (5) in Great Britain, if the licensee is a company, the appointment of a receiver or administrator or any liquidation whether compulsory or voluntary; (6) in a jurisdiction other than Great Britain, the commencement of any procedure or the making of any arrangement or appointment substantially corresponding to any of those mentioned in heads (3)-(5) *supra*; (7) any breach or non-observance by the licensee of the terms and conditions of a development scheme; (8) if the licensee is a company, the licensee's ceasing to direct and control either (a) its operations under the licence; or (b) any commercial activities in connection with those operations, from a fixed place within the United Kingdom; (9) any breach of a condition subject to which the minister gave his approval in pursuance of Sch 3 cl 38(3) (assignment of rights to petroleum or proceeds of sale of petroleum); (10) any breach of Sch 3 cl 38(5) (restrictions on assignment where the licensee is two or more persons); and where two or more persons are the licensee any reference to the licensee in heads (3)-(8) *supra* is a reference to any of those persons: *ibid* Sch 3 cl 39(2) (amended by SI 2007/784). The minister may revoke the licence, with the like consequences as are mentioned in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 3 cl 39(1), if (i) the licensee is a company; and (ii) there is a change in the control of the licensee; and (iii) the minister serves notice in writing on the licensee stating that he proposes to revoke the licence unless such a further change in the control of the licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and (iv) that further change does not take place within that period: Sch 3 cl 39(3). There is a change in the control of the licensee for the purposes of head (ii) *supra* whenever a person has control of the licensee who did not have control of the licensee when the licence was granted; and the Income and Corporation Taxes Act 1988 s 416(2)-(4), (6) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1299) applies, for the purpose of determining whether a person has or had control of the licensee, with the modifications specified in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 3 cl 38(4) (restrictions on disposal of petroleum or proceeds of sale of petroleum): Sch 3 cl 39(4). Where two or more persons are the licensee and any of them is a company, Sch 3 cl 39(3), (4) is modified: see Sch 3 cl 39(5).

41 See *ibid* Sch 3 cl 40.

42 See *ibid* Sch 3 cl 41. The licensee must give the Ministry of Defence six months' prior notice of any installation movements within a block, and six weeks' prior notice of any seismic survey within a block: Sch 3 cl 41(1), (2). He must at his own expense install and maintain underwater sonar beacons to Ministry of Defence specifications on any structures that may be temporarily within a block; provided that there is no requirement to fit such beacons to fixed and charted installations: Sch 3 cl 41(3).

43 See *ibid* Sch 3 cl 42.

44 *Ibid* Sch 3 cl 1(2).

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

1672 Model clauses for production licences relating to frontier areas which include a break clause

TEXT AND NOTES--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1673. Model clauses for standard production licences.

1673. Model clauses for standard production licences.

Model clauses have been prescribed¹ for incorporation in production licences² applied for on or after 5 March 2004³ which relate to areas other than frontier areas⁴. In such cases as the Secretary of State⁵ may think fit, such licences may contain the prescribed two-year break clause⁶ and related provisions⁷. The other model clauses cover:

- 4886 (1) the grant of the licence⁸;
- 4887 (2) the term of the licence⁹;
- 4888 (3) options to continue the licence into a second term¹⁰, to continue it after the second term¹¹ and to extend it further¹²;
- 4889 (4) the licensee's right to determine the licence or to surrender part of the licensed area¹³;
- 4890 (5) provisions as to surrendered areas¹⁴;
- 4891 (6) payment of consideration for the licence¹⁵;
- 4892 (7) the method or methods used for the measurement of petroleum obtained from the licensed area¹⁶;
- 4893 (8) the licensee's duty to keep accounts¹⁷;
- 4894 (9) the licensee's obligations to carry out the work programme set out in the licence before the expiry of the second term and to carry out any appropriate programme for exploring for petroleum in the licensed area which he has been required to submit to the minister¹⁸;
- 4895 (10) restrictions on the carrying out of development and production programmes without the minister's consent¹⁹;
- 4896 (11) restrictions on the commencement and abandonment of wells without the minister's consent and requirements as to the plugging of abandoned wells²⁰;
- 4897 (12) the distance of wells from the boundaries of the licensed area²¹;
- 4898 (13) the control of development wells²²;
- 4899 (14) the licensee's obligations to provide storage tanks, pipes, pipelines and other receptacles²³;
- 4900 (15) the avoidance of harmful methods of working²⁴;
- 4901 (16) restrictions on the appointment of operators without the minister's consent²⁵;
- 4902 (17) the protection of fishing and navigation²⁶;
- 4903 (18) the licensee's obligations as to the training of employees²⁷;
- 4904 (19) the minister's power to oblige the licensee to co-operate with other licensees in the development of an oil field as a unit²⁸;
- 4905 (20) the minister's powers to give directions as to oil fields across boundaries²⁹;
- 4906 (21) the records to be kept by the licensee³⁰;
- 4907 (22) the returns to be made by the licensee to the minister³¹;
- 4908 (23) the keeping of samples³²;
- 4909 (24) the minister's obligation to treat the licensee's reports as confidential³³;
- 4910 (25) the minister's power to inspect the licensee's records³⁴;
- 4911 (26) rights of access by persons authorised by the minister³⁵;
- 4912 (27) the minister's power to execute works where the licensee is in default³⁶;

- 4913 (28) the right of distress³⁷;
- 4914 (29) the licensee's duty to indemnify the minister against third party claims³⁸;
- 4915 (30) restrictions on the matters to be contained in advertisements and prospectuses³⁹;
- 4916 (31) restrictions on assignments⁴⁰;
- 4917 (32) the minister's power to revoke the licence⁴¹;
- 4918 (33) provisions for arbitration in the event of disputes⁴²;
- 4919 (34) the licensee's obligations to give notice of certain activities to the Ministry of Defence⁴³; and
- 4920 (35) the licensee's obligation to appoint a fisheries liaison officer⁴⁴.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person⁴⁵.

1 Ie for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

2 For the meaning of 'production licence' see PARA 1640 note 10 ante.

3 Ie the date when the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 (as amended) came into force: see reg 1.

4 Ibid reg 3(1), (5). For the meaning of 'frontier area' see PARA 1640 note 14 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 See the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(6), Sch 5. For the meaning of 'break clause' see PARA 1671 note 5 ante.

7 Ibid reg 3(6).

8 See ibid reg 3(5), Sch 4 cl 2. The licence is an exclusive licence conferring the right during its continuance and subject to its provisions to search and bore for, and get, petroleum in the sea bed and subsoil under the seaward area more particularly described in the licence, being the area comprising blocks on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry); provided that nothing in the licence affects the right of the minister to grant a methane drainage licence in respect of the whole or any part of the licensed area or affects the exercise of any rights granted under any such methane drainage licence: see Sch 4 cl 2. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry); 'the licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned; 'block' means an area comprised in the licence which is delineated on the reference map deposited at the principal office of the Department for Business, Enterprise and Regulatory Reform and to which a reference number was assigned at the date of the licence; and 'the licensed area' means the area for the time being in which the licensee may exercise the rights granted by the licence: Sch 4 cl 1(1). For the meaning of 'seaward area' see PARA 1640 note 13 ante; for the meaning of 'petroleum' see PARA 1626 ante (where a definition identical to that contained in Sch 4 cl 1(1) is set out); and as to methane drainage licences see PARA 1665 ante, PARA 1676 post.

9 See ibid Sch 4 cl 3. Unless sooner determined under any of the provisions of the licence, it continues for the initial term, ie the period of two years: Sch 4 cl 1(1), 3(1). Upon expiry of the initial term, and provided always that its terms and conditions continue to be performed and observed, the licence continues in force as follows: (1) subject to Sch 4 cl 4, 8, for the second term (ie a period of four years following expiry of the initial term); and (2) subject to Sch 4 cl 5, for the production period: Sch 4 cl 1(1), 3(2). 'Production period' means, in circumstances governed by Sch 4 cl 5(3)(a)-(c), a period of 18 years and, in circumstances governed by Sch 4 cl 5(3)(d) or Sch 4 cl 5(4), such period or periods of not more than 18 years in aggregate as the minister is to prescribe: Sch 4 cl 1(1). See further note 11 infra.

10 See ibid Sch 4 cl 4. See also note 9 supra.

11 See ibid Sch 4 cl 5. See also note 9 supra. At any time not later than three months before the expiry of the second term the licensee may, subject to payment of those sums provided for in the licence and to performance of the terms and conditions contained in it, give notice in writing to the minister that he desires the licence to continue as to a part of the licensed area ('the producing part'): see Sch 4 cl 5(1). The producing

part must be an area that comprises no section that is not, wholly or in part, the subject of a consent, approval or programme described in Sch 4 cl 5(3): Sch 4 cl 5(2). If such a notice is given the licence continues in force after the expiry of the second term as provided by Sch 4 cl 5(4)-(6) in the event that before such expiry (1) the minister has given a consent in pursuance of Sch 4 cl 13(1) and such consent is still in force upon expiry of the second term; or (2) the minister has in pursuance of Sch 4 cl 13(4) approved a programme submitted to him in pursuance of Sch 4 cl 13(2) and such approval is still in force upon expiry of the second term; or (3) the minister has served a programme on the licensee in pursuance of Sch 4 cl 13(6) and such programme is still in force upon expiry of the second term; or (4) the minister has in his discretion so directed in writing: Sch 4 cl 5(3). Where the minister has given a direction extending the second term of the licence in pursuance of head (4) supra he may in his discretion, on notice in writing being given to him by the licensee not later than three months before the expiry of such extension or before the expiry of any subsequent extension under this provision that he desires the licence to continue in force thereafter, give a further direction that the licence shall so continue in force: Sch 4 cl 5(4). Where the licence continues in force by virtue of Sch 4 cl 5 then subject to the provisions of Sch 4 cl 3 it so continues during the production period: Sch 4 cl 5(5). 'Section' means a part of a block comprising an area bounded by minute lines of latitude and longitude one minute apart respectively: Sch 4 cl 1(1).

12 See *ibid* Sch 4 cl 6.

13 See *ibid* Sch 4 cl 7. The licensee may at any time by giving to the minister not less than one month's notice in writing to that effect determine the licence or surrender any part of the licensed area being a part which complies with Sch 4 cl 8: Sch 4 cl 7.

14 See *ibid* Sch 4 cl 8.

15 See *ibid* Sch 4 cl 9.

16 See *ibid* Sch 4 cl 10.

17 See *ibid* Sch 4 cl 11.

18 See *ibid* Sch 4 cl 12.

19 See *ibid* Sch 4 cl 13, 14.

20 See *ibid* Sch 4 cl 15 (as amended). The plugging of any well must be done in accordance with a specification approved by the minister applicable to that well or to wells generally or to a class of wells to which that well belongs and must be carried out in an efficient and workmanlike manner: Sch 4 cl 15(5). Subject to Sch 4 cl 15(7) and Sch 4 cl 15(7A) (as added), any well drilled by the licensee pursuant to the licence must be plugged and sealed not less than one month before the expiry or determination of the licensee's rights in respect of the area or part thereof in which that well is drilled: see Sch 4 cl 15(6) (amended by SI 2006/784). A direction by the minister may, however, be given by notice in writing to the licensee not less than one month before the licensee's rights in respect of the area or part thereof in which the well is situated expire or determine so as to relieve the licensee of the obligation so imposed to plug and seal the well: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 4 cl 15(7). Where the minister revokes the licence, any well drilled by the licensee pursuant to the licence must either be plugged and sealed as soon as reasonably practicable or, if the minister so directs at the time of revocation, be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: see Sch 4 cl 15(7A) (added by SI 2006/784). Any well that, pursuant to a direction by the minister under the Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 4 cl 15(7), has not been plugged and sealed, must be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: Sch 4 cl 15(8). All casings and fixtures forming part of a well and left in position at the expiry or determination (whether by revocation or otherwise) of the licensee's rights in respect of the area or part thereof in which that well is drilled, or at the completion of any works required of the licensee under Sch 4 cl 15(7A) (as added), whichever is the later, are to be the property of the minister: Sch 4 cl 15(9) (substituted by SI 2006/784). 'Well' includes borehole: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 4 cl 1(1).

21 Except with the consent in writing of the minister, no well must be drilled or made so that any part of it is less than 125 metres from any of the boundaries of the licensed area: *ibid* Sch 4 cl 16.

22 See *ibid* Sch 4 cl 17. The licensee must not suspend work on the drilling of a development well, or having suspended it must not begin it again, except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 4 cl 17(1). When work on the drilling of a development well is so suspended, the licensee must forthwith furnish the minister with such information relating to the well as the minister may specify: Sch 4 cl 17(2). The licensee (1) must not do any completion work in respect of a well in the licensed area except in accordance with a programme of completion work

approved by the minister in respect of the well; (2) must furnish to the minister, in accordance with the provisions of such a programme, particulars of any completion work done by him in respect of a well in the licensed area; and (3) must not remove or alter any casing or equipment installed by way of completion work in respect of a well except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 4 cl 17(3). For these purposes, 'completion work', in relation to a well, means work, by way of the installation of a casing or equipment or otherwise after the well has been drilled, for the purpose of bringing the well into use as a development well; and 'development well' means a well which the licensee uses or intends to use in connection with the getting of petroleum in the licensed area, other than a well which for the time being he uses or intends to use only for searching for petroleum: Sch 4 cl 17(4).

23 The licensee must use methods and practice customarily used in good oilfield practice for confining the petroleum obtained from the licensed area in tanks, gasholders, pipes, pipelines or other receptacles constructed for that purpose: *ibid* Sch 4 cl 18.

24 See *ibid* Sch 4 cl 19.

25 See *ibid* Sch 4 cl 20. The licensee must ensure that another person (including, in the case where the licensee is two or more persons, any of those persons) does not exercise any function of organising or supervising all or any of the operations of searching or boring for or getting petroleum in pursuance of the licence unless that other person is a person approved in writing by the minister and the function in question is one to which that approval relates: Sch 4 cl 20(1). The minister may not refuse to give his approval of a person if that person is competent to exercise the function in question, but where an approved person is no longer competent to exercise that function the minister may, by notice in writing given to the licensee, revoke his approval: Sch 4 cl 20(2).

26 The licensee must not carry out any operations authorised by the licence in or about the licensed area in such manner as to interfere unjustifiably with navigation or fishing in the waters of the licensed area or with the conservation of the living resources of the sea: *ibid* Sch 4 cl 21.

27 See *ibid* Sch 4 cl 22.

28 See *ibid* Sch 4 cl 23.

29 See *ibid* Sch 4 cl 24.

30 See *ibid* Sch 4 cl 25.

31 See *ibid* Sch 4 cl 26.

32 See *ibid* Sch 4 cl 27(1)-(4). As far as reasonably practicable the licensee must correctly label and preserve for reference for a period of five years samples of the sea bed and of the strata encountered in any well and samples of any petroleum or water discovered in any well in the licensed area: Sch 4 cl 27(1). The licensee must not dispose of any sample after the expiry of that period of five years unless (1) he has at least six months before the date of the disposal given notice in writing to the minister of his intention to dispose of the same; and (2) the minister or any person authorised by him has not within that period of six months informed the licensee in writing that he wishes the sample to be delivered to him: Sch 4 cl 27(2).

33 See *ibid* Sch 4 cl 28.

34 See *ibid* Sch 4 cl 29.

35 See *ibid* Sch 4 cl 30.

36 If the licensee at any time fails to perform the obligations arising under the terms and conditions of any of *ibid* Sch 4 cl 10, 15, 16 (sic) or 19, the minister is entitled, after giving to the licensee reasonable notice in writing of his intention, to execute any works and to provide and install any equipment which in the opinion of the minister may be necessary to secure the performance of those obligations or any of them and to recover the costs and expenses of so doing from the licensee: Sch 4 cl 31.

37 See *ibid* Sch 4 cl 32. As to diligence in Scotland see Sch 4 cl 33.

38 See *ibid* Sch 4 cl 34.

39 No statement must be made either in any notice, advertisement, prospectus or other document issued by or to the knowledge of the licensee or in any other manner claiming or suggesting whether expressly or by implication that Her Majesty or any government department or any person or body acting on behalf of Her Majesty has or have formed or expressed any opinion that the licensed area is from its geological formation or otherwise one in which petroleum is likely to be obtainable: *ibid* Sch 4 cl 35.

40 See *ibid* Sch 4 cl 36.

41 See *ibid* Sch 4 cl 37 (as amended). If any of the specified events occur then the minister may revoke the licence and thereupon the licence and all the rights granted by it are to cease and determine: see Sch 4 cl 37(1). The specified events are: (1) any payments mentioned in Sch 4 cl 9(1) or any part of them being in arrear or unpaid for two months after any of the days on which they ought to have been paid; (2) any breach or non-observance by the licensee of any of the terms and conditions of the licence; (3) in Great Britain, the bankruptcy or sequestration of the licensee; (4) in Great Britain, the making by the licensee of any arrangement or composition with his creditors; (5) in Great Britain, if the licensee is a company, the appointment of a receiver or administrator or any liquidation whether compulsory or voluntary; (6) in a jurisdiction other than Great Britain, the commencement of any procedure or the making of any arrangement or appointment substantially corresponding to any of those mentioned in heads (3)-(5) *supra*; (7) any breach or non-observance by the licensee of the terms and conditions of a development scheme; (8) if the licensee is a company, the licensee's ceasing to direct and control either (a) its operations under the licence; or (b) any commercial activities in connection with those operations, from a fixed place within the United Kingdom; (9) any breach of a condition subject to which the minister gave his approval in pursuance of Sch 4 cl 36(3) (assignment of rights to petroleum or proceeds of sale of petroleum); (10) any breach of Sch 4 cl 36(5) (restrictions on assignment where the licensee is two or more persons); and where two or more persons are the licensee any reference to the licensee in heads (3)-(8) *supra* is a reference to any of those persons: *ibid* Sch 4 cl 37(2) (amended by SI 2007/784). The minister may revoke the licence, with the like consequences as are mentioned in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 4 cl 37(1), if (i) the licensee is a company; and (ii) there is a change in the control of the licensee; and (iii) the minister serves notice in writing on the licensee stating that he proposes to revoke the licence unless such a further change in the control of the licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and (iv) that further change does not take place within that period: Sch 4 cl 37(3). There is a change in the control of the licensee for the purposes of head (ii) *supra* whenever a person has control of the licensee who did not have control of the licensee when the licence was granted; and the Income and Corporation Taxes Act 1988 s 416(2)-(4), (6) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1299) applies, for the purpose of determining whether a person has or had control of the licensee, with the modifications specified in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 4 cl 36(4) (restrictions on disposal of petroleum or proceeds of sale of petroleum): Sch 4 cl 37(4). Where two or more persons are the licensee and any of them is a company, Sch 4 cl 37(3), (4) is modified: see Sch 4 cl 37(5).

42 See *ibid* Sch 4 cl 38.

43 See *ibid* Sch 4 cl 39. The licensee must give the Ministry of Defence six months' prior notice of any installation movements within a block, and six weeks' prior notice of any seismic survey within a block: Sch 4 cl 39(1), (2). He must at his own expense install and maintain underwater sonar beacons to Ministry of Defence specifications on any structures that may be temporarily within a block; provided that there is no requirement to fit such beacons to fixed and charted installations: Sch 4 cl 39(3).

44 See *ibid* Sch 4 cl 40.

45 *Ibid* Sch 4 cl 1(2).

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

1673 Model clauses for standard production licences

TEXT AND NOTES--See also the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, SI 2008/225 (amended by SI 2009/3283).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/ (2) LICENSING/(v) Rights and Duties of Licensees/B. MODEL CLAUSES/(B) Model Clauses for Exploration, Production and Development in Seaward and Landward Areas/1674. Model clauses for petroleum exploration and development licences.

1674. Model clauses for petroleum exploration and development licences.

Model clauses have been prescribed¹ for incorporation in petroleum exploration and development licences² applied for on or after 5 March 2004³. In such cases as the Secretary of State⁴ may think fit, such licences may contain the prescribed three-year break clause⁵ and related provisions⁶. The other model clauses cover:

- 4921 (1) the grant of the licence⁷;
- 4922 (2) the term of the licence⁸;
- 4923 (3) options to continue the licence as to part only of the licensed area⁹, to continue the licence after the second term¹⁰ and to extend it further¹¹;
- 4924 (4) the licensee's right to determine the licence or to surrender part of the licensed area and the consequences of such determination or surrender¹²;
- 4925 (5) payment of consideration for the licence¹³;
- 4926 (6) the method or methods used for the measurement of petroleum obtained from the licensed area¹⁴;
- 4927 (7) the licensee's duty to keep accounts¹⁵;
- 4928 (8) the licensee's obligation to carry out, during the initial period, the work programme, his obligations to carry out any appropriate programme for exploring for petroleum in the licensed area which he has been required to submit to the minister and his duty to observe other working obligations¹⁶;
- 4929 (9) restrictions on the carrying out of development and production programmes without the minister's consent¹⁷;
- 4930 (10) restrictions on the commencement and abandonment of wells without the minister's consent and requirements as to the plugging of abandoned wells¹⁸;
- 4931 (11) the distance of wells from the boundaries of the licensed area¹⁹;
- 4932 (12) the control of development wells²⁰;
- 4933 (13) the licensee's obligations to provide storage tanks, pipes, pipelines and other receptacles²¹;
- 4934 (14) the avoidance of harmful methods of working²²;
- 4935 (15) restrictions on the appointment of operators without the minister's consent²³;
- 4936 (16) the protection of fishing and navigation²⁴;
- 4937 (17) the licensee's obligations as to the training of employees²⁵;
- 4938 (18) the minister's power to oblige the licensee to co-operate with other licensees in the development of an oil field as a unit²⁶;
- 4939 (19) the records to be kept by the licensee²⁷;
- 4940 (20) the returns to be made by the licensee to the minister²⁸;
- 4941 (21) the keeping of samples²⁹;
- 4942 (22) the minister's obligation to treat the licensee's reports as confidential³⁰;
- 4943 (23) the minister's power to inspect the licensee's records³¹;
- 4944 (24) rights of access by persons authorised by the minister³²;
- 4945 (25) the minister's power to execute works where the licensee is in default³³;
- 4946 (26) the right of distress³⁴;
- 4947 (27) the licensee's duty to indemnify the minister against third party claims³⁵;

- 4948 (28) restrictions on the matters to be contained in advertisements and prospectuses³⁶;
 4949 (29) restrictions on assignments³⁷;
 4950 (30) the minister's power to revoke the licence³⁸; and
 4951 (31) provisions for arbitration in the event of disputes³⁹.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person⁴⁰.

1 le for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante.

2 For the meaning of 'petroleum exploration and development licence' see PARA 1640 note 11 ante.

3 Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(1), (7). 5 March 2004 is the date when the 2004 Regulations came into force: see reg 1.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 See the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, reg 3(8), Sch 7. For the meaning of 'break clause' see PARA 1671 note 5 ante.

6 Ibid reg 3(8).

7 See ibid reg 3(7), Sch 6 cl 2. The licence is an exclusive licence conferring the right during its continuance and subject to its provisions to search and bore for, and get, petroleum in the area described in the licence; provided that nothing in the licence affects the right of the minister to grant a methane drainage licence in respect of the whole or any part of the licensed area or affects the exercise of any rights granted under any such methane drainage licence: see Sch 6 cl 2. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry); 'the licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned; and 'the licensed area' means the area for the time being in which the licensee may exercise the rights granted by the licence: Sch 6 cl 1(1). For the meaning of 'petroleum' see PARA 1626 ante (where a definition identical to that contained in Sch 6 cl 1(1) is set out); and as to methane drainage licences see PARA 1665 ante, PARA 1676 post.

8 See ibid Sch 6 cl 3. Unless sooner determined under any of the provisions of the licence, it continues for the initial term, ie the period of six years: Sch 6 cl 1(1), 3(1). Upon expiry of the initial term, and provided always that its terms and conditions continue to be performed and observed, the licence continues in force as follows: (1) subject to Sch 6 cl 4, for the second term (ie a period of five years following expiry of the initial term); and (2) subject to Sch 6 cl 5, for the production period: Sch 6 cl 1(1), 3(2). 'Production period' means, in circumstances governed by Sch 6 cl 5(2)(a)-(b), a period of 20 years and, in circumstances governed by Sch 6 cl 5(2)(c) or Sch 6 cl 5(3), such period or periods of not more than 18 years in aggregate as the minister is to prescribe: Sch 6 cl 1(1). See further note 10 infra.

9 See ibid Sch 6 cl 4.

10 See ibid Sch 6 cl 5. See also note 8 supra. At any time not later than three months before the expiry of the second term the licensee may, subject to payment of those sums provided for in the licence and to performance of the terms and conditions contained in it, give notice in writing to the minister that he desires the licence to continue in force thereafter: see Sch 6 cl 5(1). If such a notice is given the licence continues in force after the expiry of the second term as provided by Sch 6 cl 5(3)-(5) in the event that before such expiry (1) the minister has in pursuance of Sch 6 cl 13(4) approved a programme submitted to him in pursuance of Sch 6 cl 13(2) and such approval is still in force upon expiry of the second term; or (2) the minister has served a programme on the licensee in pursuance of Sch 6 cl 13(6) and such programme is still in force upon expiry of the second term; or (3) the minister has with a view to securing the maximum economic recovery of petroleum so directed in writing: Sch 6 cl 5(2). Where the minister has given a direction extending the second term of the licence in pursuance of head (3) supra he may, on notice in writing being given to him by the licensee not later than three months before the expiry of such extension or before the expiry of any subsequent extension under this provision that he desires the licence to continue in force thereafter, give a further direction that the licence shall so continue in force: Sch 6 cl 5(3). Where the licence continues in force by virtue of Sch 6 cl 5 then subject to the provisions of Sch 6 cl 3 it so continues during the production period: Sch 6 cl 5(4).

11 See ibid Sch 6 cl 6.

12 See *ibid* Sch 6 cl 7, 8. The licensee may at any time by giving to the minister not less than one month's notice in writing to that effect determine the licence or surrender any part of the licensed area such as is mentioned in Sch 6 cl 7(2): Sch 6 cl 7(1). Any area to be surrendered in accordance with Sch 6 cl 7(1) must be a clearly defined area whose surrender will leave a retained area the boundaries of which (1) run north, south, east and west; and (2) each extend for 100 metres or a multiple of 100 metres; provided that the minister may agree in writing prior to the date notice is given by the licensee under Sch 6 cl 7(1) to accept a surrender of part of the licensed area which does not comply with these requirements: Sch 6 cl 7(2).

13 See *ibid* Sch 6 cl 9.

14 See *ibid* Sch 6 cl 10.

15 See *ibid* Sch 6 cl 11.

16 See *ibid* Sch 6 cl 12.

17 See *ibid* Sch 6 cl 13, 14.

18 See *ibid* Sch 6 cl 15 (as amended). The plugging of any well must be done in accordance with a specification approved by the minister applicable to that well or to wells generally or to a class of wells to which that well belongs and must be carried out in an efficient and workmanlike manner: Sch 6 cl 15(5). Subject to Sch 6 cl 15(7) and Sch 6 cl 15(7A) (as added), any well drilled by the licensee pursuant to the licence must be plugged and sealed not less than one month before the expiry or determination of the licensee's rights in respect of the area or part thereof in which that well is drilled: see Sch 6 cl 15(6) (amended by SI 2006/784). A direction by the minister may, however, be given by notice in writing to the licensee not less than one month before the licensee's rights in respect of the area or part thereof in which the well is situated expire or determine so as to relieve the licensee of the obligation so imposed to plug and seal the well: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 6 cl 15(7). Where the minister revokes the licence, any well drilled by the licensee pursuant to the licence must either be plugged and sealed as soon as reasonably practicable or, if the minister so directs at the time of revocation, be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: see Sch 6 cl 15(7A) (added by SI 2006/784). Any well that, pursuant to a direction by the minister under the Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 6 cl 15(7), has not been plugged and sealed, must be left in good order and fit for further working together with all casings and any well head fixtures the removal of which would cause damage to such wells: Sch 6 cl 15(8). All casings and fixtures forming part of a well and left in position at the expiry or determination (whether by revocation or otherwise) of the licensee's rights in respect of the area or part thereof in which that well is drilled, or at the completion of any works required of the licensee under Sch 6 cl 15(7A) (as added), whichever is the later, are to be the property of the minister: Sch 6 cl 15(9) (substituted by SI 2006/784). 'Well' includes borehole: Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 6 cl 1(1).

19 Except with the consent in writing of the minister, no well must be drilled or made so that any part of it is less than 125 metres from any of the boundaries of the licensed area: *ibid* Sch 6 cl 16.

20 See *ibid* Sch 6 cl 17. The licensee must not suspend work on the drilling of a development well, or having suspended it must not begin it again, except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 6 cl 17(1). When work on the drilling of a development well is so suspended, the licensee must forthwith furnish the minister with such information relating to the well as the minister may specify: Sch 6 cl 17(2). The licensee (1) must not do any completion work in respect of a well in the licensed area except in accordance with a programme of completion work approved by the minister in respect of the well; (2) must furnish to the minister, in accordance with the provisions of such a programme, particulars of any completion work done by him in respect of a well in the licensed area; and (3) must not remove or alter any casing or equipment installed by way of completion work in respect of a well except with the consent in writing of the minister and in accordance with the conditions, if any, subject to which the consent is given: Sch 6 cl 17(3). For these purposes, 'completion work', in relation to a well, means work, by way of the installation of a casing or equipment or otherwise after the well has been drilled, for the purpose of bringing the well into use as a development well; and 'development well' means a well which the licensee uses or intends to use in connection with the getting of petroleum in the licensed area, other than a well which for the time being he uses or intends to use only for searching for petroleum: Sch 6 cl 17(4).

21 The licensee must use methods and practice customarily used in good oilfield practice for confining the petroleum obtained from the licensed area in tanks, gasholders, pipes, pipelines or other receptacles constructed for that purpose: *ibid* Sch 6 cl 18.

22 See *ibid* Sch 6 cl 19.

23 See *ibid* Sch 6 cl 20. The licensee must ensure that another person (including, in the case where the licensee is two or more persons, any of those persons) does not exercise any function of organising or supervising all or any of the operations of searching or boring for or getting petroleum in pursuance of the licence unless that other person is a person approved in writing by the minister and the function in question is one to which that approval relates: Sch 6 cl 20(1). The minister may not refuse to give his approval of a person if that person is competent to exercise the function in question, but where an approved person is no longer competent to exercise that function the minister may, by notice in writing given to the licensee, revoke his approval: Sch 6 cl 20(2).

24 The licensee must not carry out any operations authorised by the licence in or about the licensed area in such manner as to interfere unjustifiably with navigation in any navigable waters or fishing in, or the conservation of the living resources of any waters in or in the vicinity of, the licensed area: *ibid* Sch 6 cl 21.

25 See *ibid* Sch 6 cl 22.

26 See *ibid* Sch 6 cl 23.

27 See *ibid* Sch 6 cl 24.

28 See *ibid* Sch 6 cl 25.

29 See *ibid* Sch 6 cl 26(1)-(4). As far as reasonably practicable the licensee must correctly label and preserve for reference for a period of five years samples of the strata encountered in any well (including, where the site of such well is on land covered by water, the surface of such land) and samples of any petroleum or water discovered in any well in the licensed area: Sch 6 cl 26(1). The licensee must not dispose of any sample after the expiry of that period of five years unless (1) he has at least six months before the date of the disposal given notice in writing to the minister of his intention to dispose of the same; and (2) the minister or any person authorised by him has not within that period of six months informed the licensee in writing that he wishes the sample to be delivered to him: Sch 6 cl 26(2).

30 See *ibid* Sch 6 cl 27.

31 See *ibid* Sch 6 cl 28.

32 See *ibid* Sch 6 cl 29.

33 If the licensee at any time fails to perform the obligations arising under the terms and conditions of any of *ibid* Sch 6 cl 10, 15, 18 or 19, the minister is entitled, after giving to the licensee reasonable notice in writing of his intention, to execute any works and to provide and install any equipment which in the opinion of the minister may be necessary to secure the performance of those obligations or any of them and to recover the costs and expenses of so doing from the licensee: Sch 6 cl 30.

34 See *ibid* Sch 6 cl 31. As to diligence in Scotland see Sch 6 cl 32.

35 See *ibid* Sch 6 cl 33.

36 No statement must be made either in any notice, advertisement, prospectus or other document issued by or to the knowledge of the licensee or in any other manner claiming or suggesting whether expressly or by implication that Her Majesty or any government department or any person or body acting on behalf of Her Majesty has or have formed or expressed any opinion that the licensed area is from its geological formation or otherwise one in which petroleum is likely to be obtainable: *ibid* Sch 6 cl 34.

37 See *ibid* Sch 6 cl 35.

38 See *ibid* Sch 6 cl 36 (as amended). If any of the specified events occur then the minister may revoke the licence and thereupon the licence and all the rights granted by it are to cease and determine: see Sch 6 cl 36(1). The specified events are: (1) any payments mentioned in Sch 6 cl 9(1) or any part of them being in arrear or unpaid for two months after any of the days on which they ought to have been paid; (2) any breach or non-observance by the licensee of any of the terms and conditions of the licence; (3) in Great Britain, the bankruptcy or sequestration of the licensee; (4) in Great Britain, the making by the licensee of any arrangement or composition with his creditors; (5) in Great Britain, if the licensee is a company, the appointment of a receiver or administrator or any liquidation whether compulsory or voluntary; (6) in a jurisdiction other than Great Britain, the commencement of any procedure or the making of any arrangement or appointment substantially corresponding to any of those mentioned in heads (3)-(5) *supra*; (7) any breach or non-observance by the licensee of the terms and conditions of a development scheme; (8) if the licensee is a company, the licensee's ceasing to direct and control either (a) its operations under the licence; or (b) any commercial activities in connection with those operations, from a fixed place within the United Kingdom; (9) any breach of a condition subject to which the minister gave his approval in pursuance of Sch 6 cl 35(2) (assignment of rights to

petroleum or proceeds of sale of petroleum); (10) any breach of Sch 6 cl 35(5) (restrictions on assignment where the licensee is two or more persons); and where two or more persons are the licensee any reference to the licensee in heads (3)-(8) supra is a reference to any of those persons: *ibid* Sch 6 cl 36(2) (amended by SI 2007/784). The minister may revoke the licence, with the like consequences as are mentioned in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 6 cl 36(1), if (i) the licensee is a company; and (ii) there is a change in the control of the licensee; and (iii) the minister serves notice in writing on the licensee stating that he proposes to revoke the licence unless such a further change in the control of the licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and (iv) that further change does not take place within that period: Sch 6 cl 36(3). There is a change in the control of the licensee for the purposes of head (ii) supra whenever a person has control of the licensee who did not have control of the licensee when the licence was granted; and the Income and Corporation Taxes Act 1988 s 416(2)-(4), (6) (see *INCOME TAXATION* vol 23(2) (Reissue) PARA 1299) applies, for the purpose of determining whether a person has or had control of the licensee, with the modifications specified in the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352, Sch 6 cl 35(4) (restrictions on disposal of petroleum or proceeds of sale of petroleum): Sch 6 cl 36(4) (which refers to the modifications specified in Sch 6 cl 36(4); but it is apprehended that this is a drafting error and, by analogy with Sch 4 cl 37(4) (see PARA 1673 note 41 ante), the reference is intended to be to the modifications specified in Sch 6 cl 35(4)). Where two or more persons are the licensee and any of them is a company, Sch 6 cl 36(3), (4) is modified: see Sch 6 cl 36(5).

39 See *ibid* Sch 6 cl 37.

40 *Ibid* Sch 6 cl 1(2).

UPDATE

1670-1674 Model Clauses for Exploration, Production and Development in Seaward and Landward Areas

Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004, SI 2004/352 further amended: Energy Act 2008 s 77, Sch 3 Pt 3.

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(C) MODEL CLAUSES FOR SUPPLEMENTARY SEISMIC SURVEY AND METHANE DRAINAGE LICENCES

1675. Model clauses for supplementary seismic survey licences.

Model clauses have been prescribed¹ for incorporation in supplementary seismic survey licences², which cover:

- 4952 (1) the grant of the licence³;
- 4953 (2) the term of the licence and the circumstances in which it is automatically determined⁴;
- 4954 (3) payment of consideration for the licence⁵;
- 4955 (4) notice requirements with regard to the carrying out of seismic surveys⁶;
- 4956 (5) the records to be kept by the licensee⁷;
- 4957 (6) the returns to be made to the minister by the licensee⁸;
- 4958 (7) the minister's obligation to treat the licensee's reports as confidential⁹;
- 4959 (8) the minister's power to inspect the licensee's records¹⁰;
- 4960 (9) the licensee's duty to indemnify the minister against third party claims¹¹;
- 4961 (10) restrictions on assignment¹²;
- 4962 (11) the minister's power to revoke the licence¹³; and
- 4963 (12) provisions for arbitration in the event of disputes¹⁴.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person¹⁵.

1 See for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante. The Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, were made under the Petroleum (Production) Act 1934 s 6(1) (repealed), but by virtue of the Petroleum Act 1998 s 49, Sch 3 Pt I para 1(2), they now have effect as if made under s 4.

2 For the meaning of 'supplementary seismic survey licence' see PARA 1664 note 3 ante.

3 See the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 9(2)(b), Sch 4 cl 2. The licence confers on the licensee a non-exclusive right to search for petroleum underlying the area to which the principal licence relates by undertaking seismic surveys in the adjacent area more particularly described in the licence: Sch 4 cl 2. 'The licensee' means the person or persons to whom the licence is granted, his personal representatives and any person or persons to whom the rights conferred by the licence may lawfully have been assigned: Sch 4 cl 1(1). For the meaning of 'principal licence' see PARA 1664 note 1 ante; and for the meaning of 'petroleum' see PARA 1626 ante (where a definition identical to that for the purposes of Sch 4 cl 1(1) is set out).

4 See *ibid* Sch 4 cl 3, 4. Unless it is determined sooner, the licence is to continue in force for a period of 12 months: see Sch 4 cl 3. The licence automatically ceases and determines (1) on the termination of the principal licence; and (2) on the grant of a petroleum exploration and development licence in respect of an area which includes the whole of the exploration area: Sch 4 cl 4(1). Where a petroleum exploration and development licence is granted in respect of part of the exploration area, the licence automatically ceases and determines as regards that part: Sch 4 cl 4(2). For the meaning of 'petroleum exploration and development licence' see PARA 1663 note 2 ante; and as to the model clauses now prescribed for such licences see PARA 1674 ante.

5 See *ibid* Sch 4 cl 5.

6 See *ibid* Sch 4 cl 6. Planning permission may be required for the carrying out of the survey: see Sch 4 cl 6(1).

7 See *ibid* Sch 4 cl 7.

8 See *ibid* Sch 4 cl 8.

9 See *ibid* Sch 4 cl 9. 'The minister' means the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry): Sch 4 cl 1(1). As to the Secretary of State see PARA 601 note 1 ante.

10 See *ibid* Sch 4 cl 10.

11 See *ibid* Sch 4 cl 11.

12 See *ibid* Sch 4 cl 12.

13 The minister may revoke the licence in the event of any breach or non-observance by the licensee of any of the terms and conditions of the licence, and thereupon the licence and all the rights granted by it cease and determine, subject and without prejudice to any obligation or liability imposed upon the licensee or incurred by him under the terms and conditions of the licence: see *ibid* Sch 4 cl 13.

14 See *ibid* Sch 4 cl 14.

15 *Ibid* Sch 4 cl 1(2).

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1676. Model clauses for methane drainage licences.

Model clauses have been prescribed¹ for incorporation in methane drainage licences², which cover:

- 4964 (1) the grant of the licence³;
- 4965 (2) the term of the licence and the licensee's right to determine it⁴;
- 4966 (3) payment of consideration for the licence⁵;
- 4967 (4) the records to be kept by the licensee and furnished to the minister⁶;
- 4968 (5) the minister's power to inspect the licensee's accounts and records⁷;
- 4969 (6) the minister's duty to treat the licensee's records as confidential⁸;
- 4970 (7) the licensee's duty to give notice of operations for getting natural gas⁹;
- 4971 (8) the licensee's duty to indemnify the minister against third party claims¹⁰;
- 4972 (9) restrictions on assignment¹¹;
- 4973 (10) the minister's power to revoke the licence¹²; and
- 4974 (11) provisions for arbitration in the event of disputes¹³.

Any obligations which are to be observed and performed by the licensee are joint and several obligations at any time at which the licensee is more than one person¹⁴.

1. See for the purposes of the Petroleum Act 1998 s 4(1)(e): see PARA 1639 ante. The Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, were made under the Petroleum (Production) Act 1934 s 6(1) (repealed), but by virtue of the Petroleum Act 1998 s 49, Sch 3 Pt I para 1(2), they now have effect as if made under s 4.

2. For the meaning of 'methane drainage licence' see PARA 1665 note 2 ante. In practice, such licences are granted only for the purpose of making coal mines safe. As to the safety of coal mines see generally HEALTH AND SAFETY AT WORK; MINES, MINERALS AND QUARRIES.

3. See the Petroleum (Production) (Landward Areas) Regulations 1995, SI 1995/1436, reg 9(2)(c), Sch 5 cl 2.

4. See *ibid* Sch 5 cl 3, 4.

5. See *ibid* Sch 5 cl 5.

6. See *ibid* Sch 5 cl 6.

7. See *ibid* Sch 5 cl 7.

8. See *ibid* Sch 5 cl 8.

9. See *ibid* Sch 5 cl 9. For the meaning of 'natural gas' see PARA 1627 ante.

10. See *ibid* Sch 5 cl 10.

11. See *ibid* Sch 5 cl 11.

12. See *ibid* Sch 5 cl 12.

13. See *ibid* Sch 5 cl 13.

14 Ibid Sch 5 cl 1(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(i) Statutory Regulation; in general/1677. The domestic legislation.

(3) OFFSHORE WORKINGS AND INSTALLATIONS

(i) Statutory Regulation; in general

1677. The domestic legislation.

The management of offshore installations is governed principally by the following domestic legislation:

- 4975 (1) Part II of the Petroleum Act 1998¹, which provides for the application of the criminal and civil law to offshore activities²;
- 4976 (2) Part IV of that 1998 Act³, which makes provision with regard to the abandonment of offshore installations⁴;
- 4977 (3) certain provisions of the Petroleum Act 1987⁵ which make provision for the establishment of safety zones around installations⁶;
- 4978 (4) the Offshore Safety Act 1992, which extends the general purposes of the Health and Safety at Work etc Act 1974 to offshore installations and makes provision for the security of petroleum and petroleum products⁷; and
- 4979 (5) Part II⁸ of the Aviation and Maritime Security Act 1990⁹.

The general purposes of Part I of the Health and Safety at Work etc Act 1974¹⁰ include:

- 4980 (a) securing the safety, health and welfare of persons on offshore installations¹¹ or engaged on pipeline works¹²;
- 4981 (b) securing the safety of such installations and preventing accidents on or near them;
- 4982 (c) securing the proper construction and safe operation of pipelines and preventing damage to them; and
- 4983 (d) securing the safe dismantling, removal and disposal of offshore installations and pipelines¹³.

1 Ie the Petroleum Act 1998 Pt II (ss 10-13) (as amended): see PARAS 1678-1679 post.

2 See PARAS 1678-1679 post.

3 Ie the Petroleum Act 1998 Pt IV (ss 29-45): see PARA 1729 et seq post.

4 See PARA 1729 et seq post.

5 Ie the Petroleum Act 1987 ss 21-24: see PARA 1680 post.

6 See PARA 1680 et seq post.

7 See the Offshore Safety Act 1992 ss 1, 3-5 (as amended); para 1639 note 3 ante; the text and notes 10-13 infra; and PARAS 1677, 1681 post. See also the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 305. As to health and safety regulations with regard to offshore installations and activities see PARA 1682 et seq post; and HEALTH AND SAFETY AT WORK. Health and safety regulations in relation to offshore installations were previously made under

the Mineral Workings (Offshore Installations) Act 1971 and continued in force notwithstanding the repeal of the enabling powers: see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 6(1).

The operation of any regulations made under the Mineral Workings (Offshore Installations) Act 1971 may be wholly or partly excluded in relation to any particular installation by directions of the Health and Safety Executive given in such manner and to such persons as it thinks appropriate: s 7(4) (amended by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(f), 4(2)). Any exemption or exclusion by such directions may be made subject to the conditions specified in the directions: Mineral Workings (Offshore Installations) Act 1971 s 7(5) (as so amended). Where a person is so exempted or excluded from the requirements of any provision of the Act or of regulations, but subject to a condition, the exemption or exclusion does not have effect, and proceedings may be brought in respect of any breach of duty as if the exemption or exclusion had not had effect: s 7(6). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

8 Ie the Aviation and Maritime Security Act 1990 Pt II (ss 9-17): see PARA 1681 post; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1135 et seq 1211 et seq.

9 See PARA 1681 post; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1135 et seq 1211 et seq.

10 Ie the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420 et seq.

11 For these purposes, 'offshore installation' means any installation which is an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971 (ie within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733) (see PARA 1681 note 11 post) or is to be taken to be an installation for the purposes of the Petroleum Act 1987 ss 21-23 (as amended) (see PARA 1680 post): Offshore Safety Act 1992 s 1(4).

12 For these purposes, 'pipeline works' means works of any of the following kinds, namely: (1) assembling or placing a pipeline or length of pipeline; (2) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline; (3) changing the position of or dismantling or removing a pipeline or length of pipeline; (4) opening the bed of the sea for the purposes of works mentioned in heads (1)-(3) supra, tunnelling or boring for those purposes and other works needed for or incidental to those purposes; (5) works for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for the purpose of settling the route of a proposed pipeline: *ibid* s 1(4) (definition substituted the Petroleum Act 1998 s 50, Sch 4 para 33(2)(b)). 'Pipeline' means a controlled pipeline within the meaning of the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (see PARA 1740 note 6 post): Offshore Safety Act 1992 s 1(4) (definition as so substituted). 'Pipeline' does not, however, include: (a) any pipeline so far as it forms part of the equipment of a vessel or vehicle; or (b) any apparatus and works associated with a pipe or system of pipes and prescribed for these purposes by regulations made by the Secretary of State: s 1(4A) (s 1(4A) (4B) added by the Petroleum Act 1998 Sch 4 para 33(2)(c)). A statutory instrument containing regulations made by virtue of the Offshore Safety Act 1992 s 1(4A) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament; and the Petroleum Act 1998 s 25 (see PARA 1740 note 2 post) applies in relation to any such regulations as it applies in relation to regulations under s 20 (see PARA 1764 post): Offshore Safety Act 1992 s 1(4B) (as so added). At the date at which this title states the law, no such regulations had been made.

13 *Ibid* s 1(1). The Health and Safety at Work etc Act 1974 Pt I (as amended) has effect as if the provisions mentioned in the Offshore Safety Act 1992 s 1(3) (as amended) were existing statutory provisions within the meaning of that Part and, in the case of the enactments there mentioned, were specified in the Health and Safety at Work etc Act 1974 Sch 1 col 3 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 note 12): Offshore Safety Act 1992 s 1(1). Without prejudice to the generality of the Health and Safety at Work etc Act 1974 s 15(1) (as amended) (health and safety regulations), regulations under s 15 (as amended) may repeal or modify any of the provisions mentioned in the Offshore Safety Act 1992 s 1(3) (as amended) and may make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any enactment mentioned in heads (1)-(3) supra: Offshore Safety Act 1992 s 1(3) (amended by the Petroleum Act 1998 ss 50, 51, Sch 4 para 33(2)(a), Sch 5 Pt I). The provisions mentioned in the Offshore Safety Act 1992 s 1(3) (as amended) and the definitions in s 1(4) (as amended) have effect as if any reference in: (a) the Mineral Workings (Offshore Installations) Act 1971 s 1(4) (now repealed); (b) the Petroleum Act 1987 s 21(7) (see PARA 1680 post); (c) the Petroleum Act 1998 s 14(2) or s 45 (see PARAS 1743, 1729 notes 4-5 post), to tidal waters and parts of the sea in or adjacent to the United Kingdom, or to the territorial sea adjacent to the United Kingdom, were a reference to tidal waters and parts of the sea in or adjacent to Great Britain, or to the territorial sea adjacent to Great Britain: Offshore Safety Act 1992 s 1(5) (amended by the Petroleum Act 1998 Sch 4 para 33(2)(d), Sch 5 Pt I). See further the Offshore Installations (Safety Case) Regulations 2005, SI

2005/3117 (made under various provisions of the Health and Safety at Work etc Act 1974 and also under the Offshore Safety Act 1992 s 1(2)); and PARA 1683 post. As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

UPDATE

1677 The domestic legislation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(i) Statutory Regulation; in general/1678. Application of criminal law to offshore installations.

1678. Application of criminal law to offshore installations.

Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions as may be prescribed:

- 4984 (1) any act or omission which takes place on, under or above an installation¹ in certain waters² or within 500 metres of any such installation, and which, if it took place in any part of the United Kingdom, would constitute an offence under the law in that part, is to be treated for the purposes of that law as taking place in that part³;
- 4985 (2) a constable is to have, on, under or above any installation in any such waters or any waters within 500 metres of such an installation, all the powers, protection and privileges which he has in the area for which he acts as constable⁴.

Where a body corporate is guilty of an offence by virtue of such an Order in Council, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁵. Where the affairs of a body corporate are managed by its members, this applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of a body corporate⁶.

Proceedings for anything which by virtue of the provisions described above is an offence, may be taken, and the offence treated for all incidental purposes as having been committed, in any place in the United Kingdom⁷. Subject to certain exceptions⁸, however, no proceedings for any offence alleged to have been committed on, under or above an installation in waters to which these provisions apply or in any waters within 500 metres of such an installation may be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions, unless prosecution of the offence there requires the consent of the Attorney General⁹.

The Criminal Jurisdiction (Offshore Activities) Order 1987¹⁰ has effect as if made under the above provisions¹¹ and applies the criminal law in the manner set out in heads (1) and (2) above¹².

Her Majesty may by Order in Council specify any area which is in a foreign sector of the continental shelf¹³ and comprises any part of a cross-boundary field¹⁴ as an area in which the powers described above are exercisable¹⁵.

The above provisions, so far as they apply to individuals, apply to them whether or not they are British citizens, and so far as they apply to bodies corporate, apply to them whether or not they are incorporated under the law of any part of the United Kingdom¹⁶.

1 For these purposes, 'installation' includes any floating structure or device maintained on a station by whatever means: Petroleum Act 1998 s 13. Section 10 (as amended) (see the text and notes 2-10 infra), applies to installations notwithstanding that they are for the time being in transit but does not apply to an installation that is a renewable energy installation within the meaning of the Energy Act 2004 Pt 2 Ch 2 (ss 84-104) (see PARA 1310 et seq ante): Petroleum Act 1998 s 10(10) (amended by the Energy Act 2004 s 103(3)). For the

meaning of 'renewable energy installation' see PARA 1311 note 2 ante; and as to the application of the criminal law to such installations see PARA 1311 ante.

2 The waters to which the Petroleum Act 1998 s 10 (as amended) applies are: (1) the territorial sea adjacent to the United Kingdom; (2) waters in any area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante); and (3) waters in any area specified under the Petroleum Act 1998 s 10(8) (see the text and notes 10-12 infra): s 10(7). For the meaning of 'United Kingdom' see PARA 602 note 7 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

3 Ibid s 10(1). A statutory instrument containing an Order in Council under s 10 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 10(11). At the date at which this title states the law, no such order had been made, but, by virtue of s 49, Sch 3 Pt I para 1(2), the Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198, art 3 (see the text and note 12 infra), which applies to waters falling within heads (1)-(2) in note 2 supra (art 2) has effect as if so made.

4 Petroleum Act 1998 s 10(2). This is without prejudice to any other enactment or rule of law affording any power, protection or privilege to constables: s 10(3). As to the powers, protection and privileges of a constable see generally POLICE. At the date at which this title states the law, no such order had been made, but, by virtue of s 49, Sch 3 Pt I para 1(2), the Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198, art 4 (see the text and note 12 infra), which applies to waters falling within heads (1)-(2) in note 2 supra (art 2) has effect as if so made.

5 Petroleum Act 1998 s 10(4).

6 Ibid s 10(5).

7 Ibid s 10(6).

8 The exceptions are (1) any offence to which ibid s 12(5) applies; (2) any offence under, or under any provision which has effect under: (a) the Customs and Excise Acts 1979, or any enactment to be construed as one with those Acts or any of them; (b) except where it is created by virtue of the Civil Aviation Act 1982 Sch 13 Pt III para 6(5) (see AIR LAW vol 2 (2008) PARA 30), that 1982 Act or any enactment to be construed as one with that Act; (c) the Pilotage Act 1987; (d) the Value Added Tax Act 1994 or any enactment to be construed as one with that Act; (e) the Merchant Shipping Act 1995; or (f) the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (see PARAS 1030-1032, 1637 ante, PARA 1740 et seq post) or Pt IV (ss 29-45) (see PARA 1729 et seq post): s 12(2). Section 12(5) applies to: (i) any offence under the Petroleum Act 1987 s 23 (as amended) (safety zones): see PARA 1680 post; and (ii) any offence under any provision made under the Mineral Workings (Offshore Installations) Act 1971 which has effect by virtue of the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 6(1) (see PARA 1677 note 7 ante) or the corresponding Northern Ireland provision: Petroleum Act 1998 s 12(5). See also note 9 infra.

9 Ibid s 12(1)(a), (3)(a). Similar provision is made within regard to any offence committed on or as respects an aircraft which is not registered in the United Kingdom which is an offence created by virtue of the Civil Aviation Act 1982 Sch 13 Pt III para 6(5) (see AIR LAW vol 2 (2008) PARA 30): see the Petroleum Act 1998 s 12(1)(b), (3)(a). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence to which the Petroleum Act 1998 s 12(1) or (5) applies: s 12(4).

10 Ie the Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198.

11 See notes 3-4 supra.

12 See the Criminal Jurisdiction (Offshore Activities) Order 1987, SI 1987/2198, arts 3, 4.

13 'Foreign sector of the continental shelf' means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom: Petroleum Act 1998 ss 13, 48(1).

14 'Cross-boundary field' means a field that extends across the boundary between waters falling within heads (1), (2) of note 2 supra and a foreign sector of the continental shelf; and 'field' means a geological structure identified as such by Order in Council under ibid s 10(8): s 10(9).

15 Ibid s 10(8). At the date at which this title states the law, no such order had been made.

16 Ibid s 48(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(i) Statutory Regulation; in general/1679. Application of civil law to offshore installations.

1679. Application of civil law to offshore installations.

Her Majesty may by Order in Council provide¹ that, in such cases and subject to such exceptions as may be prescribed, questions arising out of acts or omissions taking place on, under or above certain waters² in connection with activities:

- 4986 (1) connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of such waters or the subsoil beneath it³; and
 4987 (2) without prejudice to the generality of head (1) above, activities carried on from, by means of or on, or for purposes connected with, any installation⁴ which is or has been maintained, or is intended to be established, for the carrying on of any of the following activities⁵, namely:
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693. (a) the exploitation or exploration of mineral resources in or under the shore or bed of waters to which these provisions apply;
694. (b) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored;
695. (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters; and
696. (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity within head (a), head (b) or head (c) above⁶,
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are to be determined in accordance with the law in force in such part of the United Kingdom as may be specified⁷; and may make provision for conferring jurisdiction with respect to such questions on such courts in any part of the United Kingdom so specified⁸. Any jurisdiction so conferred is without prejudice to any jurisdiction otherwise exercisable⁹.

The Civil Jurisdiction (Offshore Activities) Order 1987¹⁰ has effect as if made under the above provisions¹¹.

Her Majesty may by Order in Council specify any area which is in a foreign sector of the continental shelf and comprises any part of a cross-boundary field¹² as an area in which the powers described above are exercisable¹³.

The above provisions, so far as they apply to individuals, apply to them whether or not they are British citizens, and so far as they apply to bodies corporate, apply to them whether or not they are incorporated under the law of any part of the United Kingdom¹⁴.

1 A statutory instrument containing an Order in Council under the Petroleum Act 1998 s 11 is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(7).

2 The waters to which *ibid* s 11 applies are as follows: (1) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; (2) waters in any area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante); (3) waters in any area specified under the Petroleum Act 1998 s 10(8) (see the text and notes 10-11 infra); (4) in relation to installations which have been maintained, or are intended to be established, in waters falling within head (1), head (2) or head (3) supra, waters in a foreign sector of the continental shelf which are adjacent to such waters: s 11(8). For the meaning

of 'United Kingdom' see PARA 602 note 7 ante; and as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3. For the meaning of 'foreign sector of the continental shelf' see PARA 1678 note 13 ante; and for the meaning of 'installation' see PARA 1678 note 1 ante.

3 See *ibid* s 11(2)(a).

4 *Ibid* s 11 applies to installations notwithstanding that they are for the time being in transit: s 11(6). In contrast to the position under s 10 (as amended) (see PARA 1678 ante), renewable energy installations are not specifically excluded; but as to the application of the civil law to such installations see the Energy Act 2004 s 87; and PARA 1312 ante.

5 See the Petroleum Act 1998 s 11(2)(b). The fact that an installation has been maintained for the carrying on of any such activity must be disregarded if, since it was so maintained, it has been outside waters described in note 2 supra or it has been maintained for the carrying on of an activity not falling within s 11(3) (see head (2)(a)-(d) in the text): s 11(4).

6 See *ibid* s 11(3)(a)-(d).

7 *Ibid* s 11(1)(a). At the date at which this title states the law, no such order had been made, but by virtue of s 49, Sch 3 Pt I para 1(2), the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 2 has effect as if so made. Subject to any Order in Council made under the Petroleum Act 1998 s 10(1) (see PARA 1678 ante) with respect to the application of the criminal law, the law in force in England and Wales is to apply for the determination of questions arising out of relevant acts taking place in the English area; and similar provision is made in relation to Scotland and Northern Ireland: Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 2; Interpretation Act 1978 s 17(2). 'Relevant act' means an act or omission taking place on, under or above the offshore area in connection with any of the activities mentioned in heads (1), (2) in the text; 'offshore area' means waters corresponding to those described in note 2 heads (1), (2), (4) supra; 'English area' means such of the offshore area adjacent to England and Wales lying to the south of the Scottish border (as defined) and east of the Northern Irish border (as defined), together with the internal waters of England and Wales in so far as they are tidal or constitute parts of the sea: Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 1(2).

An Order in Council under the Petroleum Act 1998 s 11 may make provision for treating for the purposes of the Radioactive Substances Act 1993 and any orders and regulations made thereunder any installation in an area or part with respect to which provision is made under the Petroleum Act 1998 s 11 and any waters within 500 metres of such an installation as if they were situated in such part of the United Kingdom as may be specified in the order, and for modifying the provisions of that Act in their application to such an installation or waters: Continental Shelf Act 1964 s 7 (amended by the Petroleum Act 1998 s 50, Sch 4 para 2(3)). The Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, provides for the extension of the application of the Radioactive Substances Act 1993 and certain provisions of the Communications Act 2003 to offshore installations: see the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 4 (as amended); the Communications Act 2003 s 410(3) (amended by the Energy Act 2004 s 87(5)); the Interpretation Act 1978 s 17(2); para 1357 note 8 ante; and TELECOMMUNICATIONS AND BROADCASTING. As to the Radioactive Substances Act 1993 see PARA 1439 et seq ante.

8 Petroleum Act 1998 s 11(1)(b). Under the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, art 3(1), jurisdiction is conferred on the High Court for the determination of any questions arising out of a relevant act which fall to be determined in accordance with the law of England and Wales (see note 7 supra), as it would have if the relevant act had taken place in England or Wales. Corresponding jurisdiction is conferred on the Court of Session and the High Court in Northern Ireland by art 3(2), (3) respectively.

9 Petroleum Act 1998 s 11(5).

10 *Ie* the Civil Jurisdiction (Offshore Activities) Order 1987, SI 1987/2197, arts 1-3: see notes 7-8 supra.

11 See notes 7-8 supra.

12 For the meaning of 'cross-boundary field' see PARA 1678 note 14 ante.

13 Petroleum Act 1998 s 10(8).

14 *Ibid* s 48(2).

UPDATE

1679 Application of civil law to offshore installations

TEXT AND NOTES 1-9--Petroleum Act 1998 s 11 amended: Energy Act 2008 Sch 1 para 7 (partly in force: SI 2009/45, SI 2009/2809).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(i) Statutory Regulation; in general/1680. Protection of installations.

1680. Protection of installations.

For the purpose of protecting installations¹, the Petroleum Act 1987 provides for the designation of sea areas as safety zones². There is a safety zone around every installation which, or part of which, is in certain waters³, if:

- 4988 (1) the installation is stationed there so that any of several specified activities⁴ may be carried out on, from or by means of it⁵;
- 4989 (2) it is being assembled at a station where it is to be used for such a purpose⁶; or
- 4990 (3) it remains or is being dismantled at a station where it has been used for such a purpose⁷.

This does not, however, apply to an installation in respect of which a zone is established by order⁸, or to one which:

- 4991 (a) is connected with dry land by a permanent structure providing access at all times and for all purposes⁹; or
- 4992 (b) does not project above the sea at any state of the tide¹⁰.

The Secretary of State¹¹ may by order¹² exclude any installation or any description of installation from the automatic establishment of a safety zone, and may do so generally or by reference to specified activities or locations or in any other way¹³.

A safety zone established under the provisions described above extends to every point within 500 metres of any part of the installation (ignoring any moorings) and to every point in the water which is vertically above or below such a point¹⁴.

The Secretary of State may by order establish a safety zone around any installation which, or part of which, is stationed in the waters to which the above provisions apply, or is being assembled or dismantled in such waters¹⁵. The area of a safety zone established by an order is as defined in the order and may extend outside those waters, but may not extend to any point which would be outside a zone defined as if it were established automatically under the provisions described above¹⁶. An order establishing a safety zone may be made in anticipation of the arrival of an installation at its station, so as to come into force when it does so¹⁷.

Where there is a safety zone around an installation, no vessel¹⁸ may enter or remain in the zone except, in the case of a safety zone established by order¹⁹, in accordance with that order, or in that or any other case, in accordance with regulations made by the Secretary of State or a consent given by the Health and Safety Executive²⁰. If a vessel enters or remains in a safety zone in contravention of this provision, then its owner and its master²¹ are each guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or to both²². It is a defence to prove that the presence of the installation or the existence of the safety zone was not, and would not on reasonable inquiry have become, known to the master²³. Where the commission by any person of an offence under this provision is due to the act or default of some other person, that other person is also guilty of that offence and is liable to be

proceeded against and punished accordingly²⁴; and where an offence committed by a body corporate under this provision is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly²⁵. Where the affairs of a body corporate are managed by its members, such liability is applicable in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate²⁶. Proceedings for an offence under this provision may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom²⁷.

1 For these purposes: (1) any floating structure or device maintained on a station by whatever means; and (2) any apparatus or works treated as associated with a pipe or system of pipes by the Petroleum Act 1998 s 26 (but not anything else within the definition of pipeline in s 26) is to be taken to be an installation: Petroleum Act 1987 s 24(1) (amended by the Petroleum Act 1998 s 50, Sch 4 para 23).

2 See the text and notes 3-27 *infra*. The provisions described in the text and notes 3-27 *infra*, so far as they apply to individuals, apply to them whether or not they are British citizens, and so far as they apply to bodies corporate, apply to them whether or not they are incorporated in any part of the United Kingdom: Petroleum Act 1987 s 24(3). For the meaning of 'United Kingdom' see PARA 602 note 7 *ante*.

3 *Ibid* s 21(1). The waters referred to are: (1) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; and (2) waters in an area designated under the Continental Shelf Act 1964 1(7) (as amended) (see PARA 1636 *ante*): Petroleum Act 1987 s 21(7). A safety zone established by s 21(1) may extend to waters outside waters to which s 21(7) applies: s 21(6). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

4 The activities are (1) the exploitation or exploration of mineral resources in or under the shore or bed of the waters described in note 3 *supra*; (2) the storage of gas in or under the shore or bed of such waters or the recovery of gas so stored; (3) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters; (4) the provision of accommodation for persons who work on or from such an installation: *ibid* s 21(2)(a)-(d).

5 *Ibid* s 21(1)(a).

6 *Ibid* s 21(1)(b).

7 *Ibid* s 21(1)(c).

8 *Ibid* s 21(3). As to orders establishing safety zones see s 22; and the text and notes 15-17 *infra*.

9 *Ibid* s 21(3)(a).

10 *Ibid* s 21(3)(b).

11 As to the Secretary of State see PARA 601 note 1 *ante*.

12 The power to make orders and regulations under the Petroleum Act 1987 ss 21-23 (as amended) is exercisable by statutory instrument; and a statutory instrument containing an order under s 21 or regulations under s 23 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(2). It is the duty of the Health and Safety Commission to submit from time to time to the Secretary of State such proposals as the Commission considers appropriate for the making of orders under s 21 or s 22: s 24(2A) (added by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 4(4)(b)).

13 Petroleum Act 1987 s 21(4).

14 *Ibid* s 21(5).

15 *Ibid* s 22(1). See also note 12 *supra*. A number of orders have been made under s 22(1), (2): see eg the Offshore Installations (Safety Zones) Order 2007, SI 2007/41; the Offshore Installations (Safety Zones) (No 2) Order 2007, SI 2007/1017; the Offshore Installations (Safety Zones) (No 3) Order 2007, SI 2007/1549; the Offshore Installations (Safety Zones) (No 5) Order 2007, SI 2007/2198; the Offshore Installations (Safety Zones) (No 6) Order 2007, SI 2007/2446.

16 Petroleum Act 1987 s 22(2).

17 Ibid s 22(3).

18 'Vessel' includes a hovercraft, submersible apparatus (within the meaning of the Merchant Shipping Act 1995 s 88(4): ie any apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters) and an installation in transit: Petroleum Act 1987 s 23(8) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 78).

19 See the text and notes 15-17 supra.

20 Petroleum Act 1987 s 23(1) (amended by the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 4(4)(a)). See also note 12 supra. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

21 'Master' means (1) in relation to a hovercraft, the captain; (2) in relation to submersible apparatus, the person in charge of the apparatus; and (3) in relation to an installation in transit, the person in charge of the transit operation: Petroleum Act 1987 s 23(8).

22 Ibid s 23(2). As to the statutory maximum see PARA 689 note 2 ante. In fixing fines in such cases, the court must have regard to the level of culpability, the financial circumstances of the defendant, and the potential consequences to others of the breach of safety: see *R v Armana Ltd* [2004] EWCA Crim 1069, [2005] 1 Cr App Rep (S) 27 (fine of £40,000 held to be manifestly excessive in circumstances where the owner of the vessel had not been aware of a likely breach, had not encouraged or acquiesced in any breach of safety regulations, had employed experienced crew and deck officers, and had acted in such a way as to reduce the risk of breaches of safety procedures occurring; fine of £15,000 substituted on appeal).

23 Petroleum Act 1987 s 23(3).

24 Ibid s 23(4).

25 Ibid s 23(5).

26 Ibid s 23(6).

27 Ibid s 23(7).

UPDATE

1680 Protection of installations

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Petroleum Act 1987 s 21(2) amended, s 21(8) added: Energy Act 2008 Sch 1 para 4 (partly in force: SI 2009/2809).

NOTE 12--The Health and Safety Commission was abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 15--See the Offshore Installations (Safety Zones) Order 2008, SI 2008/1522, the Offshore Installations (Safety Zones) (No 2) Order 2008, SI 2008/2157, the Offshore Installations (Safety Zones) (No 3) Order 2008, SI 2008/2454, the Offshore Installations (Safety Zones) (No 4) Order 2008, SI 2008/3011, the Offshore Installations (Safety Zones) Order 2009, SI 2009/1374, the Offshore Installations (Safety Zones) (No 2) Order 2009, SI 2009/2099, and the Offshore Installations (Safety Zones) (No 3) Order 2009, SI 2009/2927.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(i) Statutory Regulation; in general/1681. Preservation of security of petroleum and petroleum products and fixed platforms.

1681. Preservation of security of petroleum and petroleum products and fixed platforms.

The Secretary of State¹ may, after consultation with the Health and Safety Executive² and with any person who is the operator of an offshore installation³, onshore terminal⁴ or oil refinery⁵, give to that person such directions of a general character as appear to the Secretary of State requisite or expedient for the purpose of preserving the security of any such installation, terminal or refinery⁶. If it appears to the Secretary of State requisite or expedient for that purpose, he may after such consultation give the person a direction requiring him (according to the circumstances of the case), to do or not to do a particular thing specified in the direction⁷. A person given a direction under these provisions must give effect to it notwithstanding any other duty imposed on him by or under any enactment⁸.

The Secretary of State must lay a copy of any direction given by him under these provisions before each House of Parliament unless he is of opinion that disclosure of the direction is against the interests of national security or the commercial interests of some other person⁹. A person must not disclose, and is not required by virtue of any enactment or otherwise to disclose, anything done by virtue of these provisions if the Secretary of State has notified him that disclosure is against the interests of national security or the commercial interests of some other person¹⁰.

Provision has also been made for the suppression of unlawful acts against the safety of fixed platforms¹¹. In particular, a person who unlawfully, by the use of force or by threats of any kind, seizes a fixed platform or exercises control of it, commits an offence, whatever his nationality and whether the fixed platform is in the United Kingdom or elsewhere¹². A person guilty of such an offence is liable on conviction on indictment to imprisonment for life¹³.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

3 For these purposes, 'offshore installation' means any installation which is an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended) (see PARA 1684 note 1 post), or is to be taken to be an installation for the purposes of the Petroleum Act 1987 ss 21-23 (as amended) (see PARA 1680 ante): Offshore Safety Act 1992 ss 1(4), 5(7); Mineral Workings (Offshore Installations) Act 1971 s 12(1) (definition substituted by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 22 Sch 1 Pt II paras 2, 4).

4 'Onshore terminal' means an onshore terminal which receives petroleum directly or indirectly from an offshore installation: Offshore Safety Act 1992 s 5(7). For the meaning of 'petroleum' see PARA 1626 ante (definition applied by s 5(7) (amended for these purposes by the Petroleum Act 1998 s 50, Sch 4 para 33(4)).

5 'Oil refinery' includes an installation for processing petroleum products: Offshore Safety Act 1992 s 5(7).

6 Ibid s 5(1), (6).

7 Ibid s 5(2), (6).

8 Ibid s 5(3), (6).

9 Ibid s 5(4).

10 Ibid s 5(5).

11 See the Aviation and Maritime Security Act 1990 Pt II (ss 9-17); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1135 et seq 1211 et seq. Proceedings for any offence under the Act may not be instituted in England and Wales except by, or with the consent of, the Attorney General: s 16(1)(a). The definition of 'fixed platform' in s 17(1) includes an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971 (ie within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended) (see PARA 1684 note 1 post): see the Mineral Workings (Offshore Installations) Act 1971 s 12(1) (definition as substituted: see note 3 supra)).

12 Aviation and Maritime Security Act 1990 s 10(1).

13 Ibid s 10(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/A. DESIGN AND CONSTRUCTION ETC OF OFFSHORE INSTALLATIONS AND WELLS/1682. Design and construction.

(ii) Health and Safety etc; Employment Rights

A. DESIGN AND CONSTRUCTION ETC OF OFFSHORE INSTALLATIONS AND WELLS

1682. Design and construction.

The design and construction of offshore installations¹ and wells² is subject to the provisions of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996³ which are made under the Health and Safety at Work etc Act 1974⁴. Those regulations make provision for identifying the 'duty holder'⁵ in relation to such installations and wells and impose duties on him with regard to:

- 4993 (1) the integrity of installations⁶;
- 4994 (2) helicopter landing areas⁷ and additional requirements with regard to installations⁸; and
- 4995 (3) wells⁹.

The Health and Safety Executive¹⁰ has power to exempt any person, installation, well or class of persons, installations or wells from any requirement or prohibition imposed by those regulations¹¹.

The 1996 Regulations are discussed in detail elsewhere in this work¹².

1 For these purposes, 'installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended), except reg 3(3)(a), (b), (c)(ii) (see PARA 1684 note 1 post): Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

2 For these purposes, 'well' means (1) a well made by drilling; and (2) a borehole drilled with a view to the extraction of minerals through it or another well; and it is deemed to include any device on it for containing the pressure in it: *ibid* reg 2(1).

3 *Ie* the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913 (as amended): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 720-722. As to the application of those regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 720; as to their enforcement see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 574, 579 *et seq*; and as to offences under health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 *et seq*. A special defence is available to a person charged with an offence under reg 5 (design of an installation) or reg 6 (work to an installation) if he can prove that the commission of the offence was due to the act or default of another person not being one of his employees and that he took all reasonable precautions, and exercised all due diligence, to avoid the commission of the offence: see reg 22; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 859.

4 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 *ante*.

5 'Duty holder' in relation to an installation, means the person who is the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (see PARA 1684 note 4 post) in relation to that installation: Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 2(1).

- 6 See *ibid* Pt II (regs 4-10); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 720. 'Integrity' means structural soundness and strength, stability and, in the case of a floating installation, buoyancy in so far as they are relevant to the health and safety of persons: reg 2(1).
- 7 See *ibid* reg 11; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 721.
- 8 See *ibid* reg 12; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 721.
- 9 See *ibid* Pt IV (regs 13-21); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 721.
- 10 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 11 See the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996, SI 1996/913, reg 23; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 720.
- 12 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 720-722.

UPDATE

1682-1684 Design and construction ... Management and administration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/A. DESIGN AND CONSTRUCTION ETC OF OFFSHORE INSTALLATIONS AND WELLS/1683. Safety cases.

1683. Safety cases.

The Offshore Installations (Safety Case) Regulations 2005¹, which are made under the Health and Safety etc Act 1974², implement in domestic law certain provisions of an EC Directive concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling³, and replace the Offshore Installations (Safety Case) Regulations 1992⁴, which also implemented those provisions⁵. The 2005 Regulations make provision:

- 4996 (1) requiring a licensee⁶ to ensure that any operator⁷ he appoints is capable of carrying out his functions and discharging his duties satisfactorily⁸;
- 4997 (2) requiring an operator to prepare and send to the Health and Safety Executive a design notification for a production installation⁹ which is to be established¹⁰ and a relocation notification for a production installation that is to be moved to a new location¹¹;
- 4998 (3) prohibiting the operation of a production installation unless a safety case has been sent to and accepted by the Executive¹²;
- 4999 (4) prohibiting the movement of a non-production installation in relevant waters with a view to its being operated there unless a safety case has been sent to and accepted by the Executive¹³;
- 5000 (5) requiring a design notification to be sent to the Executive in respect of the conversion of a non-production installation to a production installation¹⁴ and prohibiting the operation of a converted installation unless a safety case has been sent to and accepted by the Executive¹⁵;
- 5001 (6) prohibiting the engagement of an installation in a combined operation with another unless a notification has been sent to the Executive¹⁶;
- 5002 (7) prohibiting the dismantling of a fixed installation¹⁷ unless a revised safety case has been sent to and accepted by the Executive¹⁸;
- 5003 (8) requiring a safety case to be reviewed when directed by the Executive and at intervals of five years¹⁹;
- 5004 (9) requiring a safety case to be revised when appropriate and when directed by the Executive²⁰;
- 5005 (10) granting to the Executive powers in respect of safety cases and related documents²¹;
- 5006 (11) requiring any procedures or arrangements in safety cases to be followed and providing for specified defences in the event of contravention of that requirement²²;
- 5007 (12) prohibiting the commencement of a well operation²³ unless a notification has been sent to the Executive²⁴;
- 5008 (13) imposing requirements with respect to the making and keeping of documents²⁵;
- 5009 (14) imposing requirements with respect to the creation, revision and continuing effect of a verification scheme in respect of an installation and providing a defence for contravention of those requirements²⁶;
- 5010 (15) providing for the granting of exemptions by the Executive²⁷; and

5011 (16) providing for an appeal to the Secretary of State²⁸ against certain decisions of the Executive²⁹.

Safety cases are discussed in more detail elsewhere in this work³⁰.

1 le the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, which came into force on 6 April 2006: reg 1.

2 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 ante; and as to the application of the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, see reg 4. They do not apply to wells to which the Borehole Sites and Operations Regulations 1995, SI 1995/2038 (as amended), apply (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 744): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 4(2).

3 le EEC Council Directive 92/91 (OJ L348, 28.11.92, p 9) concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, art 3(2).

4 le the Offshore Installations (Safety Case) Regulations 1992, SI 1992/2885 (revoked).

5 As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

6 For these purposes, 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3 (see PARA 1639 ante): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). 'Relevant waters' means (1) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and (2) any area designated by order under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante): Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante. 'Petroleum' includes any mineral oil or relative hydrocarbon and natural gas, whether or not existing in its natural condition in strata, and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1).

7 'Operator', in relation to a production installation, means (1) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or (2) the licensee, where (a) it is not clear to the Health and Safety Executive that one person has been appointed to perform the functions described in head (1) supra; or (b) in the opinion of the Executive, any person appointed to perform those functions is incapable of performing those functions satisfactorily; and 'operator', in relation to a pipeline, means (i) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline; (ii) until that person is known (should there be a case where at a material time he is not yet known) the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or (iii) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it: *ibid* reg 2(1).

8 See *ibid* reg 5.

9 'Production installation' means an installation which (1) extracts petroleum from beneath the sea bed by means of a well; (2) stores gas in or under the shore or bed of relevant waters and recovers gas so stored; or (3) is used for the conveyance of petroleum by means of a pipe; and (a) includes (i) a non-production installation converted for use as a production installation for so long as it is so converted; (ii) a production installation which has ceased production for so long as it is not converted to a non-production installation; and (iii) a production installation which has not come into use; and (b) does not include an installation which, for a period of no more than 90 days, extracts petroleum from beneath the sea bed for the purposes of well testing: *ibid* reg 2(1). 'Installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended) (see PARA 1684 note 1 post); and 'non-production installation' means an installation other than a production installation: Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 2(1).

10 See *ibid* reg 6(1), Sch 1.

11 See *ibid* reg 6(2), Sch 1.

12 See *ibid* reg 7, Sch 2.

13 See *ibid* reg 8, Sch 3.

14 See *ibid* reg 9(1), Sch 1.

15 See *ibid* reg 9(5).

16 See *ibid* reg 10, Sch 4.

17 'Dismantling' means the dismantling or removal of the main and secondary structure of a fixed installation at the place at which it was operated; and 'fixed installation' means an installation which cannot be moved from place to place without major dismantling or modification, whether or not it has its own motive power: *ibid* reg 2(1).

18 See *ibid* reg 11, Sch 5.

19 See *ibid* reg 13.

20 See *ibid* reg 14.

21 See *ibid* reg 15.

22 See *ibid* reg 16.

23 'Well' means (1) a well made by drilling; and (2) a borehole drilled with a view to the extraction of petroleum through it or another well, and is deemed to include any device on it for containing the pressure in it (but see note 2 *supra*); and 'well operation' means (a) the drilling of a well, including the recommencement of drilling after a well has been completed, suspended or abandoned by plugging at the sea bed; and (b) any operation in relation to a well during which there may be an accidental release of fluids from that well which could give rise to the risk of a major accident: reg 2(1). 'Major accident' means (i) a fire, explosion or the release of a dangerous substance involving death or serious personal injury to persons on the installation or engaged in an activity on or in connection with it; (ii) an event involving major damage to the structure of the installation or plant affixed thereto or any loss in the stability of the installation; (iii) the collision of a helicopter with the installation; (iv) the failure of life support systems for diving operations in connection with the installation, the detachment of a diving bell used for such operations or the trapping of a diver in a diving bell or other subsea chamber used for such operations; or (v) any other event arising from a work activity involving death or serious personal injury to five or more persons on the installation or engaged in an activity in connection with it: reg 2(1).

24 See *ibid* reg 17, Sch 6.

25 See *ibid* reg 18.

26 See *ibid* regs 19-22, Sch 7.

27 See *ibid* reg 23.

28 As to the Secretary of State see PARA 601 note 1 *ante*.

29 See the Offshore Installations (Safety Case) Regulations 2005, SI 2005/3117, reg 24, Sch 8.

30 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 723 *et seq*.

UPDATE

1682-1684 Design and construction ... Management and administration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/B. MANAGEMENT AND ADMINISTRATION OF OFFSHORE INSTALLATIONS/1684. Management and administration; in general.

B. MANAGEMENT AND ADMINISTRATION OF OFFSHORE INSTALLATIONS

1684. Management and administration; in general.

The management and administration of offshore installations¹ is subject to the provisions of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995² which are made under the Health and Safety at Work etc Act 1974³. Those regulations make provision for identifying the 'duty holder'⁴ in relation to such installations and impose duties on him with regard to:

- 5012 (1) notification of movement or change of ownership concerning offshore installations⁵;
- 5013 (2) the appointment of competent managers⁶;
- 5014 (3) the keeping of records⁷;
- 5015 (4) arrangements for permits to work⁸;
- 5016 (5) the issuing of health and safety instructions⁹;
- 5017 (6) arrangements for effective communications¹⁰;
- 5018 (7) the appointment and presence of a helicopter landing officer¹¹;
- 5019 (8) arrangements for the collection and keeping of operational information¹²;
- 5020 (9) the availability of information about the relevant Health and Safety Executive office¹³;
- 5021 (10) the availability of drinking water and provisions¹⁴; and
- 5022 (11) the identification of the installation¹⁵.

The 1995 Regulations also impose duties on employers with regard to the health surveillance of workers employed on offshore installations¹⁶ and extend, with modifications, the provisions of the Employers' Liability (Compulsory Insurance) Act 1969¹⁷ to employers of relevant employees¹⁸.

The Executive has power to grant exemptions from the provisions of the 1995 Regulations¹⁹.

The Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 are discussed in more detail elsewhere in this work²⁰.

1 For these purposes, 'offshore installation' means a structure which is, or is to be, or has been used, while standing or stationed in relevant waters, or on the foreshore or other land intermittently covered with water (1) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well; (2) for the storage of gas in or under the shore or bed of relevant waters or the recovery of gas so stored; (3) for the conveyance of things by means of a pipe; or (4) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(1) (as amended), together with any supplementary unit which is ordinarily connected to it or any part of it (including those parts described in reg 3(3) and all of the connections: reg 3(1) (reg 3(1), (2) amended by SI 2002/2175). Any reference in the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3(1) (as amended) to a structure or unit does not, however, include: (a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes; (b) a well; (c) a structure or device which does not project above the sea at any state of the tide; (d) a structure which has ceased to be used for

any of the purposes specified in reg 3(1) (as amended), and has since been used for a purpose not so specified; (e) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in reg 3(1) (as amended); and (f) any part of a pipeline: reg 3(2) (as so amended). For these purposes there is deemed to be part of an offshore installation: (i) any well for the time being connected to it by pipe or cable; (ii) such part of any pipeline connected to it as is within 500 metres of any part of its main structure; (iii) any apparatus or works which are situated on or affixed to its main structure, or wholly or partly within 500 metres of any part of its main structure and associated with a pipe or system of pipes connected to any part of that installation: reg 3(3). Where two or more structures are, or are to be, connected permanently above the sea at high tide they are deemed to comprise a single offshore installation: reg 3(4). 'Relevant waters' means tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of territorial waters and any area designated by order under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definition amended by SI 2002/2175). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.

2 See the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (as amended): see the text and notes 3-19 infra; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733 et seq. As to the application of those regulations see reg 4; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733.

3 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 ante. As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

4 For these purposes, 'duty holder' means (1) in relation to a production installation, the operator; and (2) in relation to a non-production installation, the owner: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definition substituted by SI 2005/3117). 'Production installation' means an installation which (a) extracts petroleum from beneath the sea bed by means of a well; (b) stores gas in or under the shore or bed of relevant waters and recovers gas so stored; or (c) is used for the conveyance of petroleum by means of a pipe; and (i) includes (A) a non-production installation converted for use as a production installation for so long as it is so converted; (B) a production installation which has ceased production for so long as it is not converted to a non-production installation; and (C) a production installation which has not come into use; and (ii) does not include an installation which, for a period of no more than 90 days, extracts petroleum from beneath the sea bed for the purposes of well testing; and 'non-production installation' means an installation other than a production installation: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definitions added by SI 2005/3117). 'Operator' means (aa) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or (bb) the licensee, where either it is not clear to the Health and Safety Executive that one person has been appointed to perform the functions described in head (aa) supra, or, in the opinion of the Executive, any person appointed to perform those functions is incapable of performing those functions satisfactorily; and 'owner' means the person who controls the operation of a non-production installation: Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definitions substituted by SI 2005/3117). 'Petroleum' includes any mineral oil or relative hydrocarbon and natural gas, whether or not existing in its natural condition in strata (differing in this respect from the definition set out in the Petroleum Act 1998 s 1 (see PARA 1626 ante), and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3 (see PARA 1639 ante): Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (definitions added by SI 2005/3117).

5 See the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 5; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733.

6 See *ibid* reg 6; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734. The manager of an offshore installation is given power to restrain certain persons or put them ashore (see reg 7; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 735) and other persons are under a duty to co-operate with him (see reg 8; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 737).

7 See *ibid* reg 9; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.

8 See *ibid* reg 10; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.

9 See *ibid* reg 11; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.

10 See *ibid* reg 12; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.

- 11 See *ibid* reg 13; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.
- 12 See *ibid* reg 14; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.
- 13 See *ibid* reg 15; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.
- 14 See *ibid* regs 17, 18; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.
- 15 See *ibid* reg 19; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 734.
- 16 See *ibid* reg 16; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 736.
- 17 As to employer's liability insurance see EMPLOYMENT vol 39 (2009) PARA 40 et seq.
- 18 See the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 21; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 736. 'Relevant employee' means an employee (1) who is ordinarily resident in the United Kingdom; or (2) who is not ordinarily resident in the United Kingdom but who has been present in the United Kingdom and relevant waters in the course of employment there for a continuous period of not less than seven days: reg 2(1).
- 19 See *ibid* reg 20; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733.
- 20 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 733-737.

UPDATE

1682-1684 Design and construction ... Management and administration; in general

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/B. MANAGEMENT AND ADMINISTRATION OF OFFSHORE INSTALLATIONS/1685. Safety committees and representatives.

1685. Safety committees and representatives.

The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989¹ make provision for the election of safety representatives by the workforce at an offshore installation², to investigate potential hazards and dangerous occurrences, and to carry out other functions relating to the health and safety of the workforce³.

There must also be established a safety committee, consisting of all the safety representatives, together with the installation manager, one person appointed by him, and any co-opted members, to review health and safety matters (including the election of safety representatives)⁴.

Specific duties relating to safety representatives and to the safety committee are imposed on the duty holder in relation to an installation⁵ and on installation managers and employers⁶. Contravention of the regulations by any such person is an offence⁷.

The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 are discussed in detail elsewhere in this work⁸.

1 The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971 (as amended): see the text and notes 2-7 *infra*; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 739-742. The regulations were made under the Mineral Workings (Offshore Installations) Act 1971 ss 6, 7, Schedule. Those enabling powers are repealed, or spent in consequence of such repeal, but the regulations continue in force: Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, regs 3(1)(e), (f), (g), 6(1). See further PARA 1677 *ante*.

2 The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971 (as amended) apply to an offshore installation at a working station in controlled waters which normally has persons on board: reg 3 (substituted by SI 1995/738).

3 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 regs 4-18A (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 739-740.

4 See *ibid* regs 19-22 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 741.

5 'Duty holder', in relation to an offshore installation, means the person who is the duty holder within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (as amended) (see PARA 1684 note 4 *ante*) for the purpose of those regulations: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 2(1) (definition added by SI 1995/738).

6 See the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, regs 23-27 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 742.

7 *Ibid* reg 28(1) (amended by SI 1995/738). In proceedings for such an offence it is a defence for the person charged to prove (1) that he exercised all due diligence to prevent the commission of the offence; and (2) that the relevant failure to comply was committed without his consent connivance or wilful default: Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, SI 1989/971, reg 28(2). As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 *et seq*; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 *et seq*.

8 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 739-742.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/B. MANAGEMENT AND ADMINISTRATION OF OFFSHORE INSTALLATIONS/1686. Extension of general employment legislation.

1686. Extension of general employment legislation.

Her Majesty may by Order in Council provide that the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996 and any Northern Ireland legislation making provision for purposes corresponding to any of the purposes of those Acts, apply, to such extent and for such purposes as may be specified in the Order (with or without modification), to or in relation to a person in offshore employment¹. The Employment Relations (Offshore Employment) Order 2000², which has been made in the exercise of these powers, extends certain provisions of those Acts to offshore employment for the purpose of specified activities and provides that employment tribunals are to have jurisdiction with regard to matters arising out of such employment³. The provisions of that Order are discussed in detail elsewhere in this work⁴.

¹ See the Trade Union and Labour Relations (Consolidation) Act 1992 s 287(2); the Employment Rights Act 1996 s 201(2); and see further EMPLOYMENT vol 39 (2009) PARA 128; EMPLOYMENT vol 40 (2009) PARA 919.

² See the Employment Relations (Offshore Employment) Order 2000, SI 2000/1828: see EMPLOYMENT vol 39 (2009) PARA 129.

³ See *ibid* arts 2, 3; and EMPLOYMENT vol 39 (2009) PARA 129.

⁴ See EMPLOYMENT vol 39 (2009) PARA 129.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/C. INSPECTORS/1687. Functions of health and safety inspectors.

C. INSPECTORS

1687. Functions of health and safety inspectors.

An inspector¹ may² at any time:

- 5023 (1) board an offshore installation³ and obtain access to all parts of it⁴;
- 5024 (2) inspect an offshore installation and any equipment⁵;
- 5025 (3) inspect the sea bed and subsoil under or near an offshore installation⁶;
- 5026 (4) inspect and take copies from certain documents⁷;
- 5027 (5) test any equipment⁸;
- 5028 (6) where a casualty has occurred or is apprehended, dismantle any equipment or test to destruction or take possession of any equipment⁹; or
- 5029 (7) require the owner or the manager, or any person on board or near to an offshore installation, to do or refrain from doing any act as appears to the inspector to be necessary or expedient for the purpose of averting a casualty¹⁰ or minimising its consequences¹¹.

In connection with any of his functions under the provisions described above, an inspector may make such requirements of any person, including the owner and manager of the installation, as appear to him to be required for the performance¹² of those functions¹³. He may require the owner, the manager or any other person to furnish¹⁴ such information as he may reasonably demand in exercise of those functions¹⁵.

The owner or manager of an offshore installation and any other person, in relation to any offshore installation in any area in respect of which he is the concession owner, must afford generally or cause to be so afforded to an inspector and any other person acting at the direction of the Health and Safety Executive all such facilities and assistance, including the carrying out of any procedures by way of a demonstration, as an inspector or such other person may reasonably require in performing the functions of an inspector; and an inspector or such other person may require accordingly¹⁶. An owner, manager or concession owner who fails to comply with these requirements is guilty of an offence¹⁷.

A person is guilty of an offence¹⁸ if he:

- 5030 (a) fails to comply with any requirement made of him under these provisions¹⁹;
- 5031 (b) obstructs any other person in the performance of his functions, powers or duties, or in complying with any requirement made of him, under these provisions²⁰;
- or
- 5032 (c) without permission²¹, removes, conceals or tampers with any article of which possession has been taken by an inspector or a person acting at the direction of the Health and Safety Executive²².

1 'Inspector' is defined for these purposes as a person appointed as an inspector under the Mineral Workings (Offshore Installations) Act 1971 s 6(4) (repealed) (see the Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, reg 1(2)); but this is now to be construed as a reference to an inspector

appointed by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 s 19 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375) who is authorised to act for the purpose (Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/SI 1993/1823, reg 5(1)). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 le for the purposes of ensuring that the relevant statutory provisions are complied with, of investigating a casualty and generally assisting the Health and Safety Executive in the execution of those statutory provisions: see the Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, reg 2 (regs 2-7 amended by virtue of SI 1993/1823). 'Casualty' means a casualty or other accident involving loss of life or danger to life suffered by a person (1) employed on, on or working from an offshore installation; or (2) on or working from an attendant vessel, in the course of any operation undertaken on or in connection with an offshore installation: Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, reg 1(2). 'Vessel' includes an aircraft, a hovercraft and any floating structure other than an offshore installation: reg 1(2). For the meaning of 'offshore installation' see note 3 infra.

The statutory provisions referred to in reg 2 (as amended) are the provisions of the Mineral Workings (Offshore Installations) Act 1971 and regulations made thereunder; but most of those provisions are now repealed. As to the replacement of the 1971 Act by regulations made under the Health and Safety etc Act 1974 see PARA 1677 note 13 ante.

3 'Offshore installation' includes any part of an offshore installation whether or not capable of being manned by one or more persons: Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, reg 1(2).

4 Ibid reg 2(1)(a). In connection with his functions under reg 2 (as amended), an inspector may require the owner or manager to provide at any reasonable time conveyance to or from the installation of himself, any other person acting at the direction of the Health and Safety Executive, any testing equipment and any article of which he has taken possession pursuant to the regulations: reg 3(1)(g) (as amended: see note 2 supra). The owner of an offshore installation must provide an inspector and any other person acting at such direction with reasonable accommodation and means of subsistence while on board an offshore installation for the purposes of the regulations (reg 5(1) (as so amended; also amended by SI 1995/738)); and if he fails to do so, he is guilty of an offence and liable on summary conviction to a fine not exceeding £100 (Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, regs 7(2), 8(2)).

5 Ibid reg 2(1)(b). 'Equipment' means any plant, machinery, apparatus or system used, formerly used or intended to be used (whether on or from an offshore installation or an attendant vessel) in the assembly, reconstruction, repair, dismantlement, operation, movement or inspection of an offshore installation or the inspection of the sea bed on or near an offshore installation: reg 1(2). An inspector must permit the owner or manager or any nominee of either of them to be present when any inspection, test or dismantlement is carried out under reg 2 (as amended): reg 2(2). An inspector may also make notes and drawings, and take measurements and photographs, of an offshore installation and of any such article as is mentioned in note 9 infra: reg 3(1)(c). In connection with any of his functions under reg 2 (as amended), an inspector may require the owner or manager or any person employed on or in connection with the installation or equipment to carry out or assist in carrying out any inspection, test or dismantlement of the offshore installation or of any equipment: reg 3(1)(e).

6 Ibid reg 2(1)(c). See also reg 2(2); and note 5 supra. In connection with any of his functions under reg 2 (as amended), an inspector may require the owner or manager of the offshore installation or the concession owner concerned to assist him in carrying out an inspection of the sea bed or subsoil under or near the installation: reg 3(1)(f).

7 Ibid reg 2(1)(d). See also reg 2(2); and note 5 supra. The documents concerned are (1) any certificate of insurance issued for the purposes of the Employers' Liability (Compulsory Insurance) Act 1969 (see EMPLOYMENT vol 39 (2009) PARA 40 et seq) or of any other corresponding provision, or any copy of it so required to be maintained on an offshore installation; (2) any installation logbook or other record required to be maintained under regulations (see PARA 1684 ante); and (3) any other document relating to the operation or safety of an offshore installation or of any equipment: see the Offshore Installations (Inspectors and Casualties) Regulations 1973, SI 1973/1842, reg 2(1)(d).

8 Ibid reg 2(1)(e). See also reg 2(2); and note 5 supra. As to the powers of the inspector to require assistance in carrying out tests see note 5 supra.

9 Ibid reg 2(1)(f). See also reg 2(2); and note 5 supra. As to the inspector's powers to require assistance in carrying out tests and dismantlement see note 6 supra. In connection with any of his functions under reg 2 (as amended), an inspector may require any person to produce to him any of certain articles in his possession or custody (reg 3(1)(b), (2)), and may require the owner and manager of the installation or, if such an article is on any vessel, the master, captain or person in charge, to furnish to him any such article other than a document (reg 3(1)(d)). The articles concerned are any equipment or part of it, or specimen of any material or substance,

including a natural substance, on or near an offshore installation and any such document as is mentioned in reg 2(1)(d) (see note 7 supra): reg 3(2).

10 Ie whether the danger is immediate or not: *ibid* reg 2(1)(g).

11 *Ibid* reg 2(1)(g). A requirement under this provision ceases to have effect at the expiration of three days after the date on which it is given unless the Health and Safety Executive, after consultation with the owner and by notice to him, extends its operation, with or without variation: reg 2(3) (as amended: see note 2 supra).

12 Ie whether by himself or any other person acting at the direction of the Health and Safety Executive: *ibid* reg 3(1)(a) (as amended: see note 2 supra).

13 *Ibid* reg 3(1)(a) (as amended: see note 2 supra). Before making a requirement in connection with any of the provisions in heads (5)-(7) in the text, the inspector must consult with the owner or manager with a view to maintaining safety and to minimising interference with the operation of the installation: reg 3(1)(a) proviso.

14 Ie to him or to a person acting at the direction of the Health and Safety Executive: *ibid* reg 4(1) (as amended: see note 2 supra).

15 *Ibid* reg 4(1). The information may, and if the inspector so requires must, be furnished in writing, and if furnished orally may be so furnished in the presence of any person whom the furnisher reasonably desires to be present and, if practicable and the furnisher so wishes, in the presence of the manager of the installation: reg 4(2). Unauthorised disclosure, by a person acting at the direction of the Health and Safety Executive who is not an office holder under the Crown, of such information so obtained is prohibited, and is an offence: see regs 6, 7(4) (as amended: see note 2 supra). As to offences under health and safety regulations see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

16 *Ibid* reg 5(2) (as amended: see note 2 supra).

17 *Ibid* reg 7(3).

18 *Ibid* reg 7(1).

19 *Ibid* reg 7(1)(a). The provisions concerned are those of Pt I (regs 2-8) (as amended): reg 7(1)(a). Variation or revocation of a requirement does not affect liability for any offence committed previously: reg 8(3).

20 *Ibid* reg 7(1)(b); and see note 19 supra.

21 Ie granted by an inspector or other person acting at the direction of the Health and Safety Executive: *ibid* reg 7(1)(c) (as amended: see note 2 supra).

22 *Ibid* reg 7(1)(c) (as amended: see note 2 supra).

UPDATE

1687-1688 Functions of health and safety inspectors, Prevention of fire and explosion, and emergency response

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID/1688. Prevention of fire and explosion, and emergency response.

D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID

1688. Prevention of fire and explosion, and emergency response.

The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995¹, which are made under the Health and Safety at Work etc Act 1974²:

- 5033 (1) make provision for identifying the 'duty holder' in relation to offshore installations³;
- 5034 (2) impose a general duty on him to take appropriate measures with a view to protecting persons on the installation from fire⁴ and explosion⁵ and securing effective emergency response⁶;
- 5035 (3) require him to make and record an assessment:
- 467 697. (a) identifying the various events which could give rise to a major accident⁷ involving fire or explosion or the need (whether or not by reason of fire or explosion) for evacuation⁸, escape or rescue to avoid or minimise a major accident;
- 698. (b) the evaluation of the likelihood and consequences of such events;
- 699. (c) the establishment of appropriate standards of performance to be attained by anything provided by measures for ensuring effective evacuation, escape, recovery and rescue to avoid or minimise a major accident and otherwise protecting persons from a major accident involving fire or explosion; and
- 700. (d) the selection of appropriate measures⁹; and
- 468 5036 (4) impose specific duties on him with regard to:
- 469 701. (a) preparation for emergencies¹⁰;
- 702. (b) equipment for helicopter emergencies¹¹;
- 703. (c) an emergency response plan¹²;
- 704. (d) the prevention of fire and explosion¹³;
- 705. (e) the detection of incidents¹⁴;
- 706. (f) communication¹⁵;
- 707. (g) the control of emergencies¹⁶;
- 708. (h) mitigation of fire and explosion¹⁷;
- 709. (i) muster areas etc¹⁸;
- 710. (j) arrangements for evacuation¹⁹;
- 711. (k) means of escape²⁰;
- 712. (l) arrangements for recovery and rescue²¹;
- 713. (m) the suitability of personal protective equipment²² for use in an emergency²³;
- 714. (n) the suitability and condition of plant²⁴;
- 715. (o) life-saving appliances²⁵; and
- 716. (p) information regarding plant²⁶.
- 470

The Health and Safety Executive²⁷ has power to exempt any person, installation or class of persons or installations from any requirement or prohibition imposed by those regulations²⁸.

The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 are discussed in more detail elsewhere in this work²⁹.

1 le the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743 (as amended): see the text and notes 3-28 infra; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 743. As to the application of the 1995 Regulations see reg 3; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 743.

2 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 ante; as to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

3 For these purposes, 'duty holder' means (1) in relation to a production installation, the operator; and (2) in relation to a non-production installation, the owner; 'production installation' means an installation which extracts petroleum from beneath the sea bed by means of a well, stores gas in or under the shore or bed of relevant waters and recovers gas so stored or is used for the conveyance of petroleum by means of a pipe, and (a) includes (i) a non-production installation converted for use as a production installation for so long as it is so converted; (ii) a production installation which has ceased production for so long as it is not converted to a non-production installation; and (iii) a production installation which has not come into use; and (b) does not include an installation which, for a period of no more than 90 days, extracts petroleum from beneath the sea bed for the purposes of well testing; and 'non-production installation' means an installation other than a production installation: Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (definition of 'duty holder' substituted, and definitions of 'production installation' and non-production installation added, by SI 2005/3117). 'Operator' means (A) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or (B) the licensee, where either it is not clear to the Health and Safety Executive that one person has been appointed to perform the functions described in head (A) supra or, in the opinion of the Executive, any person appointed to perform those functions is incapable of performing them satisfactorily; and 'owner' means the person who controls the operation of a non-production installation: Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (definitions as so substituted). 'Petroleum' includes any mineral oil or relative hydrocarbon and natural gas, whether or not existing in its natural condition in strata (differing in this respect from the definition set out in the Petroleum Act 1998 s 1 (see PARA 1626 ante), and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation; and 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to s 3 (see PARA 1639 ante): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1) (definitions as so added). 'Installation' means an offshore installation within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3 (as amended) (see PARA 1684 note 1 ante): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1).

4 'Fire' means unplanned or uncontrolled fire: *ibid* reg 2(1).

5 'Explosion' means unplanned explosion: *ibid* reg 2(1).

6 See *ibid* reg 4. 'Emergency response' means action to safeguard the health and safety of persons on or near an installation in an emergency; and 'emergency' means an emergency of a kind which can require evacuation, escape or rescue: *ibid* reg 2(1).

7 For the meaning of 'major accident' see PARA 1683 ante (definition applied by *ibid* reg 2(1) (amended for this purpose by SI 2005/3117)).

8 'Evacuation' means the leaving of an installation and its vicinity, in an emergency, in a systematic manner and without directly entering the sea: Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1).

9 See *ibid* reg 5.

10 See *ibid* reg 6.

11 See *ibid* reg 7.

- 12 See *ibid* reg 8.
- 13 See *ibid* reg 9.
- 14 See *ibid* reg 10.
- 15 See *ibid* reg 11.
- 16 See *ibid* reg 12.
- 17 See *ibid* reg 13.
- 18 See *ibid* reg 14.
- 19 See *ibid* reg 15.
- 20 See *ibid* reg 16.
- 21 See *ibid* reg 17 (amended by SI 2005/3117).
- 22 For these purposes, 'personal protective equipment' has the same meaning as in the Personal Protective Equipment at Work Regulations 1992, SI 1992/2966, reg 2(1) (ie all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety, and any addition or accessory designed to meet that objective): Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 2(1).
- 23 See *ibid* reg 18.
- 24 See *ibid* reg 19(1).
- 25 See *ibid* reg 20.
- 26 See *ibid* reg 21.
- 27 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 28 See the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, SI 1995/743, reg 22.
- 29 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 743.

UPDATE

1687-1688 Functions of health and safety inspectors, Prevention of fire and explosion, and emergency response

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID/1689. Emergency shut-down valves for major accident hazard pipelines connected to offshore installations.

1689. Emergency shut-down valves for major accident hazard pipelines connected to offshore installations.

The operator¹ of a major accident hazard pipeline² which:

- 5037 (1) is connected to an offshore installation; and
- 5038 (2) has an internal diameter of 40 millimetres or more,

must ensure that the prescribed requirements with regard to emergency shut-down valves³ are complied with in relation to the pipeline⁴; and the duty holder⁵ in relation to an offshore installation to which such a pipeline is connected must afford, or cause to be afforded, to the operator of the pipeline such facilities as he may reasonably require for the purpose of securing that those requirements are complied with in relation to the pipeline⁶. The prescribed requirements are as follows:

- 5039 (a) an emergency shut-down valve must be incorporated in the riser of a pipeline in a position in which it can be safely inspected, maintained and tested and, so far as this is consistent with that requirement, as far down the riser as is reasonably practicable; and it must comply with heads (b) to (g) below;
- 5040 (b) an emergency shut-down valve must be held open by an electrical, hydraulic or other signal to the mechanism for actuating the valve on the failure of which signal the valve must automatically close;
- 5041 (c) an emergency shut-down valve must also be capable of being closed by a person positioned by it and automatically by the operation of the emergency shut-down system⁷ of the offshore installation to which the pipeline is connected, or, while relevant work of examination or maintenance is being carried out, by one of those means;
- 5042 (d) if the pipeline is designed to allow for the passage of equipment for inspecting, maintaining or testing the pipeline, the emergency shut-down valve must also be designed to allow for such passage;
- 5043 (e) an emergency shut-down valve and its actuating mechanism must so far as is reasonably practicable be protected from damage arising from fire, explosion or impact;
- 5044 (f) an emergency shut-down valve must be maintained in an efficient state, in efficient working order and in good repair;
- 5045 (g) after an emergency shut-down valve has operated so as to block the flow of fluid within the pipeline it must not be reopened so as to permit the flow of fluid until steps have been taken to ensure that it is safe to do so⁸.

1 'Operator', in relation to a pipeline, means: (1) the person who is to have or (once fluid is conveyed) has control over the conveyance of fluid in the pipeline; (2) until that person is known (should there be a case where at a material time he is not yet known) the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; (3) when a pipeline is no longer, or is not for the time being used, the person last having control over the conveyance of fluid in it; and 'fluid' includes a mixture of fluids: Pipelines Safety Regulations 1996, SI 1996/825, reg 2(1). Subject to reg 3(2)-(5), 'pipeline' means a pipe

or system of pipes (together with any apparatus and works, of a kind described in reg 3(2), associated with it) for the conveyance of any fluid, not being: (1) a drain or sewer; (2) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes; (3) a pipe (not being apparatus described in reg 3(2)(e)) (see head (e) *infra*) which is used in the control or monitoring of any plant: reg 3(1). The apparatus and works referred to in reg 3(1) are: (a) any apparatus for inducing or facilitating the flow of any fluid through, or through a part of, the pipe or system; (b) any apparatus for treating or cooling any fluid which is to flow through, or through part of, the pipe or system; (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system; (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a)-(c) *supra*; (e) apparatus for the transmission of information for the operation of the pipe or system; (f) apparatus for the cathodic protection of the pipe or system; and (g) a structure used or to be used solely for the support of a part of the pipe or system: reg 3(2). For the purpose of head (c) *supra*, a valve, valve chamber or similar is deemed to be annexed to, or incorporated in the course of, a pipe or system where it connects the pipe or system to plant, an offshore installation, or a well: reg 3(3). A pipeline for supplying gas to premises is deemed not to include anything downstream of an emergency control: reg 3(4). For these purposes, 'emergency control' means a valve for shutting off the supply of gas in an emergency, being a valve intended for use by a consumer of gas; and 'gas' has the same meaning as it has in the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see PARA 789 note 5 *ante*): Pipelines Safety Regulations 1996, SI 1996/825, reg 3(5).

2 A 'major accident hazard pipeline' means a pipeline in which a dangerous fluid is being, or is to be conveyed (ibid regs 2(1), 18(1)); and a fluid is a dangerous fluid for these purposes if it falls within a description in Sch 2 (regs 2(1), 18(2)). 'Major accident' means death or serious injury involving a dangerous fluid: reg 2(1). The prescribed descriptions of fluid are as follows (Sch 2 paras 1-9), ie:

- 132 (1) a fluid which is flammable in air, has a boiling point below 5°C, at 1 bar absolute and is or is to be conveyed in the pipeline as a liquid;
- 133 (2) a fluid which is flammable in air and is or is to be conveyed in the pipeline as a gas at above 8 bar absolute;
- 134 (3) a liquid which has a vapour pressure greater than 1.5 bar absolute when in equilibrium with its vapour at either the actual temperature of the liquid or at 20°C;
- 135 (4) a toxic or very toxic fluid which is a gas at 20°C and 1 bar absolute and is, or is to be, conveyed as a liquid or a gas;
- 136 (5) a toxic fluid which at 20°C has a saturated vapour pressure greater than 0.4 bar and is, or is to be, conveyed in the pipeline as a liquid;
- 137 (6) acrylonitrile;
- 138 (7) a very toxic fluid which at 20°C has a saturated vapour pressure greater than 0.001 bar or is, or is to be, conveyed in the pipeline as a liquid at a pressure greater than 4.5 bar absolute;
- 139 (8) an oxidising fluid which is, or is to be, conveyed as a liquid;
- 140 (9) a fluid which reacts violently with water.

For these purposes, a liquid is oxidising and a fluid is toxic or very toxic, or reacts violently with water, if it has been, or is liable to be, classified pursuant to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689, reg 4 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 571) as, as the case may be, oxidising, toxic, very toxic or as reacting violently with water: Pipelines Safety Regulations 1996, SI 1996/825, Sch 2 para 10; Interpretation Act 1978 s 17(2).

3 Ie the requirements of the Pipelines Safety Regulations 1996, SI 1996/825, Sch 3: see heads (a)-(g) in the text. 'Emergency shut-down valve' means a valve which is capable of adequately blocking the flow of fluid within the pipeline at the point at which it is incorporated: reg 2(1).

4 Ibid reg 19(1).

5 For these purposes, 'duty holder', in relation to an offshore installation, means the person who is the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (as amended) (see PARA 1684 note 4 *ante*): Pipelines Safety Regulations 1996, SI 1996/825, reg 19(3).

6 Ibid reg 19(2).

7 For these purposes, 'emergency shut-down system' means the system comprising mechanical, electrical, electronic, pneumatic, hydraulic or other arrangements by which the plant on an offshore installation is automatically shut down in the event of an emergency: *ibid* Sch 3 para 8.

8 *Ibid* Sch 3 paras 1-7. For other provisions with regard to the safety of major accident hazard pipelines see regs 20-27; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 613 et seq; and as to the safety of pipelines generally see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 610-611.

UPDATE

1689 Emergency shut-down valves for major accident hazard pipelines connected to offshore installations

NOTE 2--Reference to SI 2002/1689 now to SI 2009/716: SI 1996/825 Sch 10 para 2 (amended by SI 2009/716).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID/1690. Reporting of industrial injuries, diseases and dangerous occurrences.

1690. Reporting of industrial injuries, diseases and dangerous occurrences.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (commonly known as 'RIDDOR')¹, which are made under the Health and Safety at Work etc Act 1974², make provision for identifying the 'responsible person' in relation to an offshore installation³ and require that person to notify the Health and Safety Executive⁴ when there is a serious industrial injury to a person at an offshore workplace⁵ or a dangerous occurrence⁶, or when a person at such a workplace suffers from any specified⁷ disease⁸. The Executive has power to exempt any person or class of persons from any requirement imposed by those regulations⁹.

In any case where any person, as a result of an accident arising out of or in connection with work at an offshore workplace, dies or suffers a major injury¹⁰, no person must disturb the place where it happened or tamper with anything at that place before:

- 5046 (1) the expiration of three clear days after the matter has been notified in accordance with those regulations; or
- 5047 (2) the place has been visited by an inspector¹¹;

whichever is the sooner¹²; but this does not prohibit the doing of anything by or with the consent of an inspector or the doing of anything necessary to secure the safety of the workplace or of any person, plant or vessel¹³.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 are discussed in detail elsewhere in this work¹⁴.

1 The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163 (as amended): see the text and notes 2-13 infra; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq.

2 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 ante; and see also the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 12. As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. It is a defence in proceedings against any person for an offence under the 1995 Regulations for that person to prove that he was not aware of the event requiring him to notify or send a report to the Health and Safety Executive and that he had taken all reasonable steps to have all such events brought to his notice: see reg 11.

3 'Responsible person' means (1) in relation to an offshore installation (otherwise than in the case of a disease reportable under ibid reg 5), the duty holder for the purposes of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738 (see PARA 1684 note 4 ante) provided that for these purposes reg 3(2)(c) is deemed not to apply; (2) in relation to a dangerous occurrence at a pipeline (being an incident to which the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, Sch 2 Pt I para 14(a)-(f) applies: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 400 at head (14) in the text), the owner of that pipeline; (3) a dangerous occurrence at a well, the person appointed by a licensee to execute the function of organising and supervising the drilling of, and all operations to be carried out by means of, that well or, where no such person has been appointed, the licensee (and, for this purpose, 'licensee' means any person to whom a licence to search and bore for and get petroleum in respect of any area within relevant waters is granted pursuant to the Petroleum Act 1998 s 3: see PARA 1639 ante); (4) a diving project (otherwise than in the case of a disease reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 5), the diving contractor: see reg 2(1) (definition

amended by SI 2005/3117). In the case of a reportable disease, the responsible person is the employer: see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 2(1).

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 As to notifiable injuries see the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, regs 3, 4; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 399, 408. For the meaning of 'offshore workplace' for these purposes see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 note 1.

6 As to the requirement to report dangerous occurrences see *ibid* reg 3; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399; and as to the dangerous occurrences which are reportable in respect of an offshore workplace see Sch 2 Pt V (paras 73-83); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 404.

7 In any disease specified in *ibid* Sch 3: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 406-407.

8 See *ibid* reg 5; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 405.

9 See *ibid* reg 13; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399.

10 For the meaning of 'major injury' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 note 4.

11 As to the powers of health and safety inspectors see PARA 1687 ante.

12 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, SI 1995/3163, reg 9, Sch 6 para 1(1).

13 *Ibid* Sch 6 para 1(2).

14 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq.

UPDATE

1690 Reporting of industrial injuries, diseases and dangerous occurrences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID/1691. Registration of deaths and persons lost.

1691. Registration of deaths and persons lost.

The Offshore Installations (Logbooks and Registration of Death) Regulations 1972¹ require that where, in connection with an offshore installation², a death occurs or a person is lost³ and the death or loss is not required to be registered under certain other legislation⁴, a return of death, in a prescribed form⁵, must be made⁶. Provision is made as to the completion and submission of such a return⁷, and for the notification by the owner of a person's death or loss⁸ to the next of kin, or in certain circumstances to his employer⁹.

Offences are prescribed by the regulations¹⁰.

1 Ie the Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542 (as amended): see the text and notes 2-10 infra.

2 The Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542 (as amended) do not apply to installations registered as vessels, whether so registered in the United Kingdom or elsewhere, which are dredging installations or which are in transit to or from a station, or in relation to installations which are unmanned: reg 1(3).

3 Ie where any person (1) dies on an offshore installation or is lost from it in circumstances such that it is reasonable to believe that he has died; or (2) dies in or on a lifeboat, life raft or other emergency survival craft belonging to such an installation or is lost from such a craft in those circumstances; or (3) otherwise dies or is lost in those circumstances in the neighbourhood of such an installation while engaged in any operations connected with the installation: *ibid* reg 8(a)-(c).

4 Ie under the Merchant Shipping Act 1995 (see s 108 (as amended), s 273) or any regulations made thereunder (see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 654-655; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 875): Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542, reg 8; Interpretation Act 1978 s 17(2).

5 For the prescribed form see the Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542, reg 8, Schedule.

6 *Ibid* reg 8.

7 See *ibid* reg 9. Where an obligation to make a return arises, the installation manager must complete part of the prescribed form and dispatch it to the owner (reg 9(1)); and the owner, after receiving the form, must complete the remainder and send the form, duly signed by him or on his behalf, to the Registrar General of Shipping and Seamen (reg 9(2)). Times are prescribed for these steps by reg 9(1), (2), but a return of death is not invalid by reason only that it is not made within those times: see reg 9(3). As to the Registrar General of Shipping and Seamen see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 61. The duties of the Registrar General of Shipping and Seamen, on receiving the return, are prescribed by reg 11.

8 Ie in circumstances in which an obligation to make a return of death arises under *ibid* reg 8: see note 3 *supra*.

9 See *ibid* reg 10. The notification must be to the next of kin if the owner is the employer (reg 10(a)); otherwise it must be to the employer (reg 10(b)). The notification must be made as soon as practicable and in any event within 48 hours of the owner becoming aware of the death or loss: reg 10.

10 Any contravention of *ibid* reg 9(1) by the manager, or of reg 9(2) or reg 10 by the owner, is an offence for which the penalty, on summary conviction, is a fine not exceeding £100: reg 12(1), (2) (amended by SI 1995/738). It is a defence in any proceedings for such an offence for the person charged to prove (1) that he exercised all due diligence to prevent the commission of the offence; and (2) that the relevant contravention

was committed without his consent, connivance or wilful default: Offshore Installations (Logbooks and Registration of Death) Regulations 1972, SI 1972/1542, reg 12(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/D. EMERGENCIES AND DANGEROUS OCCURRENCES; FIRST AID/1692. First aid.

1692. First aid.

The Offshore Installations and Pipeline Works (First-Aid) Regulations 1989¹, which are made under the Health and Safety at Work etc Act 1974², make provision for identifying the person in control of an offshore installation³ and impose duties on him to ensure that there are provided suitable equipment, facilities and medications and suitably qualified and competent persons, for rendering first aid⁴.

The Health and Safety Executive⁵ may exempt any person, class of persons, offshore installation, class of offshore installations, pipeline works, class of pipeline works, activity or class of activity from certain requirements of the regulations⁶.

The Offshore Installations and Pipeline Works (First-Aid) Regulations 1989 are discussed in detail elsewhere in this work⁷.

¹ See the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671 (as amended): see the text and notes 2-5 infra; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 738.

² As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 ante; as to the application of the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671 (as amended) see reg 3; as to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq. In any proceedings for an offence of contravening the 1989 Regulations it is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence: reg 6.

³ 'Person in control' means (1) in relation to an offshore installation, the person who is the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (as amended) for the purposes of those regulations (see PARA 1684 note 4 ante); (2) in relation to pipeline works, the owner of the pipeline or the proposed owner of the proposed pipeline as both are defined in the Petroleum Act 1998 s 27 (as amended) (see PARAS 1749 note 4, 1751 note 6 post) or, if no person has been designated as the owner of the pipeline or proposed owner of the proposed pipeline in pursuance of that provision, the person in whom the pipeline is vested or the person for whom it is to be constructed; (3) in relation to an activity in connection with an offshore installation (a) the person who is, in relation to the installation, the duty holder as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 2(1) (as amended) for the purposes of those regulations; and the employer of persons engaged in that activity: Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 2(1) (definition amended by SI 1995/738). For the meaning of 'offshore installation' see PARA 1684 note 1 ante (definition applied by the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 2(1) (as so amended)). For the meanings of 'pipeline' and 'pipeline works' for these purposes see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 738 note 1.

⁴ See *ibid* reg 5. 'First aid' means (1) in cases where a person will need help from a medical practitioner or nurse, treatment for the purpose of preserving life and minimising the consequences of injury and illness until the appropriate help is obtained; and (2) treatment of minor injuries or illnesses which would otherwise receive no treatment or which do not need treatment by a medical practitioner or nurse; and for this purpose 'treatment' includes redressing and other follow-up treatment: *ibid* reg 2(1).

⁵ As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 561 et seq.

⁶ See the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989, SI 1989/1671, reg 7 (amended by SI 1999/3242; and by virtue of SI 1993/1823).

⁷ See HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 738.

UPDATE

1692-1693 First aid, Regulations governing diving operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(ii) Health and Safety etc; Employment Rights/E. DIVING OPERATIONS/1693. Regulations governing diving operations.

E. DIVING OPERATIONS

1693. Regulations governing diving operations.

The Diving at Work Regulations 1997¹, which are made under the Health and Safety at work etc Act 1974², control work-related diving projects and diving operations³. The regulations impose duties on diving contractors⁴ and diving supervisors⁵, and contain provisions as to the fitness and qualifications of divers⁶. The Health and Safety Executive⁷ has power to exempt any person or class of persons, any diving operation or class of diving operations and any plant or class of plant from any requirement or prohibition imposed by any provision of those regulations⁸.

The Diving at Work Regulations 1997 are discussed in detail elsewhere in this work⁹.

1 le the Diving at Work Regulations 1997, SI 1997/2776: see the text and notes 2-7 *infra*; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 591-594.

2 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations see PARA 1677 *ante*. See also the Diving at Work Regulations 1997, SI 1997/2776, reg 3(2). As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 *et seq*; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 *et seq*.

3 For the meanings of 'diving project' and 'diving operation' see *ibid* reg 2(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591; and as to when a person 'dives' see reg 2(2); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591. As to the general duty to ensure compliance with the 1997 Regulations see reg 4; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591.

4 See *ibid* regs 5-8; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 592.

5 See *ibid* regs 9-11; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 593.

6 See *ibid* regs 12-15; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 594.

7 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

8 See the Diving at Work Regulations 1997, SI 1997/2776, reg 16; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591.

9 See HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 591-594.

UPDATE

1692-1693 First aid, Regulations governing diving operations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(iii) Pollution Prevention and Control/1694-1726 Pollution Prevention and Control

(iii) Pollution Prevention and Control

1694-1726 Pollution Prevention and Control

Material relating to this part has been revised and published under the title ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vols 45, 46 (2010).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(iv) Conservation of Habitats/1727-1728 Conservation of Habitats

(iv) Conservation of Habitats

1727-1728 Conservation of Habitats

Material relating to this part has been revised and published under the title ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vols 45, 46 (2010).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(v) Abandonment of Offshore Installations/1729. Preparation of programmes.

(v) Abandonment of Offshore Installations

1729. Preparation of programmes.

The Secretary of State¹ may by written notice² require (1) the person³ to whom the notice is given; or (2) where notices are given to more than one person, those persons jointly, to submit to him a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation⁴ or submarine pipeline⁵ ('an abandonment programme')⁶.

An abandonment programme:

- 5048 (a) must contain an estimate of the cost of the measures proposed in it⁷;
- 5049 (b) must either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined⁸;
- 5050 (c) if it proposes that an installation or pipeline be left in position or not wholly removed, must include provision as to any continuing maintenance that may be necessary⁹.

A person who submits an abandonment programme to the Secretary of State must at the same time pay him such fee in respect of his expenditure¹⁰ in connection with abandonment as may be determined in accordance with regulations¹¹.

The Secretary of State may exercise his powers under these provisions notwithstanding that an abandonment programme has previously been submitted for the installation or pipeline in question, but only if he rejected¹² that programme or has withdrawn his approval¹³ of it¹⁴.

Where the Secretary of State has given a notice to submit an abandonment programme in relation to an installation or pipeline he may at any time before the programme required by it is submitted withdraw the notice or give a further notice¹⁵ (whether in substitution for or in addition to any notice already given); and if he does so he must inform the recipients of any other notices which have been given in relation to that installation or pipeline and not withdrawn¹⁶.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Any notice or other communication authorised or required to be given by the Petroleum Act 1998 Pt IV (ss 29-45) may be sent by post (but this is without prejudice to any other method of transmission): s 43.

3 Ibid Pt IV, in so far as it applies to individuals, applies to them whether or not they are British citizens, and in so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom: s 48(3). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 For these purposes, 'offshore installation' means any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which ibid s 44(2) applies: ss 44(1), 45. Section 44(1) applies to any activity mentioned in s 44(3) which is carried on from, by means of or on an installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes: s 44(2). The activities referred to in s 44(2) are (1) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of relevant waters; (2) the storage of gas in or under the shore

or bed of relevant waters or the recovery of gas so stored; (3) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of relevant waters; and (4) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within head (1), head (2) or head (3) supra: s 44(3). The fact that an installation has been maintained for the carrying on of an activity falling within s 44(3) is to be disregarded for these purposes if, since it was so maintained, the installation: (a) has been outside relevant waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or (b) has been maintained for the carrying on of an activity not falling within s 44(3): s 44(6).

In Pt IV (ss 29-45), 'relevant waters' means (i) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; (ii) waters in an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante); and (iii) such inland waters as may for the time being be specified for these purposes by Order in Council; but Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions and modifications as may be prescribed by the order, the Petroleum Act 1998 Pt IV is to have effect as if (A) any reference therein to relevant waters included a reference to waters in any area specified under s 10(8) (see PARA 1679 ante); and (B) in relation to an installation which is or has been maintained, or is intended to be established, in relevant waters, any reference in s 44(3) to relevant waters included a reference to waters in a foreign sector of the continental shelf which are adjacent to such waters: ss 44(4), 45. Any statutory instrument containing an order under s 44(4) is subject to annulment in pursuance of a resolution of either House of Parliament: s 44(7). At the date at which this title states the law, no such order had been made. As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3.

For the purposes of Pt IV, 'foreign sector of the continental shelf' means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom: ss 45, 48(1). For the purposes of s 44, 'inland waters' means waters within the United Kingdom other than tidal waters and parts of the sea; 'installation' includes (aa) any floating structure or device maintained on a station by whatever means; and (bb) in such cases and subject to such exceptions as may be prescribed by Order in Council, any apparatus or works which are by virtue of s 26 (see PARA 1741 post) to be treated as associated with a pipe or system of pipes for the purposes of Pt III (ss 14-28) (as amended) (see PARA 1740 et seq post), but, subject to head (bb) supra, does not include any part of a pipeline within the meaning of s 26; and 'modifications' includes additions, omissions and alterations: s 44(5).

5 'Submarine pipeline' means a pipeline within the meaning of *ibid* s 26 (see PARA 1741 post) which is in, under or over waters in (1) the territorial sea adjacent to the United Kingdom; or (2) an area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante): Petroleum Act 1998 s 45.

6 *Ibid* s 29(1). The Secretary of State must not give a notice to a person under s 29(1) without first giving him an opportunity to make written representations as to whether the notice should be given: s 31(4).

A notice under s 29(1) must either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Secretary of State may direct: s 29(2). It may require the person to whom it is given to carry out such consultations as may be specified in the notice before submitting an abandonment programme: s 29(3).

In certain circumstances, a person may challenge the validity of the Secretary of State's act in giving a notice under s 29(1): see s 42; and PARA 1737 post.

7 *Ibid* s 29(4)(a).

8 *Ibid* s 29(4)(b).

9 *Ibid* s 29(4)(c).

10 *Ie* his expenditure under *ibid* Pt IV: s 29(5).

11 *Ibid* s 29(5). The regulations referred to are made under s 39 (as amended): see PARA 1738 post.

12 As to rejection of programmes see *ibid* s 32; and PARA 1731 post.

13 As to withdrawal of approval see *ibid* s 35; and PARA 1731 post.

14 *Ibid* s 29(6).

15 *Ie* subject to *ibid* s 29(1)-(4): see note 6 supra; and PARA 1730 notes 9, 16 post.

16 *Ibid* s 31(5). Neither the withdrawal of a notice given under s 29(1), nor the giving of a further notice, relieves the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices): s 31(6).

UPDATE

1729 Preparation of programmes

NOTE 4--Petroleum Act 1998 s 44(3), (5) amended: Energy Act 2008 Sch 1 para 11 (partly in force: SI 2009/2809).

NOTE 5--Definition of 'submarine pipeline' amended: Petroleum Act 1998 s 45 (amended by Energy Act 2008 Sch 5 para 11; Marine and Coastal Access Act 2009 Sch 8 para 8).

TEXT AND NOTES 6, 16--Petroleum Act 1998 s 31 amended: Energy Act 2008 s 72(7).

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1730. Persons who may be required to submit programmes.

A notice to submit an abandonment programme¹ must not be given to a person in relation to the abandonment of an offshore installation² unless at the time when the notice is given he is within any of heads (1) to (5) below³:

- 5051 (1) the person having the management of the installation or of its main structure⁴;
- 5052 (2) a person to whom heads (a) and (b) below apply in relation to the installation⁵, namely:
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- 717. (a) he has the right to exploit or explore mineral resources in any area, or to store gas in any area and to recover gas so stored; and
- 718. (b) any specified activity⁶ is carried on from, by means of or on the installation,
- 472
- 5053 or a person if he had such a right when any such activity was last so carried on⁷;
- 5054 (3) a person outside heads (1) and (2) above who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within head (2) above⁸;
- 5055 (4) a person outside heads (1) to (3) above who owns any interest in the installation otherwise than as security for a loan⁹;
- 5056 (5) a company which is outside heads (1) to (4) above but is associated with a company¹⁰ within any of those heads¹¹.

A notice to submit an abandonment programme must not be given to a person in relation to the abandonment of a submarine pipeline¹² unless at the time when the notice is given he is within any of heads (i) to (iii) below¹³:

- 5057 (i) a person designated¹⁴ as the owner of the pipeline¹⁵;
- 5058 (ii) a person outside head (i) above who owns any interest in the whole or substantially the whole of the pipeline, otherwise than as security for a loan¹⁶;
- 5059 (iii) a company which is outside heads (i) and (ii) above but is associated with a company within one of those heads¹⁷.

The Secretary of State may by written notice¹⁸ require a person appearing to him to be within any of heads (1) to (5) or heads (i) to (iii) above to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice believes to be within any of those heads in relation to the installation or pipeline concerned¹⁹. A person who fails, without reasonable excuse, to comply with such a notice is guilty of an offence²⁰.

¹ ie a notice under the Petroleum Act 1998 s 29(1): see PARA 1729 ante. For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

2 For the meaning of 'offshore installation' see PARA 1729 note 4 ante.

3 Petroleum Act 1998 s 30(1).

4 Ibid s 30(1)(a).

5 Ibid s 30(1)(b).

6 Ie any activity mentioned in ibid s 30(6): s 30(5). The activities referred to are: (1) the exploitation or exploration of mineral resources, or the storage or recovery of gas, in the exercise of the right mentioned in s 30(5)(a) (see head (2)(a) in the text); (2) the conveyance in the area so mentioned, by means of a pipe or system of pipes, of minerals got, or gas being stored or recovered, in the exercise of that right; and (3) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within head (1) or head (2) supra: s 30(6). The fact that an installation has been maintained for the carrying on of an activity within s 30(6) must be disregarded for the purposes of s 30(6)(c) (see head (3) supra) if, since it was so maintained, the installation (a) has been outside relevant waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or (b) has been maintained for the carrying on of an activity which is not within s 30(6): s 30(7). For the meaning of 'relevant waters' and 'foreign sector of the continental shelf' see PARA 1729 note 4 ante.

7 See ibid s 30(5).

8 Ibid s 30(1)(c).

9 Ibid s 30(1)(d). The Secretary of State must not give a notice under s 29(1) in relation to an offshore installation to a person within s 30(1)(d) or (e) (see heads (4)-(5) in the text), if he has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within s 30(1)(a), (b) or (c) (see heads (1)-(3) in the text) to ensure that a satisfactory abandonment programme will be carried out: s 31(1). This does not apply if there has been a failure to comply with a notice under s 29(1) or if the Secretary of State has rejected a programme submitted in compliance with such a notice: s 31(3). As to the Secretary of State see PARA 601 note 1 ante.

10 For these purposes, one company is associated with another if one of them controls the other or a third company controls both of them: ibid 30(8). One company controls another if it possesses or is entitled to acquire: (1) one half or more of the issued share capital of the company; (2) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company; (3) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders; or (4) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders; or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes: s 30(8). In determining whether one company controls another, the former is taken to possess any rights and powers possessed by a person as nominee for it, and any rights and powers possessed by a company which it controls (including rights and powers which such a company would be taken to possess by virtue of this provision): s 30(9).

11 Ibid s 30(1)(e). See also note 9 supra.

12 For the meaning of 'submarine pipeline' see PARA 1729 note 4 ante.

13 Petroleum Act 1998 s 30(2).

14 Ie designated by an order made by the Secretary of State under ibid s 27 (as amended): see PARA 1749 post.

15 Ibid s 30(2)(a).

16 Ibid s 30(2)(b). The Secretary of State must not give a notice under s 29(1) in relation to a submarine pipeline to a person within s 30(2)(b) or (c) (see heads (ii)-(iii) in the text) if he has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within s 30(2)(a) (see head (i) in the text) to ensure that a satisfactory abandonment programme will be carried out: s 31(2). This does not apply if there has been a failure to comply with a notice under s 29(1) or if the Secretary of State has rejected a programme submitted in compliance with such a notice: s 31(3).

17 Ibid s 30(2)(c). See also note 16 supra.

18 As to the service of notices see PARA 1729 note 2 ante.

19 Petroleum Act 1998 s 30(3).

20 Ibid s 30(4). As to offences under Pt IV (ss 29-45) see PARA 1739 post.

UPDATE

1730 Persons who may be required to submit programmes

TEXT AND NOTES--Petroleum Act 1998 ss 30, 31 amended: Energy Act 2008 s 72(1)-(7), Sch 1 para 10, Sch 5 para 9, Sch 6 (Sch 1 para 10 partly in force: SI 2009/2809).

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1731. Approval of programmes.

The Secretary of State¹ may either approve or reject an abandonment programme² submitted to him³. If he approves a programme, he may approve it with or without modifications and either subject to conditions or unconditionally⁴. If he rejects a programme, he must inform the persons who submitted it of his reasons for doing so⁵.

Unless the programme is one which he has certified as a project that should be carried out for imperative reasons of overriding public interest⁶, the Secretary of State must, where he considers that it is likely to have a significant effect on a relevant site⁷, make an appropriate assessment of the implications for the site before granting approval of the programme⁸.

The Secretary of State may, at the request of one or more of the persons who submitted an abandonment programme, withdraw his approval of the programme⁹. He must, after determining whether to withdraw his approval of a programme, give notice¹⁰ of his determination to each of the persons who submitted the programme¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. a programme submitted to him under the Petroleum Act 1998 s 29: see PARA 1729 ante. For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

3 Ibid s 32(1). The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme: s 32(5). In certain circumstances, a person may challenge the validity of the Secretary of State's act in approving or rejecting a programme: see s 42; and PARA 1737 post.

4 Ibid s 32(2). Before approving a programme with modifications or subject to conditions, the Secretary of State must give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions: s 32(3).

5 Ibid s 32(4).

6 I.e. unless the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6 (as amended) applies: see PARA 1660 ante.

7 For the meaning of 'relevant site' see PARA 1660 note 6 ante.

8 See ibid reg 5 (as amended); and PARA 1660 ante.

9 Petroleum Act 1998 s 35(1). If a request under s 35(1) is made by some but not all of the persons who submitted the programme, the Secretary of State must give the others an opportunity to make written representations as to whether his approval should be withdrawn: s 35(2).

10 As to the service of notices see PARA 1729 note 2 ante.

11 Petroleum Act 1998 s 35(3). In certain circumstances, a person may challenge the validity of the Secretary of State's act in making a determination under s 35: see s 42; and PARA 1737 post.

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1732. Financial resources etc.

At any time after the Secretary of State¹ has given a notice to submit an abandonment programme² to any person and before he has approved an abandonment programme for the installation or pipeline concerned, he may by written notice³ require that person, within such time as may be specified in the notice:

- 5060 (1) to provide such information relating to the financial affairs of that person;
and
- 5061 (2) to supply copies of such documents relating to those affairs,

as may be so specified⁴.

In order to satisfy himself that a person who has a duty to secure that an abandonment programme is carried out will be capable of discharging that duty, the Secretary of State may at any time by written notice require that person, within such time as may be specified in the notice, to provide such information, and to supply copies of such documents, as may be so specified⁵.

A person who:

- 5062 (a) without reasonable excuse fails to comply with a notice under either of the provisions described above⁶; or
- 5063 (b) in purported compliance with such a notice provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular,

is guilty of an offence⁷.

If the Secretary of State is not satisfied that a person will be capable of discharging the duty to carry out an abandonment programme⁸, he may by written notice, after consulting the Treasury, require that person to take such action as may be specified in the notice within such time as may be so specified⁹. A person who fails to comply with such a notice is guilty of an offence unless he proves that he exercised due diligence to avoid the failure¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e a notice under the Petroleum Act 1987 s 29(1): see PARA 1729 ante. For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

3 As to the service of notices see PARA 1729 note 2 ante.

4 Petroleum Act 1998 s 38(1).

5 Ibid s 38(2).

6 I.e a notice under ibid s 38(1) or (2): see the text and notes 1-5 supra.

7 Ibid s 38(3). As to offences under Pt IV (ss 29-35) see PARA 1739 post; and for the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

8 le the duty imposed by *ibid* s 36: see PARA 1735 post.

9 *Ibid* s 38(4). The Secretary of State must not give notice to a person under s 38(4) without first giving him an opportunity to make written representations as to whether the notice should be given: s 38(5).

In certain circumstances, a person may challenge the validity of the Secretary of State's act in giving a notice under s 38(4); see s 42; and PARA 1737 post.

10 *Ibid* s 38(6); and see note 7 *supra*.

UPDATE

1732 Financial resources etc

TEXT AND NOTES--Petroleum Act 1998 s 38 amended: Energy Act 2008 s 73. As to the protection of funds set aside for the purpose of an abandonment programme see Petroleum Act 1998 s 38A (ss 38A, 38B added by Energy Act 2008 s 74(1)). The Secretary of State may direct a security provider to publish specified information about the protected assets: see Energy Act 2004 s 38B. The Energy Act 2008 s 74 has effect in relation to a trust or other arrangements established on or after 1 December 2007: s 74(2).

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1733. Failure to submit programmes.

If a notice to submit an abandonment programme¹ is not complied with, or if the Secretary of State² rejects a programme submitted in compliance with such a notice, the Secretary of State may himself prepare an abandonment programme for the installation or pipeline concerned³. With a view to exercising his powers under this provision, the Secretary of State may by written notice⁴ require any of the persons to whom a notice to submit an abandonment programme was given to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified⁵. A person who fails, without reasonable excuse, to comply with such a notice is guilty of an offence⁶.

The Secretary of State may recover from any of the persons to whom a notice to submit an abandonment programme was given any expenditure incurred by him in preparing an abandonment programme under these provisions, and any fee that would have been payable on the submission of a programme by those persons⁷.

1 I.e. a notice under the Petroleum Act 1998 s 29(1): see PARA 1729 ante. For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Petroleum Act 1998 s 33(1). Where the Secretary of State prepares an abandonment programme under s 33, he must inform the persons to whom notice was given under s 29(1) of its terms; when he has done so, ss 34-45 (see PARAS 1734-1739 post) have effect as if the programme had been submitted by those persons and approved by the Secretary of State: s 33(7).

4 As to the service of notices see PARA 1729 note 2 ante.

5 Petroleum Act 1998 s 33(2).

6 Ibid s 33(3). As to offences under Pt IV (ss 29-45) see PARA 1739 post.

7 Ibid s 33(4). A person liable to pay any sum to the Secretary of State by virtue of s 33(4) must also pay interest on that sum for the period beginning with the day on which the Secretary of State notified him of the sum payable and ending with the date of payment: s 33(5). The rate of interest payable under s 33(5) is to be a rate determined by the Secretary of State as comparable with commercial rates: s 33(6).

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1734. Revision of programmes.

Where the Secretary of State¹ has approved an abandonment programme submitted to him²:

- 5064 (1) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject³; and
 5065 (2) either he or any of those persons may propose that any person who has a duty to secure that the programme is carried out⁴ is to cease to have that duty, or that a person who does not already have that duty is to have it (either in addition to or in substitution for another person)⁵.

A proposal under the above provision must be made by written notice⁶ given:

- 5066 (a) if the proposal is the Secretary of State's, to each of the persons by whom the programme was submitted; and
 5067 (b) in any other case, to the Secretary of State⁷.

A person giving notice to the Secretary of State must at the same time pay to him such fee in respect of his expenditure⁸ in connection with the abandonment programme as may be determined in accordance with regulations⁹.

The Secretary of State must determine whether a proposed change is to be made and must then give notice of his determination, and of his reasons for it, to:

- 5068 (i) every person who, before the determination was made, had a duty to secure the carrying out of the programme; and
 5069 (ii) any person who has that duty as a result of the determination¹⁰.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie a programme submitted to him under the Petroleum Act 1998 s 29: see PARA 1729 ante. For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

3 Ibid s 34(1)(a). Where the Secretary of State has made such a proposal, he must give an opportunity to make written representations about it to each of the persons who submitted the programme: s 34(5).

4 Ie the duty imposed by virtue of ibid s 36: see PARA 1735 post.

5 Ibid s 34(1)(b). In the case of a proposal of this kind, any person who would if the proposed change were made have a duty to secure that the programme is carried out must be a person who: (1) if the programme relates to an offshore installation, is within any of s 30(1)(a)-(e) (see PARA 1730 ante at heads (1)-(5) in the text) when the proposal is made, or has been within one of those heads at some time since the giving of the first notice under s 29(1) in relation to the installation; and (2) if the programme relates to a submarine pipeline, is within any of s 30(2)(a)-(c) (see PARA 1730 ante at heads (i)-(iii) in the text) when the proposal is made, or has been within one of those heads at some time since the giving of the first notice under s 29(1) in relation to the pipeline: s 34(2). For the meanings of 'offshore installation' and 'submarine pipeline' see PARA 1729 notes 4-5 ante.

The Secretary of State must not propose that a person who is or has been within s 30(1)(d) or (e) (but no other head of s 30(1)), or within s 30(2)(b), (c) (but not s 30(2)(a)) is to have a duty to secure that a programme is

carried out unless it appears to him that a person already under that duty has failed or may fail to discharge it: s 34(3).

Where a proposal has been made under s 34(1)(b), the Secretary of State must give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made (a) have a duty to secure that the programme is carried out; or (b) cease to have that duty: s 34(6).

6 As to the service of notices see PARA 1729 note 2 ante.

7 Petroleum Act 1998 s 34(4).

8 le his expenditure under ibid Pt IV (ss 29-45): s 34(4).

9 Ibid s 34(4). The regulations referred to are regulations made under s 39: see PARA 1738 post. At the date at which this title states the law, no such regulations had been made.

10 Ibid 34(7). Where the Secretary of State determines that a change proposed in accordance with s 34 is to be made, Pt IV then has effect as if the programme had been approved by the Secretary of State after being submitted under s 29 with the alterations, or as the case may be by the persons, specified in the determination: s 34(8). In certain circumstances, a person may challenge the validity of the Secretary of State's act in making a determination under s 34: see s 42; and PARA 1737 post.

UPDATE

1734 Revision of programmes

NOTE 5--Petroleum Act 1998 s 34(2), (3) amended: Energy Act 2008 Sch 5 para 10, Sch 6. See also Petroleum Act 1998 s 34(3A) (added by Energy Act 2008 s 72(8)).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(v) Abandonment of Offshore Installations/1735. Duty to carry out programmes.

1735. Duty to carry out programmes.

Where an abandonment programme¹ is approved by the Secretary of State², it is the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with³.

1 For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

2 As to such approval see PARA 1731 ante; and as to the Secretary of State see PARA 601 note 1 ante.

3 Petroleum Act 1998 s 36. As to the action to be taken by the Secretary of State where he is not satisfied that a person is able to carry out this duty see PARA 1732 the text and notes 8-10 ante.

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1736. Default in carrying out programmes.

If an abandonment programme¹ approved by the Secretary of State² is not carried out or a condition to which the approval is subject is not complied with, the Secretary of State may by written notice³ require any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be specified⁴. A person who fails to comply with such a notice is guilty of an offence unless he proves that he exercised due diligence to avoid the failure⁵. If such a notice is not complied with, the Secretary of State may carry out the remedial action required by the notice and may recover any expenditure incurred by him in doing so from the person to whom the notice was given⁶.

1 For the meaning of 'abandonment programme' see PARA 1729 the text and notes 1-6 ante.

2 As to such approval see PARA 1731 ante; and as to the Secretary of State see PARA 601 note 1 ante.

3 As to the service of notices see PARA 1729 note 2 ante.

4 Petroleum Act 1998 s 37(1).

5 Ibid s 37(2). As to offences under Pt IV (ss 29-45) see PARA 1739 post.

6 Ibid s 37(3). A person liable to pay any sum to the Secretary of State by virtue of s 37(3) must also pay interest on that sum for the period beginning with the day on which the Secretary of State notified him of the sum payable and ending with the date of payment: s 37(4). The rate of interest payable is to be a rate determined by the Secretary of State as comparable with commercial rates: s 37(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(v) Abandonment of Offshore Installations/1737. Validity of Secretary of State's acts.

1737. Validity of Secretary of State's acts.

If any person is aggrieved by any of certain specified acts¹ of the Secretary of State² and desires to question its validity on the ground that it was not within the powers of the Secretary of State or that the relevant procedural requirements³ had not been complied with, he may within 42 days of the day on which the act was done make an application to the court⁴ for the act to be quashed⁵. If on such an application the court is satisfied that the act in question was not within the powers of the Secretary of State or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the court may quash the act⁶.

Except as provided by these provisions, the validity of any of the specified acts of the Secretary of State may not be questioned in any legal proceedings whatever⁷.

1 The specified acts are (1) the giving of a notice under the Petroleum Act 1998 s 29(1) (see PARA 1729 ante); (2) the approval or rejection of a programme under s 32 (see PARA 1731 ante); (3) a determination under s 34 (see PARA 1734 ante); (4) a determination under s 35 (see PARA 1731 ante); or (5) the giving of a notice under s 38(4) (see PARA 1732 ante): s 42(2).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 'The relevant procedural requirements' means (1) in relation to the giving of a notice under the Petroleum Act 1998 s 29(1), the requirements of s 31(4) (see PARA 1729 ante); (2) in relation to the approval or rejection of a programme under s 32, the requirements of s 32(3) or (4) (see PARA 1731 ante); (3) in relation to a determination under s 34, the requirements of s 34(5), (6) and (7) (see PARA 1734 ante); (4) in relation to a determination under s 35, the requirements of s 35(2) (see PARA 1731 ante); (5) in relation to the giving of a notice under s 38(4), the requirements of s 38(5) (see PARA 1732 ante): s 42(5).

4 I.e. in relation to England and Wales, the High Court: *ibid* s 42(6)(a).

5 *Ibid* s 42(1).

6 *Ibid* s 42(3).

7 *Ibid* s 42(4).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(v) Abandonment of Offshore Installations/1738. Power to make regulations.

1738. Power to make regulations.

The Secretary of State¹ may make regulations² relating to the abandonment of offshore installations³ and submarine pipelines⁴. In particular, such regulations may:

- 5070 (1) prescribe standards in respect of the dismantling, removal and disposal of installations and pipelines⁵;
- 5071 (2) prescribe standards and safety requirements in respect of anything left in the water in cases where an installation or pipeline is not wholly removed⁶;
- 5072 (3) make provision for the prevention of pollution⁷;
- 5073 (4) make provision for inspection, including provision as to the payment of the costs of inspection⁸;
- 5074 (5) make provision as to the determination of the amount of any fees that are payable⁹ to the Secretary of State¹⁰.

Such regulations may include provision making it an offence, in such cases as may be prescribed, to contravene the regulations¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Regulations under the Petroleum Act 1998 s 39 (see the text and notes 3-11 infra) must be made by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 39(6).

3 For the meaning of 'offshore installation' see PARA 1729 note 4 ante.

4 Petroleum Act 1998 s 39(1). For the meaning of 'submarine pipeline' see PARA 1729 note 5 ante. The functions of the Secretary of State referred to in s 39(1) are, so far as exercisable in relation to Wales, exercisable only after consultation with the National Assembly for Wales or the Welsh Ministers: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2. As to the National Assembly for Wales and the Welsh Ministers see PARA 601 note 1 ante. Furthermore, certain functions under the Petroleum Act 1998 s 39(1) are, in so far as they are exercisable in or as regards Scotland, only exercisable after consultation with the Scottish Ministers: see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 4, Sch 3.

Before making regulations under the Petroleum Act 1998 s 39, the Secretary of State must consult organisations in the United Kingdom appearing to him to be representative of those persons who will be affected by the regulations; and he must not make regulations relating to the amount of any fees without the consent of the Treasury: s 39(5). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

At the date at which this title states the law, no regulations had been made under s 39 and none had effect as if so made.

5 Ibid s 39(2)(a).

6 Ibid s 39(2)(b).

7 Ibid s 39(2)(c).

8 Ibid s 39(2)(d).

9 Ie payable under ibid Pt IV (ss 29-45): s 39(2)(e).

10 Ibid s 39(2)(e); and see note 4 supra.

11 Ibid s 39(3). Where regulations under s 39 create an offence, they must make provision as to the mode of trial and punishment of offenders; but (1) any provision as to punishment on summary conviction must not authorise a fine exceeding the statutory maximum or imprisonment; and (2) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding two years: s 39(4). As to the statutory maximum see PARA 689 note 2 ante. As to offences under Pt IV see PARA 1739 post.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(3) OFFSHORE WORKINGS AND INSTALLATIONS/(v) Abandonment of Offshore Installations/1739. Offences relating to abandonment of offshore installations.

1739. Offences relating to abandonment of offshore installations.

A person guilty of an offence under the specified provisions of Part IV of the Petroleum Act 1998¹ is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both².

Proceedings for any such offence, or for an offence under regulations made under that Part of the Act³, may not be instituted in England and Wales except by the Secretary of State⁴ or a person authorised in his behalf, or by or with the consent of the Director of Public Prosecutions⁵.

Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly⁶.

If an offence of failing to comply with a notice to remedy a default in carrying out an abandonment programme⁷, or an offence under regulations⁸, is committed outside the United Kingdom⁹, proceedings for the offence may be taken, and the offence for all incidental purposes may be treated as having been committed, in any place in the United Kingdom¹⁰.

1 Ie an offence under the Petroleum Act 1998 s 30 (see PARA 1730 ante), s 33 (see PARA 1733 ante), s 37 (see PARA 1736 ante) or s 38 (see PARA 1732 ante). As to Pt IV (ss 29-45) see PARA 1729 et seq ante.

2 Ibid s 40. As to the statutory maximum see PARA 689 note 2 ante.

3 Ie regulations made under ibid s 39: see PARA 1738 ante. At the date at which this title states the law, no such regulations had been made.

4 As to the Secretary of State see PARA 601 note 1 ante.

5 Ibid s 41(1). As to the institution of proceedings in Northern Ireland see s 41(2).

6 Ibid s 41(3). Where the affairs of a body corporate are managed by its members, s 41(3) applies in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 41(4).

7 Ie an offence under ibid s 37: see PARA 1736 ante.

8 See note 3 supra.

9 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

10 Petroleum Act 1998 s 41(5). The Territorial Waters Jurisdiction Act 1878 s 3 (restriction on prosecutions: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for an offence to which the Petroleum Act 1998 s 41(1) applies: s 41(6).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/A. INTRODUCTION/1740. The domestic legislation.

(4) SUBMARINE PIPELINES

(i) Control, Authorisation and Use

A. INTRODUCTION

1740. The domestic legislation.

Part III of the Petroleum Act 1998¹, with subordinate legislation², provides for control by the Secretary of State³ of the construction⁴ and use of pipelines⁵ in certain waters, referred to as 'controlled waters'⁶, surrounding the United Kingdom⁷; for the appointment of inspectors to assist the Secretary of State in the execution of the statutory provisions⁸; for criminal⁹ and civil liability¹⁰; and for various supplemental matters¹¹. The abandonment of submarine pipelines is covered by Part IV¹² of that Act¹³.

1 The Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended); see PARA 1741 et seq post.

2 The Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835 (as amended) (see PARA 1763 et seq post), which now have effect as if made under the Petroleum Act 1998 s 20(2). See also the Submarine Pipelines (Electricity Generating Stations) Regulations 1981, SI 1981/750; and PARA 1300 ante; the Submarine Pipelines (Exemption) Regulations 1985, SI 1985/1051; and PARA 1742 post.

Before making any regulations under the Petroleum Act 1998 Pt III (as amended) the Secretary of State must consult such organisations in the United Kingdom as he considers are representative of persons who will be affected by the regulations: s 25(1). It is also his duty, before making regulations under s 20 (see PARA 1763 et seq post), to have regard to the extent of the jurisdiction which belongs to the United Kingdom under international law: s 25(2). Regulations may provide for the creation of offences and punishment of offences and for defences: see s 25(3). They may be limited so as to apply only in prescribed cases or may exclude prescribed cases from their application: see s 25(4)(a), (b). By directions given to such persons as it considers appropriate, the Health and Safety Executive may provide for a case specified in the directions to be excluded from the application of any regulations governing submarine pipelines so long as conditions so specified are satisfied: see s 25(4). Defences created by these provisions do not extend to civil proceedings: see the Petroleum Act 1998 s 23(4); and PARA 1637 ante. For the meaning of 'United Kingdom' see PARA 602 note 7 ante; and as to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

Any power under Pt III (as amended) to make orders or regulations is exercisable by statutory instrument (s 25(10)) and includes power to make different provision for different circumstances, and to include incidental, transitional or supplemental provisions (such as fees) (see s 25(7), (8)).

3 As to the Secretary of State see PARA 601 note 1 ante.

4 In relation to a pipeline, 'construction' includes placing, and cognate expressions are to be construed accordingly: Petroleum Act 1998 s 28(1).

5 For the meaning of 'pipeline' see PARA 1741 post.

6 'Controlled waters' means the territorial sea adjacent to the United Kingdom and the sea in any area designated under the Continental Shelf Act 1964 s 1(7) (as amended) (see PARA 1636 ante); Petroleum Act 1998 ss 14(2), 28(1). So much of any pipeline as is in, under or over controlled waters is referred to as a 'controlled pipeline': ss 14(2), 28(1).

7 See *ibid* ss 14-19 (as amended); and PARA 1744 et seq post. As to the provision made with respect to certain offshore gas storage facilities see ss 17C-17E, 17H (as added and amended); and PARAS 1030-1032 ante.

8 See *ibid* s 20; the Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835 (as amended); and PARA 1760 *et seq post*.

9 See *ibid* s 21 (as amended), s 22; and PARA 1763 *et seq post*.

10 See *ibid* s 23; and PARA 1637 *ante*.

11 See *ibid* ss 24-27; and PARA 1741 *et seq post*.

12 *Ie ibid* Pt IV (ss 29-45).

13 See PARA 1729 *et seq ante*.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/A. INTRODUCTION/1741. Meaning of 'pipeline'.

1741. Meaning of 'pipeline'.

Except where the context otherwise requires, in Part III of the Petroleum Act 1998¹ 'pipeline' means a pipe or system of pipes, excluding a drain or sewer, for the conveyance of any thing, together with apparatus and works associated with such a pipe or system². The apparatus and works associated with such a pipe or system for these purposes are:

- 5075 (1) any apparatus for inducing or facilitating the flow of any thing through, or through a part of, the pipe or system³;
- 5076 (2) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system⁴;
- 5077 (3) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system⁵;
- 5078 (4) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (1) to (3) above⁶;
- 5079 (5) apparatus for the transmission of information for the operation of the pipe or system⁷;
- 5080 (6) apparatus for the cathodic protection of the pipe or system⁸; and
- 5081 (7) any structure⁹ used or to be used solely for the support of a part of the pipe or system¹⁰.

The Secretary of State¹¹ may by order¹² provide that a part of a pipeline specified in the order is to be treated for the purposes of the relevant statutory provisions¹³ as a pipeline¹⁴.

1 Ie the Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended): see PARA 1740 ante, PARA 1742 et seq post.

2 Ibid s 26(1).

3 Ibid s 26(2)(a).

4 Ibid s 26(2)(b).

5 Ibid s 26(2)(c).

6 Ibid s 26(2)(d).

7 Ibid s 26(2)(e).

8 Ibid s 26(2)(f).

9 'Structure' is not defined for these purposes.

10 Petroleum Act 1998 s 26(2)(g).

11 As to the Secretary of State see PARA 601 note 1 ante.

12 As to the making of orders see PARA 1740 note 2 ante.

13 Ie for the purposes of the Petroleum Act 1998 Pt III (as amended). except s 26(3); s 26(3).

14 Ibid s 26(3). Such orders, which are of local effect only, are not dealt with in this work.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

1741 Meaning of 'pipeline'

TEXT AND NOTES 2-10--Petroleum Act 1998 s 26(1) amended, s 26(2) repealed: Energy Act 2008 s 78(3), Sch 6.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/A. INTRODUCTION/1742. Exclusion of certain pipelines.

1742. Exclusion of certain pipelines.

Where no initial or terminal point of a pipeline¹ is situated in the United Kingdom² or controlled waters³, the pipeline must be disregarded for the purposes of the relevant⁴ statutory provisions⁵. However, the Secretary of State⁶ may by order⁷ provide that such of the provisions of Part III of the Petroleum Act 1998⁸ as are specified in the order are to apply, with or without modifications, to the whole or any part of any such pipeline⁹. Any such order may contain only such provisions as the Secretary of State considers are consistent with the jurisdiction which belongs to the United Kingdom under international law¹⁰.

The Secretary of State may in regulations¹¹ provide that such of the provisions of that Part of the 1998 Act as may be specified in the regulations are not to apply to a pipeline of a kind specified therein or are not to apply to a pipeline while any condition specified in the regulations is satisfied¹².

1 For the meaning of 'pipeline' see PARA 1741 ante.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'controlled waters' see PARA 1740 note 6 ante.

4 I.e. for the purposes of the Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended) except s 24(1), (2): s 24(1).

5 Ibid s 24(1).

6 As to the Secretary of State see PARA 601 note 1 ante.

7 A statutory instrument containing an order under the Petroleum Act 1998 s 24(2) or regulations under s 24(3) is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(5). As to the making of orders generally see PARA 1740 note 2 ante. The Interpretation Act 1978 s 14 (implied power to amend) does not apply in relation to the power conferred by the Petroleum Act 1998 s 24(2): s 25(9).

8 I.e. the provisions of ibid Pt III (as amended).

9 Ibid s 24(2), (4).

10 Ibid s 24(2). As to the jurisdiction of the United Kingdom in international law see INTERNATIONAL RELATIONS LAW.

11 See note 7 supra. As to the making of regulations generally see PARA 1740 note 2 ante.

12 Petroleum Act 1998 s 24(3), (4). At the date at which this title states the law, no such regulations had been made, but by virtue of s 49, Sch 3 Pt I para 1(2), the Submarine Pipelines (Electricity Generating Stations) Regulations 1981, SI 1981/750 (see PARA 1300 ante) and the Submarine Pipelines (Exemption) Regulations 1985, SI 1985/1051 (see PARA 1742 post) have effect as if so made.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

1742 Exclusion of certain pipelines

TEXT AND NOTES--Petroleum Act 1998 s 24 amended: Marine and Coastal Access Act 2009 Sch 8 para 7.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/B. CONTROL OF CONSTRUCTION AND USE/1743. Construction and use of pipelines.

B. CONTROL OF CONSTRUCTION AND USE

1743. Construction and use of pipelines.

No person¹ must:

- 5082 (1) execute in, under or over any controlled waters² any works³ for the construction of a pipeline⁴; or
- 5083 (2) use a controlled pipeline⁵ of which the construction was begun on or after 1 January 1976⁶,

except in accordance with an authorisation⁷ given in writing by the Secretary of State⁸. Any person who contravenes⁹ these provisions is guilty of an offence¹⁰ and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine¹¹.

The issue of such an authorisation is to be deemed not to derogate from a licence granted under Part I of the Petroleum Act 1998¹² which is for the time being in force¹³.

1 The Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended), so far as it applies to individuals, applies to them whether or not they are British citizens; and so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom: s 48(3). For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

2 For the meaning of 'controlled waters' see PARA 1740 note 6 ante.

3 For these purposes, works at any place in, under or over controlled waters for the purpose of determining whether the place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for the purpose of settling the route of a proposed pipeline are not works for the construction of a pipeline: Petroleum Act 1998 s 28(2). For the meaning of 'pipeline' see PARA 1741 ante; and for the meaning of 'construction' see PARA 1740 note 4 ante.

4 Ibid s 14(1)(a).

5 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante.

6 Petroleum Act 1998 s 14(1)(b).

7 'Authorisation' means an authorisation required by ibid s 14: s 28(1).

8 Ibid s 14(1). As to the Secretary of State see PARA 601 note 1 ante. As to authorisations for pipelines see PARA 1744 et seq post.

9 Any reference to a contravention of a provision of ibid Pt III (as amended), or of regulations made or directions given thereunder, includes a reference to failure to comply with that provision: s 28(3).

10 Ibid s 21(1)(a).

11 Ibid s 21(1). As to the statutory maximum see PARA 689 note 2 ante. As to enforcement see further PARA 1757 post.

12 Ie a licence granted under ibid s 3: see PARA 1639 ante.

13 Ibid s 9(3).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/C. AUTHORISATIONS FOR PIPELINES/1744. Applications for and issue of authorisations; in general.

C. AUTHORISATIONS FOR PIPELINES

1744. Applications for and issue of authorisations; in general.

The statutory provisions relating to submarine pipelines¹ contemplate two types of authorisations² in relation to the pipelines: (1) works authorisations³; and (2) other authorisations⁴. Provision is made with respect to applications for, and notice of, works authorisations and other authorisations⁵. It is the duty of the Secretary of State not to issue an authorisation to a person⁶ other than a body corporate⁷.

Unless the pipeline in question is one which he has certified as a project that should be carried out for imperative reasons of overriding public interest⁸, the Secretary of State must, where he considers that it is likely to have a significant effect on a relevant site⁹, make an appropriate assessment of the implications for the site before granting an authorisation¹⁰.

The Secretary of State may not grant a works authorisation for a relevant project within the meaning of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999¹¹ unless an application for consent¹² is made under those regulations and the application is:

- 5084 (a) one where no part of the pipeline to be constructed or augmented would extend more than 500 metres from a well¹³ or any part of a fixed installation to which that pipeline would be directly or indirectly attached and the Secretary of State has decided that having regard to the specified matters¹⁴ the operation in respect of which consent is sought would not be likely to have a significant effect¹⁵ on the environment and that accordingly no environmental statement¹⁶ need be prepared in respect of the relevant project in question¹⁷;
- 5085 (b) accompanied by an environmental statement in respect of that project; or
- 5086 (c) the subject of a direction¹⁸ that no environmental statement need be prepared¹⁹.

The procedure for the environmental assessment of such projects has already been discussed²⁰.

1 Ie the Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended). For the meaning of 'pipeline' see PARA 1741 ante.

2 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

3 'Works authorisation' means an authorisation (1) for works for the construction of a pipeline; or (2) for such works and for the use of a pipeline: Petroleum Act 1998 s 28(1). As to works authorisations see s 15(1), Sch 2 Pt I (paras 1-9): note 5 infra; and PARA 1745 post. For the meaning of 'construction' see PARA 1740 note 4 ante; and for the meaning of 'works for the construction of a pipeline' see PARA 1743 note 3 ante.

4 As to other authorisations see *ibid* Sch 2 Pt II (para 10): and PARA 1746 post.

5 The Secretary of State may by regulations make provision as to (1) the manner in which an application for a works authorisation is to be made; and (2) the information to be included in or provided in connection with an application: *ibid* Sch 2 para 1(1). Without prejudice to the generality of Sch 2 para 1(1), such regulations may require the payment of fees in connection with an application: Sch 2 para 1(2). A statutory instrument

containing regulations under Sch 2 para 1 is to be subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2 para 1(3). At the date at which this title states the law, no such regulations had been made and none had effect as if so made. As to the procedure for granting an authorisation see the text and notes 8-19 *infra*; and PARA 1745 *post*.

6 As to persons to whom the legislation applies see PARA 1743 note 1 *ante*.

7 Petroleum Act 1998 s 15(2).

8 *Ie* unless the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 6 (as amended) applies: see PARA 1660 *ante*.

9 For the meaning of 'relevant site' see PARA 1660 note 6 *ante*.

10 See the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754, reg 5 (as amended); and PARA 1660 *ante*.

11 *Ie* within the meaning of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360 (as amended). For the meaning of 'relevant project' for those purposes see PARA 1645 note 2 *ante*.

12 For the meaning of 'consent' see PARA 1646 note 2 *ante*.

13 For the meaning of 'well' see PARA 1644 note 5 *ante*.

14 *Ie* the matters set out in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, Sch 1: see PARA 1646 note 6 *ante*.

15 For the meaning of 'effect' for these purposes see PARA 1646 note 7 *ante*.

16 For the meaning of 'environmental statement' see PARA 1646 note 8 *ante*.

17 See the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 5(2) (reg 5(1) (2) substituted by SI 2007/933).

18 *Ie* a direction given under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360, reg 6 (as amended): see PARA 1647 *ante*.

19 *Ibid* reg 5(1) (as substituted: see note 17 *supra*).

20 See PARA 1646 *et seq* *ante*.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/C. AUTHORISATIONS FOR PIPELINES/1745. Procedure for issue of works authorisations.

1745. Procedure for issue of works authorisations.

The Secretary of State¹ must, on receiving an application for a works authorisation², decide whether the application is to be considered further or rejected and must serve notice³ of his decision on the applicant⁴. In the case of a decision that the application is to be considered further, he must give the applicant such directions with respect to the application as he considers appropriate for the purposes⁵ of publicity⁶. In the case of a decision to reject the application, the Secretary of State must include in the notice a statement of the reasons for the decision except any reason which in his opinion it would be against the national interest to state⁷.

Where the Secretary of State serves on an applicant notice under the above provisions that the application is to be considered further, the applicant must:

- 5087 (1) publish, in such manner as the Secretary of State directs, a notice which:
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- 719. (a) contains such particulars of the application as the Secretary of State directs; and
- 720. (b) states that representations with respect to the application may be made in writing to the Secretary of State within the period of 28 days beginning with the date on which the notice is first published in accordance with this provision or within such longer period beginning with that date as is specified in the notice in accordance with a direction of the Secretary of State; and
- 721. (c) states where the map mentioned in head (2) below may be inspected during the period specified in the notice under head (b) above;
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- 5088 (2) secure that a map of such scale and containing such particulars as the Secretary of State directs is available for inspection by the public free of charge from 10 am to 4 pm on each weekday during the period so specified; and
- 5089 (3) serve a copy of the notice on such persons as the Secretary of State directs;

and the Secretary of State must defer his further consideration of the application until he is satisfied that the applicant has complied with these requirements⁸.

Where the Secretary of State decides that an application for a works authorisation is to be considered further and is of the opinion, either on his own initiative⁹ or in consequence of representations made to him by the applicant or any other person:

- 5090 (i) that the route proposed for the pipeline¹⁰ or part of it in the application ought to be altered in a particular manner for any of the specified purposes¹¹; or
- 5091 (ii) that the capacity proposed for the pipeline or part of it in the application ought to be increased for any of the specified purposes¹²,

then the Secretary of State must, before deciding whether to issue an authorisation¹³ in consequence of the application, serve notice of his opinion on the applicant and, where the opinion relates to an alteration of the route proposed for the pipeline or part of it, on any

persons whom the Secretary of State considers are likely to be affected by the alteration or on any person appearing to the Secretary of State to represent such persons¹⁴. In any notice of his opinion so served the Secretary of State must state the reasons for his opinion except any reason which he considers that it would be against the national interest to state¹⁵. Where the Secretary of State so serves on the applicant notice of his opinion he must give him an opportunity of being heard¹⁶ with respect to the opinion; and where the applicant is heard the Secretary of State may give such other persons, if any, as he thinks fit an opportunity to be heard at the hearing¹⁷. Where he so serves on any person other than the applicant notice of his opinion, he must state in the notice that representations in writing with respect to the opinion may be made to him within a period specified in the notice¹⁸.

Where the Secretary of State is satisfied that an applicant for a works authorisation has complied with heads (1) to (3) above, and he has considered any representations relating to the application which were made to him within the specified period¹⁹, at any hearing held²⁰ and in accordance with a notice served by him in respect of the application as described above²¹, he must decide whether to issue an authorisation in consequence of the application²².

Where the Secretary of State decides not to issue a works authorisation in consequence of an application he must serve on the applicant, and on each person on whom a copy of notice of the application was required to be served by the applicant²³, a notice stating the decision and, in the case of the notice served on the applicant, stating also the reasons for the decision except any reason which he considers that it would be against the national interest to state²⁴.

Where the Secretary of State decides to issue a works authorisation in consequence of an application he must serve notice of the decision on the applicant, on each person on whom a copy of notice of the application was required to be served by the applicant²⁵, and on any other person who made²⁶ representations²⁷. He must also publish a copy of the notice in the London and Edinburgh and Belfast Gazettes, or in such of them as he considers appropriate, and in any other publication which he considers appropriate²⁸. Where he issues a works authorisation, he must serve on the persons (other than the applicant) on whom notice in respect of the authorisation was so required to be served a notice stating that the authorisation has been issued and containing the name and address of the person to whom it was issued²⁹, such particulars as the Secretary of State considers appropriate of:

- 5092 (A) the route of the pipeline;
- 5093 (B) its authorised capacity;
- 5094 (C) the things authorised to be conveyed by it; and
- 5095 (D) the persons authorised to use it³⁰,

and such other information (if any) about the pipeline as he considers appropriate³¹. The Secretary of State must publish a copy of the notice in the London and Edinburgh and Belfast Gazettes, or in such of them as he considers appropriate, and in any other publication which he considers appropriate³².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.

3 In notice in writing: see the Petroleum Act 1998 s 28(1). As to the service of notices see PARA 1030 note 11 ante.

4 Ibid s 15(1), Sch 2 para 2(a), (b).

5 In for the purposes of ibid Sch 2 para 3: see heads (1)-(3) in the text.

6 Ibid Sch 2 para 2(b)(i).

7 Ibid Sch 2 para 2(b)(ii).

8 Ibid Sch 2 para 3.

9 Ie except in relation to the purpose mentioned in ibid Sch 2 para 6(b): see note 11 head (2) infra.

10 'Pipeline', in relation to an application for a works authorisation, means the proposed pipeline in respect of which the application is made: ibid s 28(1). For the meaning of 'pipeline' see PARA 1741 ante.

11 Ie the purposes mentioned in ibid Sch 2 para 6. Those purposes are: (1) the purpose of avoiding or reducing danger to navigation, to persons engaged in and vessels and equipment used for fishing, to some structure or apparatus (which may be the pipeline) or to marine flora or fauna; (2) the purpose of facilitating the use of the pipeline by persons other than the applicant where it appears to the Secretary of State that such persons desire to use the pipeline; (3) the purpose of avoiding or reducing interference with fishing or the exploitation of mineral resources; (4) any other purpose which the Secretary of State considers proper: Sch 2 para 6.

12 Ie the purposes mentioned in ibid Sch 2 para 6(b) or (d): see note 11 heads (2), (4) supra.

13 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

14 Petroleum Act 1998 Sch 2 para 4(1), (2).

15 Ibid Sch 2 para 4(3).

16 'Heard' means heard on behalf of the Secretary of State by a person appointed by him for the purpose: ibid s 28(1).

17 Ibid Sch 2 para 5(1).

18 Ibid Sch 2 para 5(2).

19 Ie the period specified in the notice published in respect of the application under ibid Sch 2 para 3(a): see head (1) in the text.

20 Ie held under ibid Sch 2 para 5(1): see the text and notes 16-17 supra.

21 Ie served in respect of the application under ibid Sch 2 para 5(2): see the text and note 18 supra.

22 Ibid Sch 2 para 7.

23 Ie under ibid Sch 2 para 3(c): see head (3) in the text.

24 Ibid Sch 2 para 8(1).

25 See note 23 supra.

26 Ie as mentioned in ibid Sch 2 para 7(b)(ii) or (iii): see the text to notes 20-21 supra.

27 Ibid Sch 2 para 8(2)(a).

28 Ibid Sch 2 para 8(2)(b).

29 Ibid Sch 2 para 9(1), (2)(a).

30 Ibid Sch 2 para 9(1), (2)(b).

31 Ibid Sch 2 para 9(1), (2)(c).

32 Ibid Sch 2 para 9(1), (3).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

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1746. Procedure for issue of other authorisations.

Where the Secretary of State¹ issues an authorisation² other than a works authorisation³, he must publish in the London and Edinburgh and Belfast Gazettes or in such of them as he considers appropriate, and in any other publication which he considers appropriate, a notice stating that the authorisation has been issued and containing:

- 5096 (1) the name and address of the person to whom it was issued;
- 5097 (2) such particulars as the Secretary of State considers appropriate of:
 - 475 722. (a) the route and capacity of the relevant pipeline⁴;
 - 723. (b) the things authorised to be conveyed by it; and
 - 724. (c) the persons authorised to use it; and
 - 476 5098 (3) such other information (if any) about the pipeline as the Secretary of State considers appropriate⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

3 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.

4 For the meaning of 'pipeline' see PARA 1741 ante. See also PARA 1745 note 10 ante.

5 Petroleum Act 1998 s 15(1), Sch 2 para 10.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

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1747. General terms of authorisations.

Any authorisation¹ in respect of a controlled pipeline² may contain such terms as the Secretary of State³ thinks appropriate⁴, including, in particular, terms as to:

- 5099 (1) the duration of the authorisation, including the method of ascertaining its duration⁵;
- 5100 (2) the persons⁶ or kinds of persons who are authorised to execute the works in question⁷ or to use the pipeline⁸ or are so authorised if the Secretary of State consents to the execution of the works or the use of the pipeline by them⁹;
- 5101 (3) in the case of a works authorisation¹⁰, the route of the pipeline, the boundaries within which any works may be executed in pursuance of the authorisation, the design and capacity¹¹ of the pipeline or of part of it and the steps to be taken to avoid or reduce interference by the pipeline with fishing¹² or with other activities connected with the sea¹³ or the sea bed¹⁴ or subsoil¹⁵;
- 5102 (4) the things authorised to be conveyed by the pipeline¹⁶;
- 5103 (5) the steps to be taken for the purpose of ensuring that funds are available to discharge any liability for damage attributable to the release or escape of anything from the pipeline¹⁷;
- 5104 (6) the transactions relating to the pipeline which are not to be entered into, and the other things relating to the pipeline which are not to be done, without the consent of the Secretary of State¹⁸;
- 5105 (7) the persons who may be permitted to acquire an interest in the pipeline and who may not be permitted to retain such an interest¹⁹;
- 5106 (8) the operation of the pipeline, including the methods by which it is to be operated and the persons by whom it may be operated²⁰;
- 5107 (9) the information to be furnished in respect of the pipeline²¹; and
- 5108 (10) the giving by the Secretary of State, with respect to matters specified in the authorisation, of directions which are to have effect as terms of the authorisation²².

1 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

2 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 Petroleum Act 1998 s 15(3).

5 Ibid s 15(3)(a). Unless the Secretary of State considers that there are special circumstances by reason of which the duration of an authorisation should be limited, an authorisation must provide for its duration to be unlimited subject to s 15(5)-(8), 16-28 (as amended) (see PARA 1748 et seq post): s 15(4). As to the termination of authorisations see PARA 1753 et seq post.

6 As to persons to whom the legislation applies see PARA 1743 note 1 ante.

7 I.e. works for the construction of a controlled pipeline: see the Petroleum Act 1998 s 14(1)(a); and PARA 1743 ante at head (1) in the text. For the meaning of 'works' for these purposes see PARA 1743 note 3 ante; and for the meaning of 'construction' see PARA 1740 note 4 ante.

- 8 See *ibid* s 14(1)(b); and PARA 1743 ante at head (2) in the text.
- 9 *Ibid* s 15(3)(b).
- 10 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.
- 11 For further provisions as to the capacity of controlled pipelines see the Petroleum Act 1998 ss 15(5)-(8),
16 (as amended); and PARAS 1748-1749 post.
- 12 As to rights of fishing see generally AGRICULTURE AND FISHERIES.
- 13 As to rights of navigation see generally SHIPPING AND MARITIME LAW.
- 14 As to rights affecting the sea bed see generally INTERNATIONAL RELATIONS LAW.
- 15 Petroleum Act 1998 s 15(3)(c).
- 16 *Ibid* s 15(3)(d).
- 17 *Ibid* s 15(3)(e).
- 18 *Ibid* s 15(3)(f).
- 19 *Ibid* s 15(3)(g).
- 20 *Ibid* s 15(3)(h).
- 21 *Ibid* s 15(3)(i).
- 22 *Ibid* s 15(3)(j).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

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1748. Consequences of certain terms as to capacity or route.

Where a works authorisation¹ contains a term (the 'variation term') requiring that the capacity² of the controlled pipeline³ to which it relates, or of any part of the pipeline, is to be greater than that proposed in the application for the authorisation⁴, or requiring that any part of the route of the pipeline⁵ is to be different from that so proposed, then the Secretary of State⁶ may⁷ serve notice⁸ on the holder⁹ of the authorisation, and on any other person¹⁰ who made representations¹¹ to the Secretary of State that the capacity should be greater than that proposed as mentioned above or that any of the route should be different from that so proposed¹². The notice must:

- 5109 (1) specify the sums, or the method of determining them, which the Secretary of State considers should be paid to the holder by the other person for the purpose of defraying so much of the cost of constructing¹³ the pipeline as is attributable to the variation term¹⁴;
 - 5110 (2) require that other person to make, within a period specified in the notice, arrangements which the Secretary of State considers are appropriate for the purpose of securing that those sums will be paid to the holder if he constructs the pipeline or a relevant part of it in accordance with the variation term or satisfies the Secretary of State that he will so construct it¹⁵;
 - 5111 (3) provide that if such arrangements are not made by the other person within that period, the holder may elect in the manner specified in the notice:
- 477
- 725. (a) that the term is to have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the other person; and
 - 726. (b) that the provisions included in the notice by virtue of head (4) below will cease to have effect¹⁶; and
- 478
- 5112 (4) authorise the holder, if he satisfies the Secretary of State that the pipeline or a relevant part of it has been or will be constructed in accordance with the term, to recover those sums from the other person¹⁷.

1 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.

2 As to terms governing the capacity of controlled pipelines see PARA 1747 the text and note 11 ante.

3 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante; and for the meaning of 'pipeline' see PARA 1741 ante.

4 As to applications for works authorisations see PARA 1744 note 5 ante.

5 As to terms governing the routes of controlled pipelines see PARA 1747 ante at head (3) in the text.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 le subject to the Petroleum Act 1998 s 17(7) or s 17G(6) (as added): see note 12 infra.

8 le notice in writing; see *ibid* s 28(1). As to the service of notices and documents see PARA 1030 note 11 ante.

9 In relation to an authorisation, 'holder' means the person to whom the authorisation was issued: *ibid* s 28(1). For the meaning of 'authorisation' see PARA 1743 note 7 ante.

10 As to persons to whom the legislation applies see PARA 1743 note 1 ante.

11 As to representations with respect to applications for works authorisations see PARA 1744 note 5 ante.

12 Petroleum Act 1998 s 15(5), (6) (s 15(6) amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 1). Before serving a notice under the Petroleum Act 1998 s 15(6) (as amended) on a person other than the holder of the relevant authorisation: (1) the Secretary of State must give that person an opportunity to make an application under s 17(1) (see PARA 1750 post) in respect of the proposed pipeline to which the authorisation relates; and s 17(1)-(6) (as amended) has effect for this purpose as if references to a pipeline and the owner of it were references to the proposed pipeline and the proposed owner of it (s 17(7)); (2) the Secretary of State must, in the case of a controlled petroleum pipeline (for the meaning of which see PARA 1750 note 6 post), give that person an opportunity to make applications under s 17F (as added and amended) (see PARA 1751 post) in respect of the proposed pipeline to which the authorisation relates; and s 17F (as added and amended) and s 17G(1)-(5) (as added) (see PARA 1751 post) have effect for this purpose as if references to a pipeline and the owner of it were references to the proposed pipeline and the proposed owner of it (s 17G(6) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4)).

13 For the meaning of 'construction' see PARA 1740 note 4 ante.

14 Petroleum Act 1998 s 15(7)(a).

15 *Ibid* s 15(7)(b), (8).

16 *Ibid* s 15(7)(c), (8).

17 *Ibid* s 15(7)(d).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

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1749. Compulsory modifications of pipelines.

If in the case of a controlled pipeline¹ it appears to the Secretary of State², on the application of a person³ other than the owner⁴ of the pipeline, that the capacity of the pipeline can and should be increased by modifying⁵ apparatus and works associated with the pipeline⁶, or that the pipeline can and should be modified by installing in it a junction through which another pipeline may be connected to the pipeline⁷, then after giving to the owner of the pipeline an opportunity of being heard about the matter, the Secretary of State may⁸ serve notice⁹ on the owner and on the applicant¹⁰. The notice must:

- 5113 (1) specify the modifications connected with the pipeline which the Secretary of State considers should be made in consequence of the application¹¹;
- 5114 (2) specify the sums, or the method of determining the sums, which he considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications¹²;
- 5115 (3) require the applicant to make, within a period specified in that behalf in the notice, arrangements which the Secretary of State considers appropriate for the purpose of securing that those sums will be paid to the owner if he carries out the modifications or satisfies the Secretary of State that he will carry them out¹³;
- 5116 (4) require the owner, if the applicant makes those arrangements within the period mentioned in head (3) above, to carry out the modifications within a period specified for the purpose in the notice¹⁴; and
- 5117 (5) authorise the owner, if he satisfies the Secretary of State that he has carried out or will carry out the modifications, to recover those sums from the applicant¹⁵.

Any person who contravenes¹⁶ any provision of a notice served on him in accordance with these provisions in his capacity as the owner of the pipeline to which the notice relates, in a case where no authorisation for the use of the pipeline is required¹⁷, is guilty of an offence¹⁸ and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine¹⁹.

1 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante. For the meaning of 'pipeline' see PARA 1741 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 As to persons to whom the legislation applies see PARA 1743 note 1 ante.

4 For the purposes of the Petroleum Act 1998 Pt III (ss 14-28) (as amended) (see PARAS 1030-1032, 1740 et seq ante; the text and notes 5-18 infra; and PARA 1750 et seq post), in relation to a pipeline, 'owner', and in relation to a proposed pipeline, 'proposed owner', mean the person for the time being designated as the owner of the pipeline, or, as the case may be, as the proposed owner of the proposed pipeline, by an order made by the Secretary of State: s 27(1). An order designating a person as the proposed owner of a proposed pipeline may also contain provision for him to be designated as the owner of the pipeline in question at a time designated by or under the order: s 27(2). Before designating a person under s 27(1) or (2), the Secretary of State must give the person an opportunity of being heard with respect to the matter: s 27(3). Where a person for the time being so designated requests the Secretary of State in writing to cancel the designation, he must

consider the request and, if he considers it appropriate to do so, give that person an opportunity of being heard in connection with that request: s 27(4). For the meaning of 'heard' see PARA 1745 note 16 ante.

See also s 27(1A) (as added and amended) (meaning of 'owner' and 'proposed owner' in the case of controlled petroleum pipelines, other than for the purposes of s 16 (as amended), s 17(1) and the first reference in s 17F(2) (as added); and PARA 1751 note 6 post.

5 For the purposes of ibid s 16(1), (2) (as amended), references to modifications include, in the case of modifications of any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works: s 16(3).

6 Ibid s 16(1)(a).

7 Ibid s 16(1)(b).

8 Ie subject to ibid s 17(8) or s 17G(7) (as added): see note 10 infra.

9 Ie notice in writing: see ibid s 28(1). As to the service of notices and documents see PARA 1030 note 11 ante.

10 Ibid s 16(1) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 2). Before serving a notice under the Petroleum Act 1998 s 16(1) (as amended), where the Secretary of State proposes to serve the notice on a person other than the owner of the relevant pipeline: (1) he must give that person particulars of the modifications which he proposes to specify in the notice and an opportunity to make an application under s 17(1) (see PARA 1750 post), in respect of the pipeline; and s 17(1)-(6) (as amended) (see PARA 1750 post) has effect for this purpose as if for references to a pipeline there were substituted references to the pipeline as it would be with those modifications (s 17(8)); (2) he must, in the case of a controlled petroleum pipeline (for the meaning of which see PARA 1750 note 6 post), give that person particulars of the modifications which he proposes to specify in the notice and an opportunity to make applications under s 17F (as added) (see PARA 1751 post) in respect of the pipeline; and s 17F (as added) and s 17G(1)-(5) (as added) have effect for this purpose as if references to a pipeline were references to the pipeline as it would be with those modifications (s 17G(7) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4).

11 Petroleum Act 1998 s 16(2)(a).

12 Ibid s 16(2)(b).

13 Ibid s 16(2)(c).

14 Ibid s 16(2)(d). For the purposes of s 14(1) (see PARA 1743 ante), a notice under s 16(1) (as amended) requiring a person to carry out modifications authorises him to carry them out; but nothing in Sch 2 (see PARAS 1744-1745 ante) applies to such a notice: s 16(4).

15 Ibid s 16(2)(e).

16 For the meaning of 'contravention' see PARA 1743 note 9 ante.

17 Ie under the Petroleum Act 1998 s 14(1): see PARA 1743 ante. See also note 14 supra.

18 Ibid s 21(1)(b) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 7).

19 Petroleum Act 1998 s 21(1). As to criminal proceedings see PARA 1759 post; and as to the statutory maximum see PARA 689 note 2 ante.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/D. ACQUISITION OF RIGHTS TO USE PIPELINES/1750. Acquisition of rights to use pipelines belonging to others, except controlled petroleum pipelines and gas interconnectors.

D. ACQUISITION OF RIGHTS TO USE PIPELINES

1750. Acquisition of rights to use pipelines belonging to others, except controlled petroleum pipelines and gas interconnectors.

Where a person¹ applies to the Secretary of State² for a statutory notice³ which secures to the applicant a right to have conveyed, by a controlled pipeline⁴ of which he is not the owner⁵ (but excluding a controlled petroleum pipeline⁶ or a gas interconnector⁷), quantities specified in the application of things which are of a kind so specified and which the pipeline is designed to convey, the Secretary of State must:

- 5118 (1) give notice⁸ to the owner of the pipeline and the applicant that he proposes to consider the application; and
- 5119 (2) after the expiry of 21 days beginning with the date on which that notice was served, but before considering the application, give them an opportunity of being heard⁹ with respect to the application¹⁰.

Where after considering such an application the Secretary of State is satisfied that, if he served the necessary statutory notice¹¹, the pipeline in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of permitted substances¹² which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant¹³.

The statutory notice may contain such provisions as the Secretary of State considers appropriate for any of the following purposes¹⁴:

- 5120 (a) to secure to the applicant, without prejudicing the efficient operation¹⁵ of the pipeline, the right to have conveyed by the pipeline the quantities specified in the application of the things so specified¹⁶;
- 5121 (b) to secure that the exercise of the right is not prevented or impeded¹⁷;
- 5122 (c) to regulate the charges which may be made for the conveyance of things by virtue of the right¹⁸; and
- 5123 (d) to secure to the applicant the right to have a pipeline of his connected to the pipeline by the applicant or the owner¹⁹.

Such a notice may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in head (a) or head (d) above of amounts specified in the notice or determined in accordance it²⁰.

Any person who contravenes any provision of a notice served on him in accordance with these provisions in his capacity as the owner of the pipeline to which the notice relates, in a case where no authorisation for the use of the pipeline is required²¹, is guilty of an offence²² and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine²³.

- 1 As to persons to whom the legislation applies see PARA 1743 note 1 ante.
- 2 As to the Secretary of State see PARA 601 note 1 ante.
- 3 I.e. a notice under the Petroleum and Submarine Pipelines Act 1975 s 17 (as amended): see the text and notes 11-19 infra. For the meaning of 'notice' generally see PARA 1757 note 7 ante.
- 4 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante. For the meaning of 'pipeline' see PARA 1741 ante.
- 5 For the meaning of 'owner' see PARA 1749 note 4 ante.
- 6 'Controlled petroleum pipeline' means any controlled pipeline or one of a network of controlled pipelines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects (1) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process; (2) directly to a place outside Great Britain; (3) directly to a terminal; or (4) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal: Petroleum Act 1998 s 28(1) (definition added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 9). For these purposes, 'petroleum' has the same meaning as in the Petroleum Act 1998 Pt I (ss 1-9) (see s 1; and PARA 1626 ante), and includes petroleum which has undergone any processing; 'petroleum production project' means a project carried out by virtue of a licence granted under s 3 (see PARA 1639 ante), or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas; and 'terminal' includes (a) onshore facilities in the United Kingdom for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids; (b) gas processing facilities; and (c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain: s 28(1) (definitions as so added). 'Gas processing facility' means any facility in Great Britain operated otherwise than by a gas transporter (within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended): see PARA 805 ante) which carries out gas processing operations; and 'gas processing operation' means any of the following operations, namely (i) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain; (ii) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and (iii) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person: s 28(1) (definitions as so added); Utilities Act 2000 s 76(7). For the meaning of 'gas' for these purposes see PARA 1030 note 2 ante; for the meaning of 'foreign sector of the continental shelf' see PARA 1678 note 13 ante; and for the meaning of 'Great Britain' see PARA 602 note 7 ante.
- 7 I.e. within the meaning of the Gas Act 1986 Pt I (as amended): see PARA 792 note 4 ante.
- 8 I.e. notice in writing: see the Petroleum Act 1998 s 28(1). As to the giving and service of notices and documents see PARA 1030 note 11 ante.
- 9 For the meaning of 'heard' see PARA 1745 note 16 ante.
- 10 Petroleum Act 1998 s 17(1), (1A), (2) (s 17(1A) added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 3; amended by the Energy Act 2004 s 151(5)(a)).
- 11 See note 3 supra.
- 12 For these purposes, 'permitted substances' means the things which may be conveyed by the pipeline in accordance with an authorisation (or, if no authorisation for the use of the pipeline is required by the Petroleum Act 1998 s 14(1) (see PARA 1743 ante), means the things which the pipeline is designed to convey): s 17(4). For the meaning of 'authorisation' see PARA 1743 note 7 ante.
- 13 Ibid s 17(3).
- 14 Ibid s 17(5).
- 15 I.e. for the purpose mentioned in ibid s 17(3): see the text and notes 11-13 supra.
- 16 Ibid s 17(5)(a). The use of a pipeline by any person in accordance with a right secured to him by virtue of s 17 (as amended) is not a contravention of s 14(1) (see PARA 1743 ante), but a person to whom a right is so secured is not entitled to assign the right to any other person: s 17(9). For the meaning of 'contravention' see PARA 1743 note 9 ante.

17 Ibid s 17(5)(b).

18 Ibid s 17(5)(c).

19 Ibid s 17(5)(d).

20 Ibid s 17(6).

21 le under ibid s 14(1): see PARA 1743 ante.

22 Ibid s 21(1)(b) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 7).

23 Petroleum Act 1998 s 28(1). As to criminal proceedings see PARA 1759 post; and as to the statutory maximum see PARA 689 note 2 ante.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

1750 Acquisition of rights to use pipelines belonging to others, except controlled petroleum pipelines and gas interconnectors

TEXT AND NOTES--A person ('the applicant') who seeks a right to have petroleum processed by an oil processing facility must, before making an application to the Secretary of State under the Energy Act 2008 s 80(5), apply to the owner of the facility for the right: Energy Act 2008 s 80(1). An application under s 80(1) may be made only in respect of an oil processing facility which is situated in (1) Great Britain, (2) the territorial sea adjacent to Great Britain, or (3) the sea in any area designated under the Continental Shelf Act 1964 s 1(7) (see PARA 1636): Energy Act 2008 s 80(2). An application under s 80(1) is to be made by notice in writing specifying the nature of the right which is being sought: s 80(3). The notice must, in particular, specify (a) the period during which the petroleum is to be processed by the facility, (b) the kind of petroleum to be processed, and (c) the quantities of petroleum to be processed: s 80(4). If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for directions which would secure to the applicant the right specified in the notice: s 80(5). The Secretary of State may not consider an application under s 80(5) unless satisfied that the parties have had a reasonable time in which to reach agreement: s 80(6). When considering an application under s 80(5) the Secretary of State must (i) decide whether the application is to be adjourned to enable further negotiations between the parties, considered further or rejected, (ii) give notice of that decision to the applicant, and (iii) in the case of a decision to consider the application further, give notice to the persons mentioned in s 80(8) and give them the opportunity to be heard in relation to the application: s 80(7). Those persons are (A) the owner of the oil processing facility, (B) any person with a right to have petroleum processed at the facility, and (C) the Health and Safety Executive: s 80(8). On an application under s 80(5), the Secretary of State may give directions if satisfied that they will not prejudice (aa) the efficient operation of the oil processing facility, (bb) the processing by the facility of the quantities of petroleum which the owner or an associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by the owner or associate, or (cc) the processing by the facility of the quantities of petroleum which another person with a right to have petroleum processed

by the facility requires to be processed in the exercise of that right: s 80(9). For the meaning of 'associate' see Energy Act 2008 s 82.

Supplemental provision is made with respect to directions under the Energy Act 2008 s 80: see s 81.

NOTE 6--Definitions of 'terminal' and 'gas processing operation' in Petroleum Act 1998 s 28(1) amended: Energy Act 2008 s 78(4)(a), (c), Sch 6.

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1751. Acquisition of rights to use controlled petroleum pipelines, except those subject to the Norwegian access system.

The following provisions apply to controlled petroleum pipelines¹, other than pipelines subject to² the Norwegian access system³.

Any person who seeks a right to have things conveyed by a controlled petroleum pipeline of which he is not the owner⁴ ('the applicant') must, before making an application to the Secretary of State⁵, apply to the owner of the pipeline⁶ for the right⁷. Such an application must be made by giving notice⁸ to the owner specifying what is being sought⁹. The notice must, in particular, specify the kind of things to be conveyed (which must be of a kind the pipeline is designed to convey) and the quantities to be conveyed¹⁰.

If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a statutory notice¹¹ securing to the applicant the right to have conveyed by the pipeline in respect of which he has made an application to the owner under the above provisions the quantities specified in the notice given to the owner¹² of things of a kind so specified¹³. The Secretary of State may not entertain such an application unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application¹⁴ to the owner¹⁵. Where a person applies to the Secretary of State under the above provision and the Secretary of State is satisfied that the parties have had such reasonable time, he must:

- 5124 (1) give notice to the owner of the pipeline and the applicant that he proposes to consider the application; and
- 5125 (2) after the expiry of 21 days beginning with the date on which that notice was served, but before considering the application, give them an opportunity of being heard¹⁶ with respect to the application¹⁷.

Where an application is so made to the Secretary of State in respect of a pipeline which is situated partly in, under or over controlled waters¹⁸ and partly in a foreign sector of the continental shelf¹⁹, the Secretary of State must consult the relevant authorities in the other country with respect to the application before considering it himself²⁰.

For the purpose of considering such an application, the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice²¹. That information may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to petroleum production projects²² and controlled petroleum pipelines²³. The Secretary of State may not, however, disclose to any person any information so obtained without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment²⁴.

When considering the application, the Secretary of State must, so far as relevant, take into account:

- 5126 (a) capacity which is or can reasonably be made available in the pipeline in question;
- 5127 (b) any incompatibilities of technical specification which cannot reasonably be overcome;
- 5128 (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
- 5129 (d) the owner's reasonable needs for the transport and processing of petroleum;
- 5130 (e) the interests of all users and operators of the pipeline;
- 5131 (f) the need to maintain security and regularity of supplies of petroleum; and
- 5132 (g) the number of parties involved in the dispute²⁵.

Where the Secretary of State is satisfied that, if he served a notice under this provision, the pipeline in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of permitted substances²⁶ which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant²⁷. Such a notice may contain such provisions as the Secretary of State considers appropriate for any of the following purposes²⁸:

- 5133 (i) to secure to the applicant the right to have conveyed by the pipeline the quantities specified in the original notice to the owner²⁹ of the things of a kind so specified³⁰;
- 5134 (ii) to secure that the exercise of the right is not prevented or impeded³¹;
- 5135 (iii) to regulate the charges which may be made for the conveyance of things by virtue of the right³²; and
- 5136 (iv) to secure to the applicant the right to have a pipeline of his connected to the pipeline by the applicant or owner³³.

Such a notice may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in head (i) or head (iv) above of amounts specified in the notice or determined in accordance with the notice³⁴.

Any person who contravenes any provision of such a notice served on him in his capacity as the owner of the pipeline to which the notice relates, in a case where no authorisation for the use of the pipeline is required³⁵, is guilty of an offence³⁶ and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine³⁷.

1 For the meaning of 'controlled petroleum pipeline' see PARA 1750 note 6 ante.

2 I.e. pipelines to which the Petroleum Act 1998 s 17GA (as added) applies: see PARA 1752 post.

3 Ibid s 17F(1) (ss 17F, 17G added by the Gas (Third Party Access and Accounts) Regulations 2000, 2000/1937, reg 2(4), Sch 4 para 4; the Petroleum Act 1998 s 17F(1) amended by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, art 2, Schedule para 1).

4 For the meaning of 'owner' for this purpose see PARA 1749 note 4 ante.

5 I.e. under the Petroleum Act 1998 s 17F(5) (as added): see the text and notes 11-13 infra. As to the Secretary of State see PARA 601 note 1 ante.

6 For the purposes ibid Pt III (ss 14-28) (as amended), (other than s 16 (as amended) (see PARA 1749 ante), s 17(1) (see PARA 1750 ante), the first reference in s 17F(2) (as added) (see the text to note 4 supra) and the reference in s17GA(2)(a) (as added) (see PARA 1752 post), in the case of downstream gas pipelines and controlled petroleum pipelines (1) 'owner' in relation to a pipeline includes a person in whom the pipeline is vested; and a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that (a) he is entitled to use the capacity for a period of one year or more; and (b) the

right is capable of being assigned or otherwise disposed of to another person; and (2) 'proposed owner' in relation to a proposed pipeline includes a person in whom the pipeline is proposed to be vested: s 27(1A) (added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 8; amended by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, art 2, Schedule para 4; prospectively amended, so as to remove the reference to downstream gas pipelines, by the Energy Act 2004 s 197(9), Sch 23 Pt 1, as from a day to be appointed under s 198(2); at the date at which this title states the law, no such day had been appointed).

7 Petroleum Act 1998 s 17F(2) (as added: see note 3 supra).

8 Ie notice in writing: see *ibid* s 28(1). As to the giving and service of notices and documents see PARA 1030 note 11 ante.

9 *Ibid* s 17F(3) (as added: see note 3 supra).

10 *Ibid* s 17F(4) (as added: see note 3 supra).

11 Ie a notice under *ibid* s 17F(9) (as added): see the text and notes 26-27 infra.

12 Ie the notice under *ibid* s 17F(3) (as added: see the text and notes 8-9 supra).

13 *Ibid* s 17F(5) (as added: see note 3 supra).

14 Ie the application under *ibid* s 17F(2) (as added): see the text and notes 4-7 supra.

15 *Ibid* s 17F(6) (as added: see note 3 supra).

16 For the meaning of 'heard' see PARA 1745 note 16 ante.

17 Petroleum Act 1998 s 17F(7) (as added: see note 3 supra).

18 For the meaning of 'controlled waters' see PARA 1740 note 6 ante.

19 For the meaning of 'foreign sector of the continental shelf' see PARA 1678 note 13 ante.

20 Petroleum Act 1998 s 17G(1) (as added: see note 3 supra).

21 *Ibid* s 17G(2) (as added: see note 3 supra).

22 For the meaning of 'petroleum production project' see PARA 1750 note 6 ante.

23 Petroleum Act 1998 s 17G(3) (as added: see note 3 supra).

24 *Ibid* s 17G(4) (as added: see note 3 supra).

25 *Ibid* s 17F(8) (as added: see note 3 supra).

26 For this purpose, 'permitted substances' means the things which may be conveyed by the pipeline in accordance with an authorisation (or, if no authorisation for the use of the pipeline is required by *ibid* 14(1) (see PARA 1743 ante) means the things which the pipeline is designed to convey): s 17G(5) (as added: see note 3 supra).

27 *Ibid* s 17F(9) (as added: see note 3 supra).

28 *Ibid* s 17F(10) (as added: see note 3 supra).

29 Ie the notice under *ibid* s 17F(3) (as added): see the text and notes 8-9 supra.

30 *Ibid* s 17F(10)(a) (as added: see note 3 supra). The use of a pipeline by any person in accordance with a right secured to him by the Secretary of State by virtue of s 17F (as added and amended) is not a contravention of s 14(1) (see PARA 1743 ante); but a person to whom a right is so secured may not assign the right to any other person: s 17G(8) (as added: see note 3 supra). For the meaning of 'contravention' see PARA 1743 note 9 ante.

31 *Ibid* s 17F(10)(b) (as added: see note 3 supra).

32 *Ibid* s 17F(10)(c) (as added: see note 3 supra).

33 Ibid s 17F(10)(d) (as added: see note 3 supra).

34 Ibid s 17F(11) (as added: see note 3 supra).

35 Ie under ibid s 14(1): see PARA 1743 ante.

36 Ibid s 21(1)(b) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 7).

37 Petroleum Act 1998 s 28(1). As to criminal proceedings see PARA 1759 post; and as to the statutory maximum see PARA 689 note 2 ante.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/D. ACQUISITION OF RIGHTS TO USE PIPELINES/1752. Controlled petroleum pipelines subject to the Norwegian access system.

1752. Controlled petroleum pipelines subject to the Norwegian access system.

The following provisions apply to any controlled petroleum pipeline¹ which, under the terms of the Framework Agreement concerning cross-boundary petroleum co-operation dated 4 April 2005 and made between the government of the United Kingdom² and the government of the Kingdom of Norway, is subject to a system whereby any terms or conditions on which persons who are not the owner³ of the pipeline are entitled to have things conveyed by it are determined according to the law of, or by the relevant authority of, the Kingdom of Norway⁴.

Where:

- 5137 (1) under the terms of the Framework Agreement, any term or condition on which a person who is not the owner⁵ of a pipeline is entitled to have conveyed by the pipeline any petroleum⁶ originating wholly or partly from a designated area⁷ has been determined according to the law of, or by the relevant authority of, the Kingdom of Norway; and
- 5138 (2) a dispute has arisen between the person mentioned in head (1) above and the owner as to whether the owner has complied with any term or condition so determined,

the person mentioned in head (1) above may apply to the Secretary of State⁸ for a determination⁹ whether or not the owner has complied with the terms and conditions in question¹⁰. Such an application must specify the terms and conditions in dispute and the applicant's reasons for considering that the owner has failed to comply with them¹¹; and the applicant must give notice¹² of the application to the owner of the pipeline¹³.

Where a person applies to the Secretary of State under the above provision, the Secretary of State must:

- 5139 (a) give notice to the owner of the pipeline and the applicant that he proposes to consider the application; and
- 5140 (b) after the expiry of 21 days beginning with the date on which that notice was served, but before considering the application, give them an opportunity of being heard¹⁴ with respect to the application¹⁵.

For the purpose of considering such an application, the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice¹⁶. He may not, however, disclose to any person any information so obtained without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under the Framework Agreement or by or under any enactment¹⁷.

The Secretary of State must determine whether or not the owner has complied with the terms and conditions in question, and must give notice of that determination to the owner and the applicant¹⁸. Where he determines that the owner has not so complied, the notice must state what the owner is required to do or, as the case may be, to refrain from doing, in order to

comply with the terms and conditions in question¹⁹. Where he is obliged to do so under the Framework Agreement, the Secretary of State must make his determination and issue the above-mentioned notice jointly with the relevant authority of the Kingdom of Norway²⁰.

The obligation to comply with a notice of determination given by the Secretary of State, in a case where the owner has not complied with the terms and conditions in question²¹, is a duty owed to any person who may be affected by a failure to comply with it²². Where such a duty is owed to any person, any breach of the duty which causes that person to sustain loss or damage is actionable at the suit or instance of that person²³. In any proceedings so brought against a person, it is, however, a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty²⁴.

1 For the meaning of 'controlled petroleum pipeline' see PARA 1740 note 6 ante.

2 For the meaning of 'United Kingdom' see PARA 602 note 7 ante.

3 For the meaning of 'owner' for these purposes see PARA 1751 note 6 ante.

4 Petroleum Act 1998 s 17GA(1), (9) (s 17GA, 17GB added by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, art 2, Schedule para 2).

5 For the meaning of 'owner' for this purpose see PARA 1750 note 6 ante.

6 For the meaning of 'petroleum' see PARA 1740 note 6 ante.

7 I.e. an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 ante.

8 As to the Secretary of State see PARA 601 note 1 ante.

9 I.e. a determination under the Petroleum Act 1998 s 17G(6) (as added): see the text and note 18 infra.

10 Ibid s 17GA(2) (as added: see note 4 supra).

11 Ibid s 17GA(3) (as added: see note 4 supra).

12 I.e. notice in writing: see ibid s 28(1). As to the giving and service of notices and documents see PARA 1030 note 11 ante.

13 Ibid s 17GA(4) (as added: see note 4 supra).

14 For the meaning of 'heard' see PARA 1745 note 16 ante.

15 Petroleum Act 1998 s 17GA(5) (as added: see note 4 supra).

16 Ibid s 17GB(1) (as added: see note 4 supra).

17 Ibid s 17GB(2) (as added: see note 4 supra).

18 Ibid s 17GA(6) (as added: see note 4 supra).

19 Ibid s 17GA(7) (as added: see note 4 supra).

20 Ibid s 17GA(8) (as added: see note 4 supra).

21 I.e. a notice given under ibid 17GA(6) (as added) in a case falling within s 17GA(7) (as added): see the text and notes 18-19 supra.

22 Ibid s 17H(1) (s 17H added by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 4; the Petroleum Act 1998 s 17H(1) amended for these purposes by the Petroleum Act 1998 (Third Party Access) Order 2007, SI 2007/290, SI 2007/290, art 2, Schedule para 3).

23 Ibid s 17H(2) (as added: see note 22 supra).

24 Ibid s 17H(3) (as added: see note 22 supra).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/E. TERMINATION OF AUTHORISATIONS/1753. Termination of authorisations; in general.

E. TERMINATION OF AUTHORISATIONS

1753. Termination of authorisations; in general.

An authorisation¹ for a pipeline² ceases to be in force at the earliest of the following:

- 5141 (1) where the duration of the authorisation is not expressed to be unlimited, the time at which that duration expires as specified by or ascertained under the terms of the authorisation³;
- 5142 (2) the time, if any, agreed in writing by the holder⁴ and the Secretary of State⁵ as the time at which the authorisation is to cease to be in force⁶; and
- 5143 (3) the time specified in a notice served by the Secretary of State⁷ where execution of works has not been begun at the expiry of the specified period⁸ or where the holder has contravened the terms of the authorisation or of any provision of a notice⁹ requiring modifications of, or third-party access to, the pipeline¹⁰.

When an authorisation ceases to be in force the Secretary of State must publish notice to that effect in the London, Edinburgh and Belfast Gazettes or in such one of them as he considers appropriate¹¹.

1 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

2 For the meaning of 'pipeline' see PARA 1741 ante.

3 Petroleum Act 1998 s 18(1)(a).

4 For the meaning of 'holder' see PARA 1748 note 9 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Petroleum Act 1998 s 18(1)(b). It is an offence to make a false statement for the purpose of inducing the Secretary of State to come to such an agreement: see PARA 1758 post.

7 I.e. a notice under *ibid* s 18(2) (see PARA 1754 post) or s 18(6) (as amended) (see PARA 1755 post).

8 See *ibid* s 18(2), (3); and PARA 1754 post.

9 I.e. a notice under *ibid* s 16 (as amended), s 17 (as amended) or s 17F(9) (as added): see PARAS 1749-1751 ante.

10 See *ibid* s 18(1)(c).

11 See *ibid* s 18(9).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/E. TERMINATION OF AUTHORISATIONS/1754. Termination for failure to execute works.

1754. Termination for failure to execute works.

If it appears to the Secretary of State¹ that the execution of works² authorised by a works authorisation³ has not been begun at the expiry of the period of three years beginning with the date when the authorisation is expressed to come into force⁴, or such longer period beginning with that date as the Secretary of State has, on the application of the holder⁵, specified in a notice served⁶ on him during that period of three years⁷, the Secretary of State must serve on him a notice stating that the authorisation is to cease to be in force at the time specified in the notice⁸.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie disregarding the execution of any of the works which the Secretary of State considers should be disregarded for this purpose: Petroleum Act 1998 s 18(4).

3 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.

4 See the Petroleum Act 1998 s 18(3)(a).

5 For the meaning of 'holder' see PARA 1748 note 9 ante.

6 Ie served under the Petroleum Act 1998 s 18(3)(b). As to the service of notices see PARA 1030 note 11 ante. The Secretary of State may not serve such a notice unless (1) he is satisfied that notice of the application has been served on (a) the persons on whom, in accordance with Sch 2 (see PARA 1745 ante), notice was served of the application for the authorisation, or on such of those persons as he considers appropriate in the circumstances; and (b) such other persons, if any, as he considers appropriate in the circumstances; and (2) he has considered any written representations about the application made, during such period as he considers reasonable, by any of the persons on whom notice of the application was served in accordance with head (1) supra: s 18(5).

7 See *ibid* s 18(3)(b). It is an offence to make a false statement for the purpose of inducing the Secretary of State to specify a period under s 18(3)(b): see PARA 1758 post.

8 *Ibid* s 18(2).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/E. TERMINATION OF AUTHORISATIONS/1755. Termination for contraventions.

1755. Termination for contraventions.

If the Secretary of State¹ considers that the holder² of an authorisation³:

- 5144 (1) has contravened⁴ a term of the authorisation; or
- 5145 (2) has contravened any provision of a notice which, under the specified provisions of the Petroleum Act 1998⁵, was served on him in his capacity as the owner⁶ of the pipeline⁷, or the proposed owner of the proposed pipeline, to which the authorisation relates,

he may serve on the holder a notice⁸ stating that the authorisation is to cease to be in force at a time specified in the notice⁹. He may not, however, serve such a notice without first giving the holder of the authorisation an opportunity to make written representations to him¹⁰. Nor may he serve such a notice in consequence of a contravention if he considers that:

- 5146 (a) having regard to the nature and consequences of the contravention and to any previous contravention, it would be unreasonable to terminate the authorisation in consequence of the contravention; and
- 5147 (b) the holder has taken adequate steps to prevent similar contraventions in future¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 For the meaning of 'holder' see PARA 1748 note 9 ante.

3 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

4 For the meaning of 'contravention' see PARA 1743 note 9 ante.

5 I.e. under the Petroleum Act 1998 s 16 (as amended), s 17 (as amended) or s 17F(9) (as added): see PARAS 1749-1751 ante.

6 For the meanings of 'owner' and 'proposed owner' see PARAS 1750 note 6, 1751 note 6 ante.

7 For the meaning of 'pipeline' see PARA 1741 ante.

8 I.e. a notice in writing: see the Petroleum Act 1998 s 28(1). As to the service of notices see PARA 1030 note 11 ante.

9 Ibid s 18(6) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 5).

10 Petroleum Act 1998 s 18(7). It is an offence to make a false statement for the purpose of inducing the Secretary of State not to serve a notice under s 18(6) (as amended): see PARA 1758 post.

11 Ibid s 18(8); and see note 10 supra.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/E. TERMINATION OF AUTHORISATIONS/1756. Vesting of pipelines on termination or subsequent issue of authorisations.

1756. Vesting of pipelines on termination or subsequent issue of authorisations.

When an authorisation¹ ceases to be in force² the controlled pipeline³ to which it relates is transferred to and vests⁴ in the Secretary of State⁵ free from incumbrances⁶. Where the Secretary of State proposes to issue an authorisation to any person⁷ in respect of a pipeline so vested in the Secretary of State he may agree with that person, on terms which may include provision for the making of payments by that person to the Secretary of State, that the authorisation is to include a specified⁸ statement⁹. Where an authorisation includes such a statement the pipeline to which the authorisation relates is transferred to and vests¹⁰ in the holder of the authorisation¹¹.

1 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

2 See PARAS 1753-1755 ante.

3 For the meaning of 'controlled pipeline' see PARA 1740 note 6 ante. For the meaning of 'pipeline' see PARA 1741 ante.

4 Ie by virtue of the Petroleum Act 1998 s 19(1) (as amended); but see note 6 infra.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Petroleum Act 1998 s 19(1). Nothing in this provision, however, prejudices (1) any interest belonging to the Crown Estate or to Her Majesty in right of the Duchy of Lancaster or the Duchy of Cornwall; or (2) any right conferred by a notice relating to the pipeline under s 17 (as amended) (see PARA 1750 ante) or s 17F(9) (as added) (see PARA 1751 ante): s 19(1)(a), (b) (amended by the Gas (Third Party Access and Accounts) Regulations 2000, SI 2000/1937, reg 2(4), Sch 4 para 6).

7 As to the persons to whom the legislation applies see PARA 1743 note 1 ante.

8 Ie a statement that the Petroleum Act 1998 s 19(3) (see the text and notes 10-11 infra) applies to the authorisation: s 19(2).

9 Ibid s 19(2).

10 Ie by virtue of ibid s 19(3), and at the time specified in that behalf in the authorisation.

11 Ibid s 19(3). The transfer and vesting is subject to any interest or right then subsisting in respect of the pipeline by virtue of s 19(1)(a) or (b) (as amended) (see note 6 supra): s 19(3).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/F. ENFORCEMENT AND OFFENCES/1757. Enforcement powers of the Secretary of State.

F. ENFORCEMENT AND OFFENCES

1757. Enforcement powers of the Secretary of State.

If a person¹ executes any works² in contravention³ of the statutory restrictions on the construction⁴ and use of submarine pipelines⁵ the Secretary of State⁶ may at any time serve on him a notice⁷ requiring him to comply with the requirement to remove such of the works as are specified in the notice as works to be removed⁸. It is the duty of the recipient of such a notice to comply with it within the period specified in it, and if he fails to do so the Secretary of State may comply with the notice on his behalf and recover from him any expenses reasonably incurred in doing so⁹.

If a person executes any works in contravention of the provisions previously mentioned and the Secretary of State considers that it is urgently necessary to do such things in relation to the works as he could have required that person to do by notice¹⁰, the Secretary of State may do those things and recover from that person any expenses reasonably incurred in doing so¹¹. The fact that any thing is done or omitted by the recipient of such a notice for the purpose of complying with the notice¹², or by the Secretary of State in exercise of his enforcement powers¹³, does not relieve him from liability for any damage which is attributable to the act or omission and for which he would have been liable had the act or omission not been authorised by these provisions¹⁴; but the Secretary of State is entitled to recover from the person who executed the works in question the amount of any damages which, in consequence of the works, are paid by the Secretary of State by virtue of this provision¹⁵.

1 As to persons to whom the legislation applies see PARA 1743 note 1 ante.

2 As to the meaning of 'works' see PARA 1743 note 3 ante.

3 For the meaning of 'contravention' see PARA 1743 note 9 ante.

4 For to the meaning of 'construction' see PARA 1740 note 4 ante.

5 Ie the provisions of the Petroleum Act 1998 s 14(1): see PARA 1743 ante.

6 As to the Secretary of State see PARA 601 note 1 ante.

7 'Notice' means notice in writing: Petroleum Act 1998 s 28(1). As to the service of notices see PARA 1030 note 11 ante.

8 Ibid s 21(2).

9 Ibid s 21(3).

10 Ie by notice under ibid s 21(2).

11 Ibid s 21(4).

12 Ibid s 21(5)(a).

13 Ibid s 21(5)(b). As to those powers see s 21(3), (4); and the text and notes 9-11 supra.

14 Ie by ibid s 21.

15 Ibid s 21(5).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/F. ENFORCEMENT AND OFFENCES/1758. Offence of making false statements.

1758. Offence of making false statements.

Any person¹ is guilty of an offence if he makes a statement which he knows is false in a material particular, or recklessly² makes a statement which is false in a material particular, for the purpose of inducing the Secretary of State³:

- 5148 (1) to issue any authorisation⁴; or
- 5149 (2) to agree⁵ that an authorisation is to cease to be in force; or
- 5150 (3) to specify a period⁶ within which the execution of works authorised by a works authorisation⁷ must be begun; or
- 5151 (4) not to serve a contravention notice⁸ on him⁹.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine¹⁰.

1 As to the persons to whom the legislation applies see PARA 1743 note 1 ante.

2 For the meaning of 'recklessly' in the context of the criminal law see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 11.

3 As to the Secretary of State see PARA 601 note 1 ante.

4 For the meaning of 'authorisation' see PARA 1743 note 7 ante.

5 Ie under the Petroleum Act 1998 s 18(1)(b): see PARA 1753 ante.

6 Ie under ibid s 18(3)(b): see PARA 1754 ante.

7 For the meaning of 'works authorisation' see PARA 1744 note 3 ante.

8 Ie not to serve a notice under the Petroleum Act 1998 s 18(6) (as amended): see PARA 1755 ante.

9 Ibid s 21(1)(c).

10 Ibid s 21(1). As to the statutory maximum see PARA 689 note 2 ante; and as to criminal proceedings see PARA 1759 post.

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(i) Control, Authorisation and Use/F. ENFORCEMENT AND OFFENCES/1759. Criminal proceedings.

1759. Criminal proceedings.

Proceedings for an offence under the specified provision of the Petroleum Act 1998¹, or created by regulations made under Part III of that Act² (a 'relevant offence') may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom³.

Proceedings for a relevant offence alleged to have been committed in, under or over controlled waters⁴ may not be instituted in England and Wales except:

- 5152 (1) by the Secretary of State⁵ or by a person authorised in that behalf by the Secretary of State; or
- 5153 (2) by or with the consent of the Director of Public Prosecutions⁶;

but this does not apply to proceedings for an offence created by regulations made⁷ with regard to the powers and duties of inspectors⁸.

In proceedings for a relevant offence an averment in the information, complaint or indictment that anything was done or situated in, under or over controlled waters is, unless the contrary is proved, to be sufficient evidence of the matter stated in the averment⁹.

Where a relevant offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director¹⁰, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly¹¹.

In any proceedings for:

- 5154 (a) an offence¹² of executing works or using a pipeline¹³ otherwise than in accordance with the terms of the relevant authorisation¹⁴; or
- 5155 (b) an offence¹⁵ of contravening¹⁶ any provision of a notice¹⁷,

it is a defence to prove that the accused used all due diligence to comply with those terms or, as the case may be, with that provision¹⁸.

1 Ie an offence under the Petroleum Act 1998 s 21(1) (as amended): see PARAS 1743-1751, 1758 ante.

2 Ie regulations made under *ibid* Pt III (ss 14-28) (as amended). As to the making of regulations see PARA 1740 note 2 ante.

3 Ibid s 22(1). For the meaning of 'United Kingdom' see PARA 602 note 7 ante. The Territorial Waters Jurisdiction Act 1878 s 3 (consents to prosecution of offences committed on the open sea by persons who are not British citizens: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1056) does not apply to any proceedings for a relevant offence: Petroleum Act 1998 s 22(9).

4 For the meaning of 'controlled waters' see PARA 1740 note 6 ante.

5 As to the Secretary of State see PARA 601 note 1 ante.

6 Petroleum Act 1998 s 22(2). As to the institution of proceedings in Northern Ireland see s 22(3).

7 le regulations made under *ibid* s 20: see PARAS 1763-1764 *post*.

8 *Ibid* s 22(4).

9 *Ibid* s 22(5).

10 For these purposes, in relation to a body corporate which (1) is established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking; and (2) is a body whose affairs are managed by its members, 'director' means a member of the body corporate: *ibid* s 22(7).

11 *Ibid* s 22(6).

12 le an offence under *ibid* s 21(1)(a): see PARA 1743 *ante*.

13 For the meaning of 'pipeline' see PARA 1741 *ante*.

14 For the meaning of 'authorisation' see PARA 1743 note 7 *ante*.

15 le an offence under *ibid* s 21(1)(b) (as amended): see PARAS 1749-1751 *ante*.

16 For the meaning of 'contravention' see PARA 1743 note 9 *ante*.

17 le a notice under the Petroleum Act 1998 s 16 (as amended) (see PARA 1749 *ante*), s 17 (as amended) (see PARA 1750 *ante*) or s 17F(9) (as added) (see PARA 1751 *ante*) served on the person in question in his capacity as the owner of the pipeline to which the notice relates in a case where no authorisation for the use of the pipeline is required by s 14(1) (see PARA 1743 *ante*); see s 21(1)(b) (as amended); and see PARAS 1749-1751 *ante*.

18 *Ibid* s 22(8).

UPDATE

1740-1759 Control, Authorisation and Use

For provision requiring consent to be given for works detrimental to navigation in connection with licences under the Petroleum Act 1998 Pt 3, see Energy Act 2008 Pt 4A (ss 79A-79Q) and WATER AND WATERWAYS.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/A. SAFETY REGULATIONS/1760. Power to make regulations; in general.

(ii) Safety

A. SAFETY REGULATIONS

1760. Power to make regulations; in general.

The power to make safety regulations in relation to pipeline works is now contained in the Health and Safety at Work etc Act 1974, extended and applied as previously described in relation to offshore installations¹.

¹ See the Offshore Safety Act 1992 ss 1, 3-5 (as amended), which extend the general purposes of the Health and Safety at Work etc Act 1974 to offshore installations etc and make provision for the security of petroleum and petroleum products; and PARA 1677 ante. See also PARAS 1761-1762 post.

UPDATE

1760-1764 Power to make regulations; in general ... Functions of inspectors

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/A. SAFETY REGULATIONS/1761. The Pipelines Safety Regulations 1996.

1761. The Pipelines Safety Regulations 1996.

The Pipelines Safety Regulations 1996¹, which are made under the Health and Safety at Work etc Act 1974², make provision:

- 5156 (1) with regard to the safe design, construction, installation, operation and maintenance of pipelines³;
- 5157 (2) for the arrangements to be made in connection with incidents and emergencies⁴;
- 5158 (3) as to the safe decommissioning of pipelines⁵;
- 5159 (4) for the prevention of damage to pipelines⁶ and co-operation between operators of different parts of a pipeline⁷; and
- 5160 (5) with regard to major accident hazard pipelines⁸.

Contravention of the regulations is an offence⁹; but in any proceedings for such an offence, it is a defence for the person charged to prove that the commission of the offence was due to the act or default of another person not being one of his employees and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence¹⁰.

The 1996 Regulations are discussed in detail elsewhere in this work¹¹.

1 See the Pipelines Safety Regulations 1996, SI 1996/825 (as amended): see PARA 1689 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq.

2 As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations etc see PARAS 1677, 1760 ante; and see also the Pipelines Safety Regulations 1996, SI 1996/825, reg 4(1).

3 See ibid regs 5-11, 13; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611. For the meaning of 'pipeline' for these purposes see PARA 1689 note 1 ante.

4 See ibid reg 12; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611.

5 See ibid reg 13A (as added), reg 14; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611.

6 See ibid regs 15, 16; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611.

7 See ibid reg 17; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 611.

8 See ibid Pt III (regs 18-27); para 1689 ante; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 610 et seq. For the meaning of 'major accident hazard pipeline' see PARA 1689 note 1 ante.

9 As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

10 Pipelines Safety Regulations 1996, SI 1996/825, reg 28(1). For restrictions on the circumstances in which such a defence may be relied on see reg 28(2), (3); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 630.

11 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 610 et seq.

UPDATE

1760-1764 Power to make regulations; in general ... Functions of inspectors

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/A. SAFETY REGULATIONS/1762. Control of diving operations.

1762. Control of diving operations.

The Diving at Work Regulations 1997¹, which are made under the Health and Safety at Work etc Act 1974², apply to and in relation to any work-related diving project or diving operation³ carried out in connection with pipeline works executed in, under or over controlled waters⁴.

¹ See the Diving at Work Regulations 1997, SI 1997/2776: see PARA 1693 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 591-594.

² As to the extension of the Health and Safety at Work etc Act 1974 to offshore installations etc see PARAS 1677, 1760 ante. See also the Diving at Work Regulations 1997, SI 1997/2776, reg 3(2). As to the enforcement of health and safety regulations see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370, 375 et seq; and as to offences under them see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

³ For the meanings of 'diving project' and 'diving operation' see *ibid* reg 2(1); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591; and as to when a person 'dives' see reg 2(2); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591. As to the general duty to ensure compliance with the 1997 Regulations see reg 4; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 591.

⁴ See PARA 1693 ante; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 591-594.

UPDATE

1760-1764 Power to make regulations; in general ... Functions of inspectors

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/B. INSPECTORS/1763. Appointment of inspectors.

B. INSPECTORS

1763. Appointment of inspectors.

The Secretary of State¹ may appoint, as inspectors to assist him in the execution of Part III of the Petroleum Act 1998², such number of persons appearing to him to be qualified for the purpose as he considers appropriate from time to time³. He may also make, to or in respect of any person so appointed, such payments by way of remuneration or otherwise as he determines⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 Ie the Petroleum Act 1998 Pt III (ss 14-28, Sch 2) (as amended): see PARA 1740 et seq ante. As to the functions of inspectors see PARA 1764 post.

3 Ibid s 20(1).

4 Ibid s 20(1). Such determination requires the approval of the Minister for the Civil Service: s 20(1).

UPDATE

1760-1764 Power to make regulations; in general ... Functions of inspectors

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/B. INSPECTORS/1764. Functions of inspectors.

1764. Functions of inspectors.

The Secretary of State¹ may by regulations² make provision with respect to:

- 5161 (1) the powers and duties of inspectors appointed by him³ to assist him in the execution of Part III of the Petroleum Act 1998⁴ and of any other persons acting on the directions of the Secretary of State in connection with the execution of that Part of that Act; and
- 5162 (2) the facilities to be accorded to such inspectors and other persons⁵.

For the purpose of enforcing regulations so made, an inspector⁶ has the same powers to institute proceedings in England and Wales under the Health and Safety at Work etc Act⁷ as he would have if he were an inspector appointed⁸ by the Health and Safety Executive⁹ who is authorised to act for the purposes of the regulations¹⁰.

Regulations provide that for the purpose of assisting the Secretary of State or the Executive in such execution, an inspector¹¹ may, at any time:

- 5163 (a) inspect any pipeline¹² or require any person to carry out such procedures or conduct such tests as may appear likely to facilitate the power to inspect¹³;
 - 5164 (b) enter upon any premises, vessel¹⁴ or installation used or intended to be used in connection with any pipeline or with any activities relating to a pipeline or proposed pipeline¹⁵;
 - 5165 (c) inspect and test, or cause to be tested, any equipment so used or intended to be used¹⁶;
 - 5166 (d) where he is of the opinion that any activities relating to a pipeline or a proposed pipeline as carried on or about to be carried on involve or, as the case may be, will involve a risk of an occurrence of a specified kind¹⁷ or there has been such an occurrence:
- 479
- 727. (i) require any person engaged, or about to be engaged, in the carrying on of the activities to do or refrain from doing anything in connection with the activities with a view to minimising the risk of that occurrence or, as the case may be, its consequences¹⁸;
 - 728. (ii) cause to be dismantled or subjected to any test (including a test to destruction) any part of a pipeline or any equipment which may cause or, as the case may be, have caused that occurrence¹⁹;
 - 729. (iii) take possession of any such part of a pipeline or any such equipment²⁰;
- 480
- 5167 (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any inspection or test under head (a), head (c) or head (d)(ii) above²¹;
 - 5168 (f) require the production of, inspect and take copies of books and other documents and entries in them²²;
 - 5169 (g) require the owner²³ of a pipeline or the proposed owner²⁴ of a proposed pipeline to convey him and his equipment for testing, and anything of which he has taken possession under head (d)(iii) above, to and from any vessel or installation

- used or intended to be used with the pipeline or related pipeline works and to provide him with reasonable accommodation and means of subsistence while on, or in transit to or from, such a vessel or installation²⁵; and
- 5170 (h) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers so conferred on him²⁶.

It is the duty of any person whom an inspector has reasonable cause to believe to be able to give him information relevant to the execution of Part III of the Petroleum Act 1998 to answer, in private²⁷, such questions as the inspector may think fit to ask²⁸ and to furnish in writing such of that information as he has or can reasonably obtain²⁹.

Nothing in the above provisions³⁰, however, imposes, or confers power on an inspector to impose, any obligation on any person on a vessel registered outside the United Kingdom as a ship, aircraft or hovercraft when it is not engaged in operations for the purposes of laying or maintaining a pipeline³¹.

It is an offence to contravene, or fail to comply with a requirement or obligation imposed under, the above provisions³².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the making of regulations see PARA 1740 note 2 ante.

3 *Ie* under the Petroleum Act 1998 s 20(1): see PARA 1763 ante.

4 *Ie* *ibid* Pt III (ss 14-28) (as amended): see PARA 1740 *et seq* ante.

5 *Ibid* s 20(2). At the date at which this title states the law, no such regulations had been made; but, by virtue of s 49, Sch 3 Pt I para 1(2), the Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835 (as amended), have effect as if so made.

6 *Ie* an inspector appointed under the Petroleum Act 1998 s 20(1).

7 *Ie* under the Health and Safety at Work etc Act 1974 s 38 (as amended): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 856.

8 *Ie* under *ibid* s 19: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

9 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 *et seq*.

10 Petroleum Act 1998 s 20(3).

11 For these purposes, 'inspector' means (1) a person appointed as an inspector under *ibid* s 20(1) (or under the Health and Safety at Work etc Act 1974 s 19: see the Offshore Safety (Repeals and Modifications) Regulations 1993, SI 1993/1823, reg 5(1)); or (2) any other person acting on the direction of the Secretary of State or the Health and Safety Executive in connection with the execution of the Petroleum Act 1998 Pt III (as amended): Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 2(1) (amended by SI 1993/1823); Interpretation Act 1978 s 17(2).

12 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(a). 'Pipeline' means a controlled pipeline (see PARA 1740 note 6 ante) of which an initial or terminal point is situated in the United Kingdom or controlled waters but excluding any pipeline or part of a pipeline which is in, under or over the territorial sea adjacent to Northern Ireland: reg 2(2) (amended by SI 1991/680). For the meaning of 'United Kingdom' see PARA 602 note 7 ante; as to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and as to the meaning of 'controlled waters' see PARA 1740 note 6 ante.

13 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(j) (added by SI 1982/1513). Before exercising any of the powers conferred by the Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(j) (as so added), or conferred by reg 3(1)(c) (see head (c) in the text) or reg 3(1)(d)(i), (ii) (see heads (d)(i), (ii) in the text), an inspector must, except in a case of urgency, consult such persons as

appear to him appropriate for the purpose of ascertaining what may be the consequence of doing anything he proposes to do under the power: reg 3(5) (amended by SI 1982/1513).

14 'Vessel' includes an aircraft, a hovercraft and any floating structure: Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 2(1).

15 Ibid reg 3(1)(b).

16 Ibid reg 3(1)(c); and see note 13 supra. Where an inspector proposes to exercise either of the powers conferred by reg 3(1)(c) (see head (c) in the text) and reg 3(1)(d)(iii) (see head (d)(iii) in the text) on any premises, vessel or installation, he must, if so requested by a person who at the time is present in and has responsibilities in relation to those premises or that vessel or installation, as the case may be, do, or cause to be done, anything which is to be done by virtue of the power in the presence of that person: reg 3(3).

17 It is an occurrence of a kind specified in ibid Sch 1. The specified occurrences are as follows (Sch 1), ie:

141 (1) any accident causing the death or loss of, or serious bodily injury to, any person;

142 (2) any damage to, or defect in, a pipeline;

143 (3) any substantial change in the position of a pipeline;

144 (4) any substantial change in the sea bed or subsoil in the vicinity of a pipeline or pipeline works;

145 (5) any escape of anything from, or inrush of anything into, a pipeline;

146 (6) any damage to a vessel or installation which may affect its safety or that of a pipeline attached to it;

147 (7) any parting of an anchor or winch cable of a vessel being used to lay a pipeline;

148 (8) discovery of a defect in any plant, machinery, equipment or material which might endanger the safety or health of any person or affect the safety of a pipeline;

149 (9) any uncontrolled explosion or fire;

150 (10) any failure of a lifting appliance or of a pipe tensioning appliance; and

151 (11) any emission of ionising radiation or of radioactive or other toxic substances which may endanger the safety or health of any person.

18 Ibid reg 3(1)(d)(i); and see note 13 supra. This power is exercisable only by an inspector appointed under the Petroleum Act 1998 s 20(1) or the Health and Safety at Work etc Act 1974 s 19 (and, therefore, not by a person as described in note 11 head (2) supra): Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(d)(i); Interpretation Act 1978 s 17(2). An inspector may not exercise the power so conferred so as to require the shutting down of a pipeline, or the discontinuance of the conveyance of anything through it, except in a case where the inspector is of the opinion that there is a risk of an accident causing the death or loss of, or serious bodily injury to, any person, or such an accident has occurred, or where the inspector is of the opinion that the escape of anything from the pipeline has occurred or is imminent: Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(2). A requirement under reg 3(1)(d)(i) ceases to have effect on the expiration of a period of three days beginning with the date on which it was made unless the Secretary of State or the Executive by notice given to the person on whom it was imposed extends its operation either in its original or a modified form for additional periods: reg 3(4) (amended by SI 1993/1823).

19 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(d)(ii); and see note 13 supra.

20 Ibid reg 3(1)(d)(iii); and see note 16 supra.

21 Ibid reg 3(1)(e).

22 Ibid reg 3(1)(f). The books and documents referred to are those required to be kept under the Petroleum Act 1998 Pt III (as amended), or any other book relating to the construction and use of a pipeline or to pipeline works: Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(f).

23 In relation to a pipeline in respect of which no person has been designated as its owner under the Petroleum Act 1998 s 27(1) (see PARA 1749 note 4 ante), 'owner' means the person by whom the pipeline is to

be used: Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 2(1); Interpretation Act 1978 s 17(2).

24 In relation to a proposed pipeline for which no person has been designated as its proposed owner under the Petroleum Act 1998 s 27(1) (see PARA 1749 note 4 ante), 'proposed owner' means the person for whom the pipeline is to be constructed: Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 2(1); Interpretation Act 1978 s 17(2).

25 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1)(g).

26 Ibid reg 3(1)(h).

27 Ie in the absence of persons other than a person nominated by the person concerned to be present and any persons whom the inspector may allow to be present: ibid reg 4(a).

28 Ibid reg 4(a).

29 Ibid reg 4(b).

30 Ie nothing in ibid reg 3 (as amended), reg 4: see the text and notes 11-29 supra.

31 Ibid reg 8.

32 See PARA 1765 post.

UPDATE

1760-1764 Power to make regulations; in general ... Functions of inspectors

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(ii) Safety/B. INSPECTORS/1765. Offences relating to functions of inspectors, etc.

1765. Offences relating to functions of inspectors, etc.

A person commits an offence if:

- 5171 (1) he contravenes¹ or fails to comply with a requirement imposed by an inspector² in the exercise of his functions³ or with an obligation⁴ imposed on him with respect to information⁵;
- 5172 (2) he wilfully obstructs a person exercising a function conferred, or performing a duty imposed, by the regulations⁶ relating to inspectors⁷; or
- 5173 (3) in furnishing any information for the purposes of those regulations, he makes or causes to be made on his behalf a statement which he knows to be false or does not believe to be true⁸.

The penalty for such an offence is on summary conviction a fine not exceeding the statutory maximum⁹ or, on conviction on indictment, imprisonment for up to two years or a fine, or both¹⁰. It is a defence for the person charged with any such offence to prove that he took all reasonable precautions and exercised all due diligence to prevent the commission of the offence¹¹.

1 For the meaning of 'contravention' see PARA 1743 note 9 ante.

2 For the meaning of 'inspector' for these purposes see PARA 1764 note 11 ante.

3 I.e. his functions under the Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 3(1) (as amended): see PARA 1764 ante.

4 I.e. an obligation under *ibid* reg 4: see PARA 1764 ante.

5 *Ibid* reg 7(1)(a) (amended by SI 1995/3163).

6 I.e. by the Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835 (as amended): see PARA 1764 ante.

7 *Ibid* reg 7(1)(b).

8 *Ibid* reg 7(1)(c).

9 *Ibid* reg 7(3) (added by SI 1982/1513) expresses the maximum penalty for summary conviction as 'that authorised by section 32(3)(a) of the [Petroleum and Submarine Pipelines Act 1975], that is to say, on summary conviction, a fine not exceeding £1,000'. Section 32(3)(a) is, however, repealed and replaced by the Petroleum Act 1998 s 25(3), which authorises the statutory maximum as the maximum penalty for summary conviction. As to the statutory maximum see PARA 689 note 2 ante.

10 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 7(3) (as added: see note 9 *supra*); Interpretation Act 1978 s 17(2).

11 Submarine Pipelines (Inspectors etc) Regulations 1977, SI 1977/835, reg 7(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(4) SUBMARINE PIPELINES/(iii) Penalties etc for Damage to Pipelines/1766. Criminal and civil liability for damage.

(iii) Penalties etc for Damage to Pipelines

1766. Criminal and civil liability for damage.

The provisions of the Submarine Telegraph Act 1885 which impose criminal penalties for damaging submarine cables¹ and a civil liability to pay compensation for damage to cables and for loss of gear sacrificed to avoid such damage² are extended to cover damage to all pipelines under the high seas, including those under the territorial sea adjacent to the United Kingdom³ or under waters in a designated⁴ area⁵. Those provisions are discussed elsewhere in this work⁶.

1 Ie the Submarine Telegraph Act 1885 s 3 (as amended): see TELECOMMUNICATIONS vol 97 (2010) PARA 207.

2 Ie ibid Schedule arts IV, VII.

3 As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'United Kingdom' see PARA 602 note 7 ante.

4 Ie an area designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 ante.

5 See ibid s 8(1), (1A) (s 8(1) amended by the Energy Act 2004, ss 103(1)(a), 197(9), Sch 23 Pt 1; the Continental Shelf Act 1964 s 8(1A) added by the Petroleum Act 1998 s 50, Sch 4 para 2(4)).

6 See TELECOMMUNICATIONS vol 97 (2010) PARA 207.

UPDATE

1766 Criminal and civil liability for damage

NOTE 5--Continental Shelf Act 1964 s 8(1A) amended: Marine and Coastal Access Act 2009 Sch 4 para 1 (not yet in force).

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(5) FINANCE

1767. Repayments and loans for development.

Where any person has paid to the Secretary of State¹ a sum by way of royalty under the terms of a licence granted under the Petroleum Act 1998², the Secretary of State may, with the approval of the Treasury, repay to him the whole or a part of that sum if the Secretary of State considers it expedient to do so for the purpose of facilitating or maintaining the development of the petroleum³ resources of the United Kingdom⁴. Any such repayment and right to such repayment is to be disregarded for the purposes of income tax, corporation tax or petroleum revenue tax⁵.

Where it appears to the Secretary of State expedient to do so for the purpose of facilitating or maintaining the development of the petroleum resources of the United Kingdom, he may, with Treasury approval:

- 5174 (1) make loans to an oil company⁶ on terms determined by him; or
- 5175 (2) guarantee on such terms the repayment of the principal of, and the payment of interest on loans made to, an oil company by another person⁷.

The aggregate amount for the time being outstanding in respect of the principal of loans so made must not exceed £50 million⁸; and the aggregate amount of the principal sums in respect of which guarantees so given are for the time being in force and of the payments made by the Secretary of State on account of principal sums under such guarantees and not recovered by him must not exceed £600 million⁹. Immediately after a loan is so made or guarantee so given, the Secretary of State must lay a statement relating to it before each House of Parliament¹⁰; and where any sum is issued for fulfilling a guarantee so given he must, as soon as possible after the end of each financial year¹¹, similarly lay a statement relating to that sum¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 I.e. a licence granted under the Petroleum Act 1998 s 3: see PARA 1639 ante. Any information which the Commissioners for Revenue and Customs possess in connection with petroleum won by virtue of a licence granted under s 3: (1) may be disclosed by the Commissioners to the Secretary of State, or to an officer of his who is authorised by him to receive such information, in connection with provisions of the licence relating to royalty payments; but (2) must not be disclosed by a person to whom it is disclosed under head (1) *supra* except (a) as authorised by the licence; (b) to a person to whom it could have been disclosed under head (1) *supra*; or (c) for the purposes of proceedings (which may be arbitration proceedings) in connection with the licence: s 4(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50). At the date at which this title states the law, however, royalties are not payable under such licences: see Department of Trade and Industry Press Release, 17 November 2002. Exemption from royalties in respect of petroleum from certain fields and areas had earlier been granted by statute: see the Petroleum Royalties (Relief) and Continental Shelf Act 1989 ss 1, 2, Schedule (s 1 amended by the Petroleum Act 1998, s 50, Sch 4 para 26).

3 For the meaning of 'petroleum' see PARA 1626 ante.

4 Petroleum Act 1998 s 6(1). For the meaning of 'United Kingdom' see PARA 602 note 7 ante. The Secretary of State may contract out any function of his which relates to or is connected with the payment or repayment of any sum by way of royalty which is conferred on him by (1) any provision of any licence granted or treated as

having been granted under the provisions of s 3(1); or (2) s 6: see the Contracting Out (Functions in Relation to Petroleum Royalty Payments) Order 2000, SI 2000/353, arts 2, 3.

Where a person has been required for the purposes of a licence granted under the Petroleum Act 1998 s 3 to deliver petroleum to the Secretary of State for any chargeable period, s 6(1) has effect as if the person had paid to the Secretary of State by way of royalty such sum, or (where he has been required to deliver some but not all of the petroleum which he could have been required to deliver) such additional sum as he would have been required to pay under the licence if he had not been required to deliver the petroleum: s 6(2).

5 Ibid s 6(3); and see note 4 supra.

6 For these purposes, 'oil company' means a body corporate which, in the opinion of the Secretary of State, has as its principal object (1) the production of petroleum; (2) the refining of petroleum; (3) the production and refining of petroleum; or (4) the supplying of petroleum in a case where any of its other objects is one of those mentioned in heads (1)-(3) supra: *ibid* s 47(6).

7 Ibid s 47(1).

8 Ibid s 47(2).

9 Ibid s 47(3).

10 Ibid s 47(4).

11 I.e. beginning with the financial year in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and interest on it is finally discharged: *ibid* s 47(5).

12 Ibid s 47(5).

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1768. Contributions in respect of mineral exploration.

There must be defrayed out of money provided by Parliament any payments made by the Secretary of State¹ by way of contribution towards expenditure incurred on searching for, or on discovering and testing, mineral deposits² in Great Britain³ or in the sea bed and subsoil of territorial waters⁴ or of designated areas⁵ of the continental shelf⁶. The amount so paid must not exceed £25 million or such larger sum, not exceeding £50 million, as the Secretary of State may specify by order⁷; and contributions must not exceed 35 per cent of the expenditure towards which they are made⁸.

Any such payment by the Secretary of State may be made on such terms as he thinks fit⁹, including terms providing for repayment¹⁰ of the amount paid, or for the giving of security for the performance of any of the terms¹¹.

In respect of each financial year in which payments are made under these provisions the Secretary of State must as soon as may be prepare a report on the operation of the provisions and lay it before Parliament¹².

1 As to the Secretary of State see PARA 601 note 1 ante.

2 'Mineral deposits' includes any natural deposits capable of being lifted or extracted from the earth: Mineral Exploration and Investment Grants Act 1972 s 1(8).

3 For the meaning of 'Great Britain' see PARA 602 note 7 ante.

4 I.e. territorial waters of the United Kingdom adjacent to Great Britain: Mineral Exploration and Investment Grants Act 1972 s 1(1). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31 note 3; and for the meaning of 'the United Kingdom' see PARA 602 note 7 ante.

5 I.e. areas designated under the Continental Shelf Act 1964 s 1(7) (as amended): see PARA 1636 ante.

6 Mineral Exploration and Investment Grants Act 1972 s 1(1), which has effect subject to s 1(2)-(8): s 1(1). This provision gives effect to a government scheme to encourage exploration for, and evaluation of, non-ferrous metals and other minerals: see 820 HC Official Report (5th series), 8 July 1971, written answers, col 441. Before making a contribution the Secretary of State must be satisfied that planning permission was obtained for the operations concerned, or that it was not necessary to obtain it: Mineral Exploration and Investment Grants Act 1972 s 1(4). As to planning control in relation to mining operations see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 355; and TOWN AND COUNTRY PLANNING.

7 Ibid s 1(2). Any such order must be made by statutory instrument, but it must not be made unless a draft has been approved by a resolution of the House of Commons: s 1(2).

8 Ibid s 1(5).

9 It is a condition for the making of a contribution in respect of any operations that the applicant for it has agreed that geological information obtained will be communicated, in appropriate form and detail, to the Secretary of State and, for the purposes of the geological survey of Great Britain, to the Natural Environment Research Council: ibid s 1(3). As to that Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 967, 970. As to the provision of facilities to the council in connection with certain mining operations see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 358.

10 I.e. in whole or in part, and with or without interest or an addition in lieu of interest: ibid s 1(5).

11 Ibid s 1(5). Any sums received by the Secretary of State in accordance with the terms on which a payment is made under the provisions mentioned in the text must be paid into the Consolidated Fund: s 1(6).

As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq;
PARLIAMENT vol 78 (2010) PARAS 1028-1031.

12 Ibid s 1(7).

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1769. Credits and grants for construction of offshore installations.

Provision is made by the Industry Act 1972 for the Secretary of State for Business, Enterprise and Regulatory Reform (formerly the Secretary of State for Trade and Industry) to give guarantees and to make loans and grants in connection with the construction of certain offshore installations. These matters are dealt with elsewhere in this work¹.

¹ See the Industry Act 1972 Pt III (ss 10-12, Sch 1) (as amended); and TRADE AND INDUSTRY vol 97 (2010) PARA 861655.

UPDATE

1769 Credits and grants for construction of offshore installations

TEXT AND NOTE 1--The functions of the Secretary of State for Business, Enterprise and Regulatory Reform have been transferred to the Secretary of State for Business, Innovation and Skills: see Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

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1770. Northern Ireland and Isle of Man shares of petroleum revenue from the continental shelf.

For any financial year in which the proceeds from petroleum licences granted for the continental shelf¹ exceed the expenses of administration, the Secretary of State must out of money provided by Parliament make payments to the governments of Northern Ireland and the Isle of Man of amounts equal respectively to the Northern Ireland share and the Isle of Man share of the balance². Provision is made for the calculation of expenses of administration³ and of the two shares⁴.

1 The licences granted under the Petroleum Act 1998 s 3 (see PARA 1639 ante) by virtue of s 3(2)(b): see the Miscellaneous Financial Provisions Act 1968 s 2(5) (amended by the Petroleum Act 1998 s 50, Sch 4 para 3). For those purposes the proceeds from the licence are to be taken to include the proceeds from the sale of the petroleum less (1) any sums paid by the Secretary of State in respect of the petroleum or its delivery or treatment; and (2) any expenses incurred by him in connection with the sale; and 'petroleum' has the same meaning as in the Petroleum Act 1998 Pt I (ss 1-9) (see s 1; and PARA 1626 ante): s 46(1), (2). As to the Secretary of State see PARA 601 note 1 ante.

2 See the Miscellaneous Financial Provisions Act 1968 s 2(1), (2).

3 See *ibid* s 2(4).

4 See *ibid* s 2(3).

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(6) THE OIL AND PIPELINES AGENCY

(i) Constitution and Functions

1771. Establishment and constitution.

The Oil and Pipelines Agency ('the Agency') is a body corporate which exists for the purpose of exercising and performing the functions assigned to it by the Oil and Pipelines Act 1985¹. The Agency consists of (1) a full-time or part-time chairman; and (2) such number of other full-time or part-time members, not being less than two or more than four, as the Secretary of State² may from time to time determine³.

The Agency is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown; and its property is not to be regarded as property of, or property held on behalf of, the Crown⁴.

The Agency is not exempt from any tax, duty, rate, levy or charge whatsoever, whether general or local⁵.

The property, rights and liabilities of the British National Oil Corporation were transferred on 1 December 1985 to the Oil and Pipelines Agency⁶, and the Corporation was dissolved on 27 March 1986⁷.

1 Oil and Pipelines Act 1985 s 1(1).

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Oil and Pipelines Act 1985 s 1(2). See further PARA 1773 et seq post.

4 Ibid s 1(3). This applies unless the Agency is acting in pursuance of an agreement entered into under s 2(1)(a): see PARA 1772 post at head (1) in the text.

5 Ibid s 1(4).

6 See ibid s 3, Sch 2; and the Oil and Pipelines Act 1985 (Appointed Day) Order 1985, SI 1985/1749. The Oil and Pipelines Act 1985 imposed a duty on the Agency to dispose of or discharge, on the best reasonably obtainable terms, property, rights and liabilities so transferred, except such as the Secretary of State determined should continue to be vested in the Agency: see s 4.

7 See the British National Oil Corporation (Dissolution) Order 1986, SI 1986/585.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(i) Constitution and Functions/1772. General powers and duties of the Oil and Pipelines Agency.

1772. General powers and duties of the Oil and Pipelines Agency.

The Oil and Pipelines Agency ('the Agency')¹ has power:

- 5176 (1) to enter into agreements for the carrying out on behalf of the Crown of activities with respect to petroleum², pipelines and storage installations held by or on behalf of the Crown³;
- 5177 (2) to do anything required for the purpose of giving effect to such agreements⁴; and
- 5178 (3) to buy, sell or otherwise deal in petroleum on its own account⁵; but the exercise of this power requires the Secretary of State's consent⁶.

The Agency also had power to enter into such participation agreements⁷ as the Secretary of State might determine⁸ and to do anything required for the purpose of giving effect to agreements so entered into and to such participation agreements entered into by persons other than the Agency as the Secretary of State might determine⁹; but participation agreements were phased out between 1988 and 1991 and the legislation regarding them has now been repealed¹⁰.

The Agency has the power to do anything which is calculated to facilitate, or is incidental or conducive to, the exercise or performance of any of its functions under the Oil and Pipelines Act 1985 including, in particular, power to appoint other persons to exercise or perform any of those functions on its behalf¹¹.

The Agency also has a duty to comply with any general or specific direction given by the Secretary of State with respect to the exercise or performance of any of its functions under the Act¹²; and a duty to comply with any notice given by the Secretary of State with the approval of the Treasury requiring it to perform duties of a financial nature specified in the notice¹³.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 For these purposes, 'petroleum' has the same meaning as in the Petroleum Act 1998 Pt I (ss 1-9) (see s 1; and PARA 1626 ante): Oil and Pipelines Act 1985 s 6 (definition substituted by the Petroleum Act 1998 s 40, Sch 4 para 21).

3 Oil and Pipelines Act 1985 s 2(1)(a); see also PARA 1771 the text and note 4 ante.

4 Ibid s 2(1)(c).

5 Ibid s 2(1)(d).

6 Ibid s 2(2)(b). In giving a consent for these purposes, the Secretary of State may impose such conditions as he thinks fit: s 2(3). As to the Secretary of State see PARA 601 note 1 ante.

7 'Participation agreement' is defined as meaning either (1) any participation agreement as defined by the Participation Agreements Act 1978 s 1 (repealed); or (2) so much of any scheme made under the Oil and Gas (Enterprise) Act 1982 s 2 or 10 (both repealed), as would, if made by agreement, constitute a participation agreement as so defined: Oil and Pipelines Act 1985 s 6.

8 See *ibid* s 2(1)(b). The Secretary of State's consent was required for the exercise of any option or the making of any election which (in either case) entitled the Agency to take petroleum under a participation agreement: see s 2(2)(a).

9 See *ibid* s 2(1)(c).

10 As to the phasing out of participation agreements see 135 HC Official Report (6th series), 17 July 1988, written answers col 182. The Participation Agreements Act 1978 was repealed by the Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000, SI 2000/311, art 10.

11 Oil and Pipelines Act 1985 s 5(2). This is subject to Sch 3 (as amended) (see PARA 1778 et seq post): s 5(2).

12 *Ibid* s 5(1)(a).

13 *Ibid* s 5(1)(b).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(ii) Members and Staff/1773. Appointment and tenure of members.

(ii) Members and Staff

1773. Appointment and tenure of members.

The members of the Oil and Pipelines Agency¹, including the chairman, are appointed by the Secretary of State². A person so appointed holds and vacates office in accordance with the terms of the instrument appointing him and, on ceasing to hold office, is eligible for reappointment³. The instrument appointing a member must not, except with the approval of the Treasury, include terms entitling him to compensation on ceasing to be a member⁴.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 Oil and Pipelines Act 1985 s 1(5), Sch 1 para 1(1). As to the Secretary of State see PARA 601 note 1 ante.

3 Ibid Sch 1 para 1(2).

4 Ibid Sch 1 para 1(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(ii) Members and Staff/1774. Remuneration and expenses of members.

1774. Remuneration and expenses of members.

The Oil and Pipelines Agency ('the Agency')¹ may pay to any member such sums, whether by way of remuneration or allowances or otherwise, as the Secretary of State² may determine³. The Agency may also pay or make provision for paying to or in respect of any member or former member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine⁴.

Where a person ceases to be a member in circumstances in which, by the terms of the instrument appointing him, he is entitled to compensation of any amount, the Agency must make to him a payment of that amount⁵.

Where:

- 5179 (1) a person ceases to be a member otherwise than on the expiry of his term of office; and
- 5180 (2) the terms of the instrument appointing him do not provide for compensation as stated above; and
- 5181 (3) it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation,

the Agency may make to him a payment of such amount as the Secretary of State may determine⁶.

The approval of the Treasury is required for any determination under the provisions described above⁷.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Oil and Pipelines Act 1985 s 1(5), Sch 1 para 2(1).

4 Ibid Sch 1 para 2(2).

5 Ibid Sch 1 para 2(3).

6 Ibid Sch 1 para 2(4).

7 Ibid Sch 1 para 2(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(ii) Members and Staff/1775. Parliamentary disqualification.

1775. Parliamentary disqualification.

Members of the Oil and Pipelines Agency¹ are disqualified for membership of the House of Commons or the Northern Ireland Assembly².

¹ As to the Oil and Pipelines Agency see PARA 1771 ante; and as to the appointment or members see PARA 1773 ante.

² House of Commons Disqualification Act 1975 Sch 1 Pt II (amended by, inter alia, the Oil and Pipelines Act 1985 s 1(5), Sch 1 para 3); Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt II (similarly amended). See PARLIAMENT vol 78 (2010) PARA 908.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(ii) Members and Staff/1776. Staff.

1776. Staff.

The Oil and Pipelines Agency ('the Agency')¹ may, but only with the approval of the Secretary of State², appoint a person (who may be the chairman or another member) to act as its chief executive³. The Agency may appoint such other officers, and employ such other persons, as it may determine⁴. As regards such of its officers or employees as it may determine, the Agency may pay such pensions, allowances or gratuities, or provide and maintain such pension schemes (whether contributory or not), as it may determine⁵. If any officer or employee who is a participant in any applicable pension scheme becomes a member of the Agency, he may, if the Secretary of State so determines, be treated for the purposes of the scheme as if his service as a member were service as an officer or employee, notwithstanding that benefits will be payable to him as a member⁶.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Oil and Pipelines Act 1985 s 1(5), Sch 1 para 4(1).

4 Ibid Sch 1 para 4(2).

5 Ibid Sch 1 para 4(3).

6 Ibid Sch 1 para 4(4). As to payment of allowances to members see PARA 1774 ante.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(ii) Members and Staff/1777. Proceedings and documents.

1777. Proceedings and documents.

The quorum of the Oil and Pipelines Agency ('the Agency')¹ and the arrangements relating to its meetings are such as the Agency may determine². The arrangements may provide for the exercise or performance, under the general directions of the Agency, of any of the Agency's functions by a committee or by one or more of the members, officers or employees of the Agency³. The validity of any proceedings of the Agency are not affected by any vacancy among the members or by any defect in the appointment of a member⁴.

The application of the Agency's seal⁵ must be authenticated by the signature of an officer of the Agency authorised by the Agency in that behalf⁶.

Any document purporting to be an instrument issued by the Agency and to be sealed as described above or signed on behalf of the Agency is to be received in evidence and deemed to be such an instrument without further proof unless the contrary is shown⁷.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 Oil and Pipelines Act 1985 s 1(5), Sch 1 para 5(1).

3 Ibid Sch 1 para 5(2).

4 Ibid Sch 1 para 6.

5 As to the seal of a body corporate see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1122 et seq.

6 Oil and Pipelines Act 1985 Sch 1 para 7.

7 Ibid Sch 1 para 8.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iii) Financial Provisions/1778. Borrowing and investment powers.

(iii) Financial Provisions

1778. Borrowing and investment powers.

The Oil and Pipelines Agency ('the Agency')¹ may borrow temporarily, by way of overdraft or otherwise:

- 5182 (1) in sterling from the Secretary of State²; or
- 5183 (2) with the consent of the Secretary of State and the approval of the Treasury, in sterling or a currency other than sterling from a person other than the Secretary of State³,

such sums as may be required for meeting the obligations and exercising and performing the functions of the Agency or any of its wholly owned subsidiaries⁴.

The Agency may not:

- 5184 (a) borrow money otherwise than in accordance with head (1) above⁵; or
- 5185 (b) except with the consent of the Secretary of State and the approval of the Treasury:
- 481 730. (i) lend money, charge any of its actual or future assets or give any surety or guarantee for the performance by another person of any obligation; or
- 731. (ii) promote or participate in the promotion of, or acquire or relinquish membership of or any interest in or securities issued by, a body corporate⁶.
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The Agency must secure that none of its wholly owned subsidiaries either borrows money otherwise than temporarily⁷, or does anything without the permission of the Agency which, if done by the Agency, would under this provision require the consent of the Secretary of State and the approval of the Treasury⁸.

Where the consent of the Secretary of State is required for these purposes he may impose such conditions as he thinks fit⁹.

The aggregate of the amounts outstanding, otherwise than by way of interest, in respect of:

- 5186 (A) sums borrowed by the Agency or any of its wholly owned subsidiaries from outside persons¹⁰;
- 5187 (B) sums for the repayment of which by outside persons the Agency or any of its wholly owned subsidiaries has given any surety or guarantee; and
- 5188 (C) sums issued by the Treasury in fulfilment of guarantees given by the Treasury¹¹,

may not at any time exceed £20 million sterling or any such greater amount, not exceeding £80 million, as the Secretary of State may by order specify¹².

- 1 As to the Oil and Pipelines Agency see PARA 1771 ante.
- 2 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 1(1)(a). As to the Secretary of State see PARA 601 note 1 ante.
- 3 Ibid Sch 3 para 1(1)(b).
- 4 Ibid Sch 3 para 1(1). For these purposes, 'subsidiary' and 'wholly owned subsidiary' are to be construed in accordance with the Companies Act 1985 s 736 (as substituted; prospectively repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed) (see COMPANIES vol 14 (2009) PARA 25): Oil and Pipelines Act 1985 s 6.
- 5 Ibid Sch 3 para 1(2)(a).
- 6 Ibid Sch 3 para 1(2)(b).
- 7 Ibid Sch 3 para 1(3)(a).
- 8 Ibid Sch 3 para 1(3)(b). The consent of the Secretary of State and the approval of the Treasury are required for the giving of such permission by the Agency: Sch 3 para 1(4).
- 9 Ibid Sch 3 para 1(5).
- 10 'Outside person' refers to a person other than the Agency or any of its wholly owned subsidiaries: ibid Sch 3 para 2(2).
- 11 Ie under ibid Sch 3 para 4: see PARA 1780 post.
- 12 Ibid Sch 3 para 2(1). An order under these provisions must be made by statutory instrument, and no such order may be made unless a draft has been approved by a resolution of the House of Commons: Sch 3 para 2(3). At the date at which this title states the law, no such order had been made.

UPDATE

1778 Borrowing and investment powers

NOTE 4--Definitions of 'subsidiary' and 'wholly owned subsidiary' amended: SI 2009/1941.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iii) Financial Provisions/1779. Loans by Secretary of State.

1779. Loans by Secretary of State.

The Secretary of State¹ may, with the approval of the Treasury, lend to the Oil and Pipelines Agency² any sums which it has power³ to borrow⁴. Any loans which the Secretary of State makes under this power must be repaid to him at such times and by such methods, and interest must be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct⁵. The Treasury may issue such sums as the Secretary of State requires for making such loans out of the National Loans Fund⁶. Any sums received as interest or repayment by the Secretary of State must be paid into the National Loans Fund⁷.

It is the duty of the Secretary of State, as respects each financial year:

- 5189 (1) to prepare, in such form as the Treasury may direct, an account of sums issued to him out of, or required to be paid into, the National Loans Fund, and the disposal of those sums by him⁸; and
- 5190 (2) to send the account to the Comptroller and Auditor General⁹ not later than the end of August following the end of that year¹⁰.

The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it before each House of Parliament¹¹.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Oil and Pipelines Agency see PARA 1771 ante.

3 I.e. under the Oil and Pipelines Act 1985 s 5(3), Sch 3 para 1: see PARA 1778 ante.

4 Ibid Sch 3 para 3(1).

5 Ibid Sch 3 para 3(2).

6 Ibid Sch 3 para 3(3). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

7 Ibid Sch 3 para 3(4).

8 Ibid Sch 3 para 3(5)(a).

9 As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

10 Oil and Pipelines Act 1985 Sch 3 para 3(5)(b).

11 Ibid Sch 3 para 3(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iii) Financial Provisions/1780. Treasury guarantees.

1780. Treasury guarantees.

The Treasury may guarantee, in such manner and on such conditions as it may think fit, the repayment of the principal of, the payment of the interest on, and the discharge of any other financial obligation in connection with, any sums which the Oil and Pipelines Agency ('the Agency')¹ borrows from a person other than the Secretary of State².

Immediately after a guarantee is given under this power, the Treasury must lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling such a guarantee, the Treasury must so lay a statement relating to that sum³.

Any sums required by the Treasury for fulfilling a guarantee under this power must be charged on and issued out of the Consolidated Fund⁴. If any sums are issued in fulfilment of a guarantee given under this power, the Agency must make to the Treasury, at such times and in such manner as the Treasury may from time to time direct:

5191 (1) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and

5192 (2) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct⁵.

Any such sums received must be paid into the Consolidated Fund⁶.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 4(1); see also PARA 1778 ante at head (c) in the text. As to the Secretary of State see PARA 601 note 1 ante.

3 Ibid Sch 3 para 4(2).

4 Ibid Sch 3 para 4(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

5 Ibid Sch 3 para 4(4).

6 Ibid Sch 3 para 4(5).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iii) Financial Provisions/1781. Grants by the Secretary of State.

1781. Grants by the Secretary of State.

The Secretary of State¹ may, with the approval of the Treasury, make to the Oil and Pipelines Agency² grants of such amounts and for such purposes as he thinks fit³. Grants under this power may be made subject to such conditions as the Secretary of State with the approval of the Treasury may determine⁴. There must be paid out of money provided by Parliament any sums required by the Secretary of State for making grants under this power⁵.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Oil and Pipelines Agency see PARA 1771 ante.

3 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 5(1).

4 Ibid Sch 3 para 5(2).

5 Ibid Sch 3 para 5(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iii) Financial Provisions/1782. Payments to Secretary of State.

1782. Payments to Secretary of State.

The Secretary of State¹ may, with the approval of the Treasury, direct the Oil and Pipelines Agency ('the Agency')² to pay, or cause to be paid, to the Secretary of State the whole or part of any sum which is or, in the opinion of the Secretary of State, ought to be, standing to the credit of a reserve of the Agency or any of its wholly owned subsidiaries³. Any sums received by the Secretary of State under this power must be paid into the Consolidated Fund⁴.

1 As to the Secretary of State see PARA 601 note 1 ante.

2 As to the Oil and Pipelines Agency see PARA 1771 ante.

3 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 6(1). For the meaning of 'wholly owned subsidiary' see PARA 1778 note 4 ante.

4 Ibid Sch 3 para 6(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iv) Administration/1783. Provision of information to the Secretary of State.

(iv) Administration

1783. Provision of information to the Secretary of State.

It is the duty of the Oil and Pipelines Agency ('the Agency')¹ to provide the Secretary of State² with such information as he may from time to time require with respect to the property, activities or proposed activities of the Agency or any of its subsidiaries³. Any such requirement does not impose on the Agency the duty of providing the Secretary of State with information which the Agency does not possess and cannot be reasonably expected to obtain⁴.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 7(1). For the meaning of 'subsidiary' see PARA 1778 note 4 ante.

4 Ibid Sch 3 para 7(2).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iv) Administration/1784. Annual reports.

1784. Annual reports.

It is the duty of the Oil and Pipelines Agency ('the Agency')¹ to make to the Secretary of State², as soon as possible after the end of each accounting year³, a report on the exercise and performance of its functions during that year⁴. The report for any accounting year must include:

- 5193 (1) such information as the Secretary of State may specify with respect to the activities of the Agency⁵; and
- 5194 (2) particulars of any directions or notices made under the Oil and Pipelines Act 1985⁶ which the Secretary of State has given during that year, except any particulars as to which he has given notice to the Agency that in his opinion the publication of them would be contrary to the national interest or to the commercial interest of the Agency or some other person⁷.

The Secretary of State must lay before each House of Parliament a copy of each report made to him in this manner⁸.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

2 As to the Secretary of State see PARA 601 note 1 ante.

3 'Accounting year' means the period of 12 months beginning on 1 January in each year, or immediately after the end of the previous accounting year: Oil and Pipelines Act 1985 s 5(3), Sch 3 para 10(1). The Secretary of State may direct that a particular accounting year is to end on a date specified in the direction (whether before or after the date on which it would otherwise end): Sch 3 para 10(2).

4 Ibid Sch 3 para 8(1).

5 Ibid Sch 3 para 8(2)(a).

6 Ie under ibid s 5(1): see PARA 1772 ante.

7 Ibid Sch 3 para 8(2)(b).

8 Ibid Sch 3 para 8(3).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/8. PETROLEUM PRODUCTION/(6) THE OIL AND PIPELINES AGENCY/(iv) Administration/1785. Accounts and audit.

1785. Accounts and audit.

It is the duty of the Oil and Pipelines Agency ('the Agency')¹ to keep proper accounts and records²; and to prepare in respect of each accounting year³ a statement of accounts giving a true and fair view of the state of affairs and the profit and loss⁴ of the Agency⁵.

It is the duty of the Agency to prepare, in respect of each accounting year in which it has subsidiary undertakings⁶, a statement of consolidated accounts dealing with, and giving a true and fair view of, the state of affairs and the profit and loss of:

- 5195 (1) the Agency and all of its subsidiary undertakings⁷; or
- 5196 (2) the Agency and such of its subsidiary undertakings as the Agency may determine and the Secretary of State⁸ may for the time being approve⁹.

Where the Agency prepares such a statement of consolidated accounts in respect of any accounting year, the Secretary of State may, with the approval of the Treasury, direct that the statement of accounts prepared by the Agency¹⁰ in respect of that year need not show the Agency's profit or loss¹¹.

Without prejudice to these requirements, every statement of accounts prepared by the Agency in accordance with these provisions must comply with any requirement which the Secretary of State has, with the approval of the Treasury, notified in writing to the Agency relating to:

- 5197 (a) the information contained in the statement;
- 5198 (b) the manner in which that information is to be presented; and
- 5199 (c) the methods and principles according to which the statement is to be prepared¹².

The accounts kept, and all statements prepared, by the Agency under these provisions in respect of accounting years ending on or before 31 March 2002 were to be audited by auditors appointed¹³ for each such accounting year by the Secretary of State after consultation with the Agency¹⁴. As soon as the accounts kept, and the statements prepared, by the Agency under these provisions in respect of such accounting years had been audited, the Agency was to send to the Secretary of State a copy of the statements together with a copy of any report made by the auditors on the statements or on the accounts of the Agency; and the Secretary of State was to lay a copy of every statement and report of which a copy had been received by him in pursuance of this provision before each House of Parliament¹⁵.

The Agency must send the accounts kept in respect of each accounting year ending on or after 31 March 2003 and the statement of accounts prepared by it under these provisions in respect of each such accounting year to the Comptroller and Auditor General¹⁶ as soon as reasonably practicable after the end of the accounting year to which the accounts relate¹⁷. The Comptroller and Auditor General must examine, certify and report on each statement of accounts so sent to him and must lay a copy of the statement and his report on it before each House of Parliament¹⁸.

1 As to the Oil and Pipelines Agency see PARA 1771 ante.

- 2 Oil and Pipelines Act 1985 s 5(3), Sch 3 para 9(1)(a).
- 3 For the meaning of 'accounting year' see PARA 1784 note 3 ante.
- 4 le subject to the Oil and Pipelines Act 1985 Sch 3 para 9(2) (as amended): see the text and notes 10-11 infra.
- 5 Ibid Sch 3 para 9(1)(b).
- 6 For these purposes, 'subsidiary undertaking' has the same meaning as in the Companies Act 1985 Pt VII (ss 221-262A) (as amended; prospectively repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by ss 386 et seq, as from a day to be appointed under s 1300(2); at the date at which this title states the law, no such day had been appointed): Oil and Pipelines Act 1985 Sch 3 para 9(2) (amended by the Companies Act 1989 s 23, Sch 10 para 33). See further COMPANIES.
- 7 Oil and Pipelines Act 1985 Sch 3 para 9(2)(a) (as amended: see note 6 supra).
- 8 As to the Secretary of State see PARA 601 note 1 ante.
- 9 Oil and Pipelines Act 1985 Sch 3 para 9(2)(b) (as amended: see note 6 supra).
- 10 le the statement prepared under ibid Sch 3 para 9(1): see the text and notes 1-5 supra.
- 11 Ibid Sch 3 para 9(2).
- 12 Ibid Sch 3 para 9(3).
- 13 A person was not to be so appointed unless he was eligible for appointment as a company auditor under the Companies Act 1989 s 25 (prospectively repealed): see the Oil and Pipelines Act 1985 Sch 3 para 9(5) (substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997).
- 14 See the Oil and Pipelines Act 1985 Sch 3 para 9(4) (Sch 3 para 9(4), (6) amended, and Sch 3 para 9(7), (8) added, by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 15).
- 15 See the Oil and Pipelines Act 1985 Sch 3 para 9(6) (as amended: see note 14 supra).
- 16 As to the office of Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.
- 17 Oil and Pipelines Act 1985 Sch 3 para 9(7) (as added: see note 14 supra).
- 18 Ibid Sch 3 para 9(8) (as added: see note 14 supra).

UPDATE

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NOTE 6--1985 Act Sch 3 para 9(2) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

NOTE 13--For 'company auditor under the Companies Act 1989 s 25' read 'statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264)': 1985 Act Sch 3 para 9(5) (amended by SI 2008/948).

Halsbury's Laws of England/FUEL AND ENERGY (VOLUME 19(1) (2007 REISSUE) PARAS 601-775; VOLUME 19(2) (2007 REISSUE) PARAS 776-1328); VOLUME 19(3) (2007 REISSUE) PARAS 1329-1927)/9. OIL AND GAS TAXATION/1786-1927 Oil and Gas Taxation

9. OIL AND GAS TAXATION

1786-1927 Oil and Gas Taxation

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